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GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 1022

31 July 2002

**PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000
REGULATIONS ON FAIR ADMINISTRATIVE PROCEDURES**

The Minister for Justice and Constitutional Development has in terms of section 10 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), made the regulations set out in the Schedule.

SCHEDULE**Definitions**

1. In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned, and "Act" means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

CHAPTER 1

PUBLIC INQUIRIES

Application of this Chapter

2. This Chapter applies to administrative action which materially and adversely affects the rights of the public as envisaged in section 4(1) of the Act, and must be complied with if an administrator decides in terms of section 4(1) of the Act to hold a public inquiry contemplated in section 4(1)(a) of the Act.

Part 1: General

Notice of public inquiry

3. (1) An administrator must give notice of a public inquiry, –
- (a) if the administrative action affects the rights of the public throughout the Republic, in the *Government Gazette* and a newspaper which is distributed, or in newspapers which collectively are distributed, throughout the Republic; or
 - (b) if the administrative action affects the rights of the public in a particular province only, in the *Provincial Gazette* of that province and a newspaper which is distributed, or in newspapers which collectively are distributed, throughout that province; or
 - (c) if the administrative action affects the rights of the public in a specific area only, in a newspaper which is distributed in that specific area.
- (2) A notice published in terms of subregulation (1) must state –
- (a) whether the administrator will conduct the inquiry or whether a person or panel of persons has been appointed in terms of section 4(2)(a) of the Act to conduct the inquiry;
 - (b) where a person or panel has been appointed –

- (i) the name of the person or the names of the persons on the panel appointed to conduct that inquiry, including, in the case of a panel, the name of the person appointed as convenor of that panel; and
- (ii) the period within which the inquiry should be completed; and
- (c) particulars of the matter to be investigated, or if a person or panel has been appointed, the terms of reference of that person or panel.

(3) A notice published in terms of subregulation (1) must –

- (a) contain an invitation to members of the public who have information on the matter to be investigated, to submit –
 - (i) written representations; or
 - (ii) a request for permission to testify or to make oral representations;
- (b) state the closing date, which may not be earlier than 30 days from the date of publication of the notice, for persons to submit –
 - (i) written representations; or
 - (ii) requests for permission to testify or to make oral representations;
- (c) when appropriate, contain a warning that written representations, or requests for permission to testify or to make oral representations, received after the closing date may be disregarded;
- (d) state the name and official title of the person to whom any written representations or requests for permission must be sent or delivered; and
- (e) state the –
 - (i) work postal and street address and, if available, also an electronic mail address;
 - (ii) work telephone number; and
 - (iii) fax number, if any,of the person contemplated in paragraph (d).

(4) A notice published in terms of subregulation (1) must –

- (a) contain sufficient information about the matter to be investigated to enable the public to submit meaningful representations; and

- (b) when appropriate, specify a place or places where, and the hours within which, further information about the matter to be investigated will be available for public scrutiny.

(5) A notice published in terms of subregulation (1)(a) and (b) in a newspaper may, notwithstanding the provisions of subregulations (2) to (4), only contain-

- (a) a concise statement of the matter to be investigated;
- (b) the name, official title, contact telephone number and physical address of the person from whom further information on the matter and the procedure of the investigation can be obtained; and
- (c) a note that a more detailed notice concerning the matter to be investigated appears in the *Government Gazette* or *Provincial Gazette*, as the case may be.

(6) If a notice published in terms of subregulation (1) specifies a place or places where further information about the matter to be investigated will be available for public scrutiny, access to that information must be allowed from the date on which the notice is published until the closing date for comment, with the exclusion of Saturdays, Sundays and public holidays.

(7) Persons who want to submit requests for permission to testify or to make oral representations, must submit in writing to the person referred to in subregulation (3)

(d) –

- (a) their names, postal address and telephone number or other contact details;
- (b) an indication of the matter on which they wish to testify or make oral or written representations; and
- (c) their preference as to the language in which they want to testify or make oral or written representations.

