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STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 926.

5 Mei 1988

No. 926.

5 May 1988

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 49 van 1988: Wysigingswet op Streeksdiensterade, 1988.

No. 49 of 1988: Regional Services Councils Amendment Act, 1988.

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- (c) by the substitution for paragraph (b) of the definition of "management body" of the following paragraph:
- (b) **[any body established in terms of the Rural Coloured Areas Law, 1979 (Law No. 1 of 1979), of the Coloured Persons Representative Council of the Republic of South Africa]** a board of management or board referred to in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);";
- (d) by the substitution for paragraph (c) of the definition of "management body" of the following paragraph:
- (c) **[any body referred to in section 2 of the Community Councils Act, 1977 (Act No. 125 of 1977)]** any local area committee established under section 21(1) of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943 (Ordinance No. 20 of 1943), of the Transvaal;";
- (e) by the insertion after paragraph (d) of the definition of "management body" of the following paragraph:
- (e) a rural council;";
- (f) by the substitution for the definition of "representative body" of the following definition:
- "representative body" means any body of which one or more members of its executive are elected by the members of that body and the members of which body consist of persons residing or communities established outside the area of jurisdiction of any local authority or management body in a region, and—
- (a) which body, in relation to certain affairs, manages the interests in the region or any part of the region of the persons or communities that elected the executive in question;
- (b) to members of which body any regional service is provided or may be provided **[against payment]**; and
- (c) which body is recognized by the Administrator as a representative body for the purposes of this Act provided he is satisfied that the members of the body concerned are not or cannot be adequately represented on a regional services council by means of a rural council;"; and
- (g) by the insertion after the definition of "representative body" of the following definition:
- "rural council" means a body established under section 12A;".

Amendment of section 2A of Act 109 of 1985, as inserted by section 3 of Act 78 of 1986

2. Section 2A of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph, the existing subsection becoming paragraph (a):
- (b) If a local authority refuses or fails to comply with a directive in terms of paragraph (a), the Administrator may perform the act himself or cause it to be performed, and thereafter the act shall for all purposes be deemed to be performed by that local authority, and any costs incurred by the Administrator in that respect may be recovered from that local authority."

Amendment of section 3 of Act 109 of 1985

3. Section 3 of the principal Act is hereby amended—
- (a) by the deletion of subparagraph (iv) of paragraph (a) of subsection (2); and
- (b) by the substitution for the words following subparagraph (v) of paragraph (a) of subsection (2) of the following words:
- "is at a date on which a function or any part of a function is in terms of subsection (1) identified as a regional function and entrusted to a council, charged with that function or any part thereof, that body,

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board or corporation shall be relieved of its duties in relation to that function or part thereof in the region concerned, with effect from that date or such other date as is mentioned in the notice, and different dates may be determined in respect of different regional functions which have been so identified.”

Amendment of section 4 of Act 109 of 1985, as amended by section 4 of Act 78 of 1986**4. Section 4 of the principal Act is hereby amended—**

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- 10 “(a) this Act and any other law, a council shall **[in relation to any of its regional functions]** have all the powers and duties of a local authority or an officer in the employment of any local authority in terms of the laws which apply in the province where the seat of the council is situated **[and]** in relation to such functions or any part of a function
- 15 which the Administrator entrusts to it by notice referred to in section 3 (1), but a council shall not have the power to levy any rates on immovable property;”;
- (b) by the insertion after subsection (1) of the following subsection:
- 20 “(1A) (a) When a function of any part of a function has in terms of section 3 (1) (b) been identified as a regional function and entrusted to a council, the Administrator may by notice in the *Official Gazette* declare that any law relating to such function or any part thereof and which has been enacted by the local body within the area of jurisdiction of which the seat of that council is situated, shall be deemed to be
- 25 a law made by the council in terms of subsection (1) (a) in respect of the region of that council.
- (b) A council may by notice in the *Official Gazette* of the province where the seat of the council is situated, amend any law referred to in paragraph (a) in order to give effect to the provisions of that
- 30 paragraph.”;
- (c) by the insertion after subsection (2) of the following subsection:
- “(2A) Any arrangement referred to in the first proviso to subsection (2) may provide that the assets, powers, duties, rights and obligations in question shall only in part be transferred or devolve.”;
- 35 (d) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (3) of the following words:
- “A council may, subject to the provisions of paragraph (b), enter into an agreement with a local body or any other person or institution **[which is a juristic person]** irrespective of whether the area of jurisdiction of that body, person or institution is situated within or
- 40 outside the region of that council, or within or outside the Republic, in terms of which—”;
- (e) by the substitution for subparagraph (iii) of paragraph (a) of subsection (3) of the following subparagraph:
- 45 “(iii) that council undertakes on behalf of such local body, person or institution, if the area of jurisdiction of that local body, person or institution is situated outside the Republic or within the area of a legislative assembly or a self-governing territory referred to in section 38 of the National States Constitution Act, 1971 (Act No. 21 of 1971), to perform—
- 50 (aa) any regional function; or
- (bb) any other function of the council in terms of this Act, within the area of jurisdiction of such local body, person or institution, in which event such area shall on the conditions specified in the agreement be deemed to form part of the region and such local body,
- 55 person or institution may be represented on the council.”; and
- (f) by the substitution for subsection (6) of the following subsection:
- “(6) The Administrator may by notice in the *Official Gazette* declare that a reference to a local authority in a law, excluding the Eskom Act, 1987

