

LOCAL GOVERNMENT ELECTIONS REGULATIONS

SUMMARY GUIDE [South Africa]

RETURN TO RESOURCE CENTER
INTERNATIONAL FOUNDATION
FOR ELECTORAL SYSTEMS
1101 15th STREET, NW 3rd FLOOR
WASHINGTON, DC 20005

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This summary is not an attempt to rewrite the law. The legal position is contained in the Local Government Election Regulations. The summary attempts to provide clearer expression in practical language of the effect of the regulations and to group subject matter together so as to help those interested in parts of the regulations not to have to delve into all the provisions.

If there is any doubt as to procedures that the law on local government elections requires then the regulations themselves should be examined and, if still unclear, legal opinion sought.

Dates given in this summary are the latest dates possible under the timeframes allowed by the regulations. The election date is 1 November 1995.

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Throughout this document, the term “transitional authority” means a transitional local council (TLC), transitional metropolitan substructure (TMS) and transitional metropolitan council (TMC).

The provisions of the Election Regulations, as they apply to a transitional authority, also apply to a local government co-ordinating committee established in terms of section 7 of the Local Government Act and to a local government body exempted in terms of section 5 of the Local Government Act.

Throughout the regulations dates and times on or by which actions must be completed and dates and times between which facilities must be made available or rights are conferred are specified. However regulation 100A gives each Premier the power to alter any of these dates either prospectively or retrospectively, by notice in the Provincial Gazette, if he or she considers that there are circumstances which make it unreasonably difficult or impossible to achieve the actions by, on or during the prescribed dates.

VOTER FRANCHISE

Qualifications for Registration as a Voter (Reg 2(1))

1.1 A person who is:

- (i) a South African citizen; or, who though not a citizen of South Africa, has been given the right to vote by an Act of Parliament (ie has permanent status); and
- (ii) of or over the age of 18 years by or on the day of the election (1 November 1995) ; and
- (iii) ordinarily resident within the area of jurisdiction of a transitional authority (*that is, normally lives within the area under the control of the authority, and if absent temporarily it is the place to which he or she returns regularly*), or under law liable for the payment of assessment rates, rent, services charges or levies to that transitional authority;

is entitled to be included on the voters' roll for that transitional authority and to vote in an election for members of the council of that authority. Voting for the council may mean marking two or three ballot papers representing the ward (voting for a ward candidate in a TLC or TMS) and the proportional representation (voting for a party in a TLC/TMS and, if relevant a TMC) components of a vote.

1.2 Persons who are not citizens, but have been granted permanent residency in South Africa, are able to register, if otherwise qualified.

- 1.3 Registration forms should be accepted from persons who are 17 years old at the time of registration and otherwise qualified to register. These registration forms should be processed onto a separate provisional voters' roll. Those on the provisional roll who will be 18 years of age on or before election day will later be transferred to the voters' roll.
- 1.4 A person can only be included once on the voters' roll for any one transitional authority.

Disqualifications from Registration (Reg 2(2))

- 1.5 Even if satisfying the qualifications in paragraph 1.1 above anyone who is:
- (i) declared by a court to be of unsound mind or mentally disordered or affected; or
 - (ii) detained under any applicable law as a mentally ill patient; or
 - (iii) detained under any applicable law relating to drug dependency prevention and treatment; or
 - (iv) imprisoned without the option of a fine following conviction for murder, robbery with aggravating circumstances and rape, or any attempt to commit these offences

is not entitled to be included in the voters' roll.

VOTERS' ROLL

Registration of Voters (Reg 3)

- 2.1 Each transitional authority must compile a voters' roll. Every person who is entitled to be registered as a voter may apply for registration within the period 27.1.95 to 5.6.95 inclusive.

NOTE: In Eastern Transvaal and KwaZulu Natal, registration did not commence on 27 January 1995.

Eastern Transvaal: period commenced 26 January 1995

KwaZulu Natal: period commenced 3 February 1995

- 2.2 Each transitional authority must appoint one of its employees as the voters' roll officer, who is responsible for preparing the authority's voters' roll. Each transitional authority may also appoint employees or other persons to assist the voters' roll officer with the preparation of the voters' roll, at rates of payment determined by the authority.

- 2.3 Registration is voluntary. Each person applying for registration as a voter is required to supply all the relevant information as set out in, but not necessarily on, Form ERI. If the voters' roll officer is satisfied from this information that the person is qualified to be enrolled as a voter, the person's name and particulars will be included on the voters' roll.

NOTE: The serial number from an acknowledgment of receipt of an application for an identity document issued by the Director General of the Department of Home Affairs is sufficient to satisfy the 'identity number' requirement of Form ERI.

Preparation and Content of Voters' Roll (Regs 3(5), (6), 41(3)(c))

- 2.4 The voters roll prepared at the end of the registration period by each transitional authority must contain, for each person qualified to enrol, the following information:

- (i) a unique serial number for each name;
- (ii) the