(8) In order to ensure that a public inquiry is brought to the attention of the public, an administrator may, in addition, publicise the information referred to in subregulations (1) to (4) by way of communications through the printed or electronic

media, including by way of press releases, press conferences, the Internet, radio or television broadcasts, posters or leaflets.

Language

4. (1) A notice published in terms of regulation 3(1) must be in at least two of the official languages.

(2) A notice published in terms of regulation 3(1)(b) or (c) must take account of language preferences and usage in the province or area concerned.

(3) Written representations may be in any official language.

Special assistance

5. (1) If any administrative action that may be taken as a consequence of the public inquiry may materially and adversely affect the rights of members of a specific community consisting of a considerable proportion of people who cannot read or write or who otherwise need special assistance –

- (a) a notice must be publicised in the area in a manner that will bring the matter to be investigated to the attention of the community at large; and
- (b) the administrator must take special steps to solicit the views of members of the community on the matter to be investigated.

(2) Special steps in terms of subregulation (1)(b) may include –

- (a) the holding of public or group meetings where the matter to be investigated and the possible consequences are explained, questions are answered and views from the audience are minuted;
- (b) a survey of public opinion in the community on the matter to be investigated;
- (c) provision of a secretarial facility in the community where members of the community can state their views on the matter to be investigated; or

- (d) secretarial assistance to persons who wish to submit requests for permission to testify or to make oral representations, to comply with regulation 3(7).

Extension of closing date

6. (1) An administrator may extend the closing date specified in a notice published in terms of regulation 3 for persons who want to submit written representations or requests for permission to testify or to make oral representations.

(2) Any extension of a closing date for a significant period must be published by way of a notice as prescribed in regulations 3(1) and 4(1) and, when appropriate, in regulation 3(8).

Representations and requests received after closing date

7. (1) An administrator, or a person or panel conducting a public inquiry –
(a) may refuse to accept any written representations or requests for permission to testify or to make oral representations, received after the closing date; or
(b) may, but is not obliged to, grant requests for condonation of late submission of written representations or requests for permission to testify or to make oral representations.

(2) A request for condonation may be granted on good cause shown by the person who submitted the written representations or the request for permission, provided that condonation would not –

- (a) lead to unnecessary delays; or
(b) otherwise prejudice the public interest.

Special provisions applicable to both persons and panels appointed to conduct public inquiries

8. If a person or panel has been appointed in terms of section 4(2)(a) of the Act to conduct a public inquiry, that person or panel must –

- (a) conduct the inquiry –

- (i) in accordance with the terms of reference;
 - (ii) with the resources provided by the administrator; and
 - (iii) within a time and financial framework determined by the administrator;
- (b) regularly or on request by the administrator, report to the administrator on progress with the completion of the inquiry; and
- (c) immediately report to the administrator any administrative or other obstacles impeding progress with the inquiry.

Special provisions applicable to panels only

9. (1) The convenor of a panel, or another panel member designated by the convenor, presides at meetings of the panel.

(2) When a panel reports on a public inquiry in terms of section 4(2)(b)(iii) of the Act, it must also report any minority view.

Compilation of written report

10. An administrator, or a person or panel conducting a public inquiry, must compile the written report contemplated in section 4(2)(b)(iii) of the Act without unreasonable delay.

Part 2: Public hearings

Commencement of public hearings

11. (1) An administrator, or a person or panel conducting a public inquiry, must start and complete a public hearing contemplated in section 4(2)(b)(i)(aa) of the Act without unreasonable delay.

(2) An administrator or a person or panel conducting a public inquiry must give notice of the public hearing in at least –

- (a) a newspaper which is distributed, or in newspapers which collectively are distributed, throughout the Republic, if the administrative action affects the rights of the public throughout the Republic;
- (b) a newspaper which is distributed, or in newspapers which collectively are distributed, throughout a particular province, if the administrative action affects the rights of the public in that particular province only; or
- (c) a newspaper which is distributed in a specific area, if the administrative action affects the rights of the public in that specific area only.