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(Act No. 40 of 1987), and the Electricity Act, 1987 (Act No. 41 of 1987), specified in the notice shall be construed as a reference also to a council.”.

Amendment of section 6 of Act 109 of 1985

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Every local body represented on a council shall from its members nominate one member of the council for every 10 per cent or part of 10 per cent of the total number of votes to which it is entitled in terms of section 9 (1) (a) or 4 (b), but no local body shall nominate more than five members: Provided that each local body may nominate at least one member.”.

Amendment of section 7 of Act 109 of 1985

6. Section 7 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The council shall, subject to the provisions of section 11 (1A), at its first meeting and annually thereafter, elect one of its members as deputy chairman, who shall act as chairman whenever the chairman is for any reason absent or unable to act as chairman or whenever he is requested thereto by the chairman.”.

Amendment of section 8 of Act 109 of 1985

7. Section 8 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The remuneration and allowances of the chairman, the deputy chairman, **[and]** the members of the council and members of a committee referred to in section 10A who are not members of the council shall be determined by the Administrator with the concurrence of the Minister of Finance.”.

Amendment of section 9 of Act 109 of 1985

8. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) (a) Subject to the provisions of subsection (2), every local body represented on a council shall in respect of the decisions of the council be entitled to cast such number of votes as is equal to the proportion, expressed as a percentage, between the amount paid by any local authority or management body and the persons in their areas of jurisdiction or the members of a representative body, as the case may be, for the provision by the council of regional services (excluding regional services provided in any industrial area or central business area which the Administrator shall, subject to the provisions of section 2 (2) (a) and (b), delimit by notice in the *Official Gazette* after consideration of a report by the Demarcation Board for Local Government Areas referred to in section 7A of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983), which report shall be based on criteria prescribed by the Administrator, by notice in the *Official Gazette*), and the total amount obtained by the council as a result of the provision of such regional services in that region on behalf of all such local bodies: Provided that, if the Administrator is of the opinion that the basis for the apportionment of votes as determined in this subsection cannot be applied in respect of a specific local body, he may, in order to achieve a result which in his opinion is fair to all persons concerned, subject to the provisions of section 2 (2) (a) determine any other basis according to which the number of votes for such local body shall be determined.”.

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- (b) Any person admitted by agreement in terms of section 4 (3) (a) (iii) a member of the council shall in respect of the decisions of the council in regard to any matter to which the agreement relates, or which has financial implications for the local body, person or institution which he represents, be entitled to cast such number of votes as is specified in the agreement in question.”;
- (b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:
- “(a) The number of votes which may be cast by members of a local body in respect of decisions of the council shall be so apportioned by the chairman of the council among the members of that local body that the votes that may be cast by members nominated by a local body, are as far as possible equal.”; and
- (c) by the substitution for paragraph (b) of subsection (4) of the following paragraph:
- “(b) In respect of the first constitution or any reconstitution of a council, the number of votes to which local bodies shall be entitled shall be determined by the Administrator subject to the provisions of section 2 (2) (a) on the basis of sworn information obtained by him from the local bodies in the region concerned, or on such other basis as he may determine in terms of the proviso to subsection (1) (a).”.

Amendment of section 10 of Act 109 of 1985

9. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:
- “(3) Notice of a meeting of a council shall be given to the members thereof as prescribed in the standing orders referred to in subsection (6).”;
- (b) by the substitution for subsection (5) of the following subsection:
- “(5) [(a) A person designated by a development board established by section 3 of the Black Communities Development Act, 1984 (Act No. 4 of 1984), in a region, may attend the proceedings of the council and take part in the discussions thereof but that person may not vote in respect of any decision.
- (b) A Council] The chairman may allow any person or institution which in [its] his opinion has an interest in the functions of the council to nominate a person to attend the proceedings of the council or any committee thereof and to take part in such discussions of the council or the committee concerned as in the opinion of the chairman relate to the interests of the person or institution in question, but such a nominee may not vote in respect of any decision.”; and
- (c) by the substitution for subsection (6) of the following subsection:
- “(6) (a) Subject to the provisions of this Act, a council may approve standing orders for the regulation of its proceedings and [for] of all other matters relating to the management, powers and duties of the council.
- (b) Any standing orders may provide—
- (i) for the manner in which committees referred to in sections 10A and 10B may vote notwithstanding the provisions of section 9;
- (ii) that any person contravening a provision of the standing orders shall be guilty of an offence and on conviction liable to a fine not exceeding R500 or in default of payment to imprisonment for a period not exceeding three months.”.

Amendment of section 10A of Act 109 of 1985, as inserted by section 5 of Act 78 of 1986

10. Section 10A of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) may appoint one or more committees to perform such functions as the council may assign to it or them under section 11A.”;

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(b) by the substitution for subsection (2) of the following subsection:

“(2) The chairman **[or deputy chairman]** of the council shall be a member *ex officio* of every committee appointed under subsection (1), and during his absence or when he requests the deputy chairman of the council to act as chairman, the deputy chairman shall be such member, but the chairman or any member of such committee who is not a member of the council shall not have a vote at any meeting of any such committee.”; and

(c) by the deletion of subsection (3).

Insertion of sections 10B and 10C in Act 109 of 1985

11. The following sections are hereby inserted in the principal Act after section 10A:

“Executive committee

10B. (1) A council may, and shall if the Administrator so requests, appoint an executive committee for its area.

(2) (a) An executive committee shall consist of the chairman and the deputy chairman of the council, who shall be the chairman and deputy chairman of the committee respectively, and not more than six members, who shall be members of the council, designated by the council, of which not more than two members may be members of the same local body: Provided that the chairman may not vote in respect of any decision.

(b) A majority of the total number of members of an executive committee shall constitute a quorum.

(3) (a) A member shall serve on the executive committee for a period of one year, but may again be designated, and shall remain in office until his successor is designated.

(b) Upon the expiry of the term of office of any member of an executive committee, the vacancy shall be filled by the council concerned at its next ensuing ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairman of the council within 21 days after that ordinary meeting.

(c) A casual vacancy on an executive committee shall occur if a member resigns as a member of the committee, or if he ceases to be a member of the council concerned as contemplated in section 8 (3).

(d) If a casual vacancy occurs in an executive committee such vacancy shall be filled by the council concerned at its next ensuing ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairman of the council within 21 days after that ordinary meeting, and the person designated to fill such vacancy shall act in that capacity for the unexpired portion of the term of office of his predecessor.

(e) If a council is convinced that the executive committee temporarily cannot function, as no quorum can be obtained, the council may designate so many members as is necessary to constitute a quorum to serve temporarily on the executive committee in the place of the absent members until such members can again attend a meeting of the executive committee.

(4) An executive committee shall hold at least one ordinary meeting during the month in which the council meets as contemplated in section 10 (1).

(5) A special meeting of an executive committee—

(a) may at any time be convened by the chairman thereof; and

(b) shall be convened by the chairman if he is requested thereto in writing by a majority of the members of the executive committee.

Powers of executive committee

10C. (1) An executive committee shall have the power—

(a) to ensure that the resolutions of the council are carried out;

(b) to consider any matter entrusted to the council in terms of the provisions of any law (excluding any matter determined by the council) and to advise the council in connection therewith;

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- (c) to prepare estimates of revenue and expenditure of the council;
- (d) to control the expenditure of moneys voted by the council in its approved estimates and all other moneys or funds made available by the council; and
- 5 (e) to report at every ordinary meeting of the council on the functions of the committee.”.