(3) A notice published in terms of subregulation (2) must –

- (a) be in at least two of the official languages;
- (b) if the administrative action affects the rights of the public in a particular province or a specific area, take into account the language preferences and usage in the province or area concerned;
- (c) state particulars of the matter that is being investigated;
- (d) state the venue of the hearing and the time and date on which the hearing will commence; and
- (e) invite members of the public to attend the hearing.

(4) In order to ensure that a public hearing is brought to the attention of the public, the administrator or the person or panel conducting that public hearing may, in addition, publicise the information referred to in subregulations (2) and (3) by way of communications through the printed or electronic media, including by way of press releases, press conferences, the Internet, radio or television broadcasts, posters or leaflets.

(5) An administrator, or a person or panel conducting a public inquiry, must inform every person who submitted a request for permission to testify or to make oral representations in terms of regulation 3(7) –

- (a) whether the request has been granted, and if not, the reasons why the request was declined;

- (b) the venue of the public hearing, and the time and date on which it will commence;
and
- (c) if the request is granted, the date on which that person will be heard.

Procedure at public hearings

12. (1) The administrator, or the person or panel conducting a public inquiry, determines the procedure at that public hearing, subject to the Act and any other provision of these regulations.

(2) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court, applies to the questioning of a person in the course of a public hearing.

Person presiding at public hearings

13. (1) The administrator or, if a person or panel has been appointed to conduct the public inquiry, that person or the convenor of the panel, or another panel member designated by the convenor, presides at a public hearing.

(2) The person presiding at a public hearing, either in person or through an assistant, must explain the issues the administrator or the person or panel has to consider, and the person presiding may –

- (a) allow a person present at the proceedings and whose request for permission referred to in regulation 3(7) has been granted, to give evidence, to make oral representations or to produce a document;
- (b) call any other person present at the proceedings to give evidence, to make oral representations or to produce a document in that person's custody;
- (c) administer an oath or solemn affirmation to that person;
- (d) question that person, or have that person questioned by a person designated by the person presiding; and
- (e) retain for a reasonable period any document produced in terms of paragraph (a) or (b).

Persons appearing at public hearing

14. (1) A person appearing at a public hearing may, with the approval of the person presiding at the public hearing and at own expense, be assisted by a representative.

(2) A person appearing at a public hearing, including such person's representative, may speak in a language of choice, but must observe the directives of and conform to the procedures determined by the person presiding at the public hearing.

(3) If the person appearing at a public hearing is a minor, the person presiding at the hearing must ensure that the minor's rights and interests are protected.

Access to public hearings

15. (1) Public hearings are open to the public, including the media, and the person presiding at the public hearing may not exclude the public, including the media, from the hearing, except when –

- (a) legislation applicable to the hearing provides for the hearing to take place in closed session; or
- (b) a matter is raised during the hearing which is –
 - (i) privileged in terms of the law;
 - (ii) confidential in terms of legislation; or
 - (iii) of such a nature that its confidential treatment is for any other reason reasonable and justifiable in an open and democratic society.

(2) The administrator or the person or panel conducting the public inquiry may take reasonable measures—

- (a) to regulate public access, including access of the media, to the place where the hearing is held;
- (b) to prevent and control misconduct by members of the public attending the hearing; and

(c) to provide for the voluntary searching of any person, and, where appropriate, for the refusal of entry to, or the removal of any person from the place where that hearing is held.

(3) The person presiding at a public hearing may –

(a) order a member of the public, including the media, to leave the place where that hearing is held –

(i) when the public is excluded from that hearing in terms of subregulation (1); or

(ii) whenever this is necessary to give effect to the measures taken in terms of subregulation (2); or

(b) order a person referred to in regulation 14(2) to leave that hearing if that person does not observe a directive of or conform to the procedures determined by the person presiding at the public hearing.