Amendment of section 11 of Act 109 of 1985, as amended by section 6 of Act 78 of 1986

12. Section 11 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:
- 10 “(1A) (a) If a council cannot come to a decision on any matter because a majority referred to in subsection (1) was not obtained, the matter shall be reconsidered by the council at its following meeting.
- (b) If a council upon reconsideration of any matter as contemplated in paragraph (a) cannot come to a decision because the majority in question was not obtained—
- 15 (i) the election or designation of the deputy chairman of the council, or a chairman and members of a committee referred to in section 10A or members of the executive committee referred to in section 10B, shall be by an ordinary majority of the votes of the members present at that meeting; and
- 20 (ii) any other matter shall be referred by the chairman to the appeal board as contemplated in section 11 (3) (a), in which case the provisions of section 11 (6), (7) and (8) shall *mutatis mutandis* apply.”;
- (b) by the substitution for subsection (2) of the following subsection:
- 25 “(2) (a) A decision of a council **[or a proposal in respect of which the majority referred to in subsection (1) was not obtained]**, excluding a decision referred to in subsection (1A) (b), shall at the request of a local body represented at the discussion of the matter concerned at the meeting at which such decision was taken **[or the proposal served,]** be reconsidered at the following meeting of the council and not again within six months thereafter.
- 30 (b) Any local body not so represented may in writing furnish to the chairman of the council reasons why it was not so represented, whereupon the chairman shall at the request of that local body decide whether or not the decision **[or proposal]** concerned shall be so reconsidered.”; and
- (c) by the substitution for paragraph (c) of subsection (4) of the following paragraph:
- 40 “(c) any decision **[or proposal]** of the council relating to a tariff or levy for services rendered by the council;”.

Amendment of section 11A of Act 109 of 1985, as inserted by section 7 of Act 78 of 1986

13. Section 11A of the principal Act is hereby amended—

- 45 (a) by the substitution for paragraph (a) of the following paragraph:
- “(a) **[any member or members of]** a committee appointed under section 10A;”;
- (b) by the insertion after paragraph (a) of the following paragraphs:
- 50 “(aA) an executive committee appointed under section 10B;
- (aB) the chairman of the council;”;
- (c) by the deletion of the word “and” at the end of subparagraph (iii); and
- (d) by the addition of the following subparagraph:
- “(v) the appointment of committees referred to in sections 10A and 10B.”.

Amendment of section 12 of Act 109 of 1985, as amended by section 8 of Act 78 of 1986

55 14. Section 12 of the principal Act is hereby amended—

- (a) by the deletion of the word “and” at the end of the paragraph (d) of subsection (1A);

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(b) by the insertion after paragraph (d) of subsection (1A) of the following paragraphs:

“(dA) authorize the Commissioner for Inland Revenue—

- 5 (i) to take such steps as the Commissioner may deem necessary to ensure that any levy payable under this Act is paid;
- (ii) to conduct audits of the affairs of any person who is or may be liable for the payment of any such levy;
- 10 (iii) to require any person to produce for examination any books, records or accounts or any other document which in the opinion of the said Commissioner are or may be necessary to determine the liability of such person or any other person for the payment of any such levy;
- (iv) to determine or estimate the liability of any person for any such levy and to direct a council to make an assessment of such levy;
- 15 and
- (v) to furnish a council with a ruling or directive on the interpretation of any provision of this Act or any such notice relating to the determination of the liability of any person for the payment of any such levy, which ruling or directive the council shall be obliged to apply;
- 20 (dB) authorize a council to administer, subject to any ruling or directive furnished by the said Commissioner under the provisions of paragraph (dA) (v), any provision of this Act or of any such notice in so far as it relates to the determination of the liability of any person for or the payment or recovery of any such levy;
- 25 (dC) authorize a council, if it appears to the council that the total monthly amount for which an employer or person in respect of the payment of a regional services levy and a regional establishment levy shall be liable, is less than the amount determined from time to time by the said Minister, to permit that employer or person to pay the total amount of such levies once per annum at the time determined in the permission;
- 30 (dD) provide for an appeal against any decision of a council or the said Commissioner to the special court referred to in section 83 of the Income Tax Act, 1962 (Act No. 58 of 1962), and for an appeal against any decision of the said court;”;

(c) by the substitution in paragraph (b) of subsection (6) for the words preceding the proviso of the following words:

“the payment or part payment of the costs incurred in the region by a local body in the execution or performance of any of **[its]** the powers or functions of such local body;”;

(d) by the substitution for subsection (10) of the following subsection:

“(10) If any person who is liable for the payment of a levy under subsection (1) fails to pay such levy in full within the period for payment prescribed in terms of this Act, interest shall, unless the **[Commissioner for Inland Revenue]** relevant council, having regard to the circumstances of the case, otherwise directs, become payable by that person on the balance of the levy outstanding at the same rate **[prescribed by the Minister of Finance by notice in the Gazette]** as the rate determined from time to time for the purposes of paragraph (b) of the definition of ‘prescribed rate’ in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), reckoned from the end of the said period.”.

Insertion of section 12A in Act 109 of 1985

15. The following section is hereby inserted in the principal Act after section 12:

“Establishment of rural councils

55 **12A. (1)** The Minister referred to in section 2 (2) (a) (ii) or (iv) according to the population group concerned, may by notice in the

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Gazette and from the date mentioned in such notice establish a rural council in a region or part of a region for persons resident in such region or part, but outside the area of jurisdiction of a local authority.

5 (2) One rural council may be established for each population group in a region, unless in the opinion of the Minister concerned and regard being had to the matters mentioned in Schedule 1, the circumstances justify the establishment in that region of more than one but not more than three rural councils for a specific population group.

10 (3) Notwithstanding the provisions of subsection (1), any two or more Ministers referred to in that subsection, may, in such manner and on such conditions as may be agreed upon, by notice in the *Gazette* and from the date mentioned in such notice, in lieu of any rural council contemplated in the said subsection, establish rural councils in a region or part of a region to jointly represent the persons belonging to the population groups concerned, and are resident in such region or part but outside the area of jurisdiction of a local authority.

15 (4) The members of the rural council shall be elected by the persons referred to in subsection (1).

20 (5) A rural council shall be a juristic person.

25 (6) The objects of a rural council are to grant representation on a council to persons in a region outside the areas of jurisdiction of local authorities to promote the interests and welfare of those persons, and for such purpose a rural council shall be vested and entrusted with the powers and duties which the Minister concerned may from time to time identify in the *Gazette* as powers and duties of a rural council, but a rural council shall not have the power to impose any levy or service charge or to levy taxes on immovable property.

30 (7) The expenditure in connection with the administration of a rural council shall be defrayed out of money appropriated by Parliament for such purpose.

(8) The Minister concerned may by notice in the *Gazette* make regulations in respect of any matter which in his opinion is necessary or expedient for the effective execution or furtherance of the provisions and objects of this section."

35 Insertion of section 13A in Act 109 of 1985

16. (1) The following section is hereby inserted in the principal Act after section 13:

"Accounts and audit

40 **13A. (1)** The council shall cause full and correct accounts to be kept of all moneys received or expended and of all assets and liabilities and all financial transactions concluded by it.

(2) The books, statements, accounts and balance sheets of a council shall be audited by the Auditor-General."

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1987.

45 Amendment of section 14 of Act 109 of 1985

17. Section 14 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words following paragraph (b) of the following words:

50 "except in the exercise of his powers or the performance of his duties under this Act or by order of a competent court: Provided that **[the Auditor-General in the performance of his duties in terms of section 42 of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), and]** the Commissioner for Inland Revenue in the exercise of his functions under this or any other Act, shall have access to all records and documents in the possession or custody of the council for the purposes of this Act."; and

55 (b) by the deletion of subsection (2).

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Insertion of section 15A in Act 109 of 1985

18. The following section is hereby inserted in the principal Act after section 15:

“Removal of conflict and administrative problems

5 **15A.** (1) If in the application of this Act it appears that any provision thereof is in conflict with any other law or that administrative problems are being experienced, the Minister may by notice in the *Gazette* make regulations in order to remove such conflict or administrative problems: Provided that in respect of any matter referred to in section 12, such regulations shall be made by the Minister of Finance.

10 (2) The Minister concerned shall make a regulation referred to in subsection (1) only with the concurrence of the Ministers referred to in section 2 (2) (a) (ii) and (iv).

15 (3) (a) A copy of a regulation in terms of subsection (1) shall be tabled in Parliament by the Minister within 14 days after the issue thereof if Parliament is then in session or, if Parliament is then not in session, within 14 days after its next ensuing session.

20 (b) If Parliament disapproves of any such regulation or any provision thereof, such regulation or such provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such regulation or such provision up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such regulation or such provision.”

25 Amendment of Schedule 3 to Act 109 of 1985

19. (1) Schedule 3 to the principal Act is hereby amended—

30 (a) by the substitution where it appears in the third column opposite the expression “Ordinance No. 17 of 1981, of the Cape of Good Hope”, for the expression “section 3 (2) (b)” of the expression “sections 3 (2) (b) and 8 (1) (b)”;

 (b) by the insertion before the expression “Act No. 78 of 1977” of the following:

	“Ordinance No.	Divisional	The liability to
35	18 of 1976, of the Cape of Good Hope. . . .	Councils Ordinance, 1976. . . .	pay rates referred to in sections 80 (1), 81 (a) and 82 1 (a) and (b) in relation to a region as from the date on which the levies referred to in section 12 of this Act are introduced in that region.”
40			
45			

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1987.

Short title

50 20. This Act shall be called the Regional Services Councils Amendment Act, 1988.