(4) When instructed by the person presiding at a public hearing, a peace officer present at that hearing must remove a person –

(a) who disrupts the proceedings or causes a nuisance; or

(b) does not leave when ordered to leave in terms of subregulation (3).

Adjournment of public hearings

16. (1) The administrator, or the person or panel conducting a public inquiry, may

–

(a) adjourn a public hearing and set a time and date for its resumption; or

(b) at any time after the adjournment, change the time or date for the resumption of that hearing.

(2) If the date for resumption of a hearing is changed in terms of subregulation (1)(b), the administrator, or the person or panel conducting that public inquiry, must give notice of such change in accordance with regulation 11(2).

CHAPTER 2

NOTICE AND COMMENT PROCEDURE

Application of this Chapter

17. This Chapter applies to administrative action which materially and adversely affects the rights of the public as envisaged in section 4(1) of the Act, and must be complied with if an administrator decides in terms of section 4(1) of the Act to follow a notice and comment procedure contemplated in section 4(1)(b) of the Act.

Publication

18. (1) Information concerning the proposed administrative action must be published by way of notice –

- (a) if the administrative action affects the rights of the public throughout the Republic, in the *Government Gazette* and a newspaper which is distributed, or in newspapers which collectively are distributed, throughout the Republic; or
- (b) if the administrative action affects the rights of the public in a particular province only, in the *Provincial Gazette* of that province and a newspaper which is distributed, or in newspapers which collectively are distributed, throughout that province; or
- (c) if the administrative action affects the rights of the public in a specific area only, in a newspaper which is distributed in that specific area.

(2) A notice published in terms of subregulation (1) must include –

- (a) an invitation to members of the public to submit comments in connection with the proposed administrative action to the administrator concerned on or before a date specified in the notice, which date may not be earlier than 30 days from the date of publication of the notice;
- (b) a caution that comments received after the closing date may be disregarded;

- (c) the name and official title of the person to whom any comments must be sent or delivered; and
- (d) the –
 - (i) work, postal and street address and, if available, also an electronic mail address;
 - (ii) work telephone number; and
 - (iii) fax number, if any,of the person contemplated in paragraph (c).

(3) A notice published in terms of subregulation (1) must –

- (a) contain sufficient information about the proposed administrative action to enable members of the public to submit meaningful comments; and
- (b) when appropriate, specify a place or places where, and the hours within which, further information concerning the proposed administrative action will be available for public scrutiny.

(4) A notice published in terms of subregulation (1)(a) and (b) in a newspaper may, notwithstanding the provisions of subregulations (2) and (3), only contain-

- (a) a concise statement of the proposed administrative action;
- (b) the name, official title, contact telephone number and physical address of the person from whom further information on the proposed administrative action and the administrative procedure can be obtained; and
- (c) a note that a more detailed notice concerning the proposed administrative action appears in the *Government Gazette* or *Provincial Gazette*, as the case may be.

(5) If a notice published in terms of subregulation (1) specifies a place or places where further information about the proposed administrative action will be available for public scrutiny, access to that information must be allowed from the date on which the notice is published until the closing date for comment, with the exclusion of Saturdays, Sundays and public holidays.

(6) In order to ensure that a proposed administrative action is brought to the attention of the public, an administrator may, in addition, publicise the information referred to in subregulations (1) to (5) by way of communications through the printed or electronic media, including by way of press releases, press conferences, the Internet, radio or television broadcasts, posters or leaflets.

Language

19. (1) A notice published in terms of regulation 18(1) must be in at least two of the official languages.

(2) A notice published in terms of regulation 18(1)(b) or (c) must take account of language preferences and usage in the province or area concerned.

(3) Written comments may be in any official language.

Special assistance

20. (1) If any proposed administrative action may materially and adversely affect the rights of members of a specific community consisting of a significant proportion of people who cannot read or write or who otherwise need special assistance –

- (a) a notice must be publicised in the area of that community in a manner that will bring the proposed action to the attention of the community at large; and
- (b) the administrator must take special steps to solicit the views of members of the community.

(2) Special steps in terms of subregulation (1)(b) may include –

- (a) the holding of public or group meetings where the proposed action is explained, questions are answered and views from the audience are minuted;
- (b) a survey of public opinion in the community on the proposed action; or
- (c) provision of a secretarial facility in the community where members of the community can state their views on the proposed action.

Extension of closing date

21. (1) The administrator may extend the closing date for comment specified in a notice published in terms of regulation 18.

(2) Any extension of a closing date of more than one month must be published by way of a notice as prescribed in regulations 18(1) and 19(1) and (2), and when appropriate, in regulation 18 (6).

Comments received after closing date

22. (1) The administrator –

- (a) may refuse to accept comments received after the closing date for comment; or
- (b) may, but is not obliged to, grant requests for condonation of late submission of comments.

(2) A request for condonation may be granted on good cause shown by the person who submitted the comments, provided that condonation would not –

- (a) lead to unnecessary delays; or
- (b) otherwise prejudice the public interest.

CHAPTER 3**NOTICE OF ADMINISTRATIVE ACTION AND RIGHTS****Notice of administrative action and rights**

23. If an administrative action that has been taken, materially and adversely affects a person's rights, an administrator, when informing that person of the administrative action, must also inform that person of-

- (a) the right which that person has in terms of section 5 of the Act to request reasons for the action; and
- (b) any right of review or internal appeal, where applicable.

Notice of right to request reasons

- 24.** A notice contemplated in regulation 23(1)(a) must also-
- (a) set out the formal requirements in respect of a request for reasons as set out in regulation 27(1) and (3); and
 - (b) refer to assistance that will be given in terms of regulation 27(2).

Notice of review or internal appeal

- 25.** A notice contemplated in regulation 23(1)(b), must also, where applicable -
- (a) stipulate the period, if any, in which the review or appeal proceedings must be instituted;
 - (b) state the name and address of the person with whom proceedings for review or appeal must be instituted; and
 - (c) set out any other formal requirements in respect of the proceedings for review or appeal.

CHAPTER 4

REQUESTS FOR REASONS

Application of this Chapter

- 26.** This Chapter applies to administrative action which materially and adversely affects the rights of any person, and must be complied with if a request for reasons for administrative action is made in terms of section 5(1) of the Act.

Formal requirements

- 27.** (1) A request in terms of section 5 of the Act for reasons for administrative action which materially and adversely affected a person's rights must be –
- (a) in writing;
 - (b) addressed to the administrator concerned; and
 - (c) sent to the administrator by post, fax or electronic mail or delivered to the administrator by hand.

(2) If an administrator receives an oral request for reasons from a person who cannot write or otherwise needs assistance, the administrator or a person designated by the administrator must give reasonable assistance to that person to submit such request in writing.

- (3) A request for reasons contemplated in this Chapter must –
- (a) indicate –
 - (i) the administrative action which affected the rights of the person making the request; and
 - (ii) which rights of that person were materially and adversely affected by the administrative action; and
 - (b) state –
 - (i) the full name and postal and, if available, electronic mail address of that person; and
 - (ii) any telephone and fax numbers where that person may be contacted.

Administrator's duties

- 28.** (1) An administrator to whom a request for reasons is made must –
- (a) acknowledge receipt of the request; and
 - (b) either –
 - (i) accede to the request and furnish the reasons in writing; or
 - (ii) decline the request.

(2) If an administrator declines a request for reasons in terms of section 5(4)(a) of the Act, the administrator must give reasons in writing to the person who made the request why the request was declined.

Short title and commencement

- 29.** These regulations are called the Regulations on Fair Administrative Procedures, 2002, and shall come into operation on 31 July 2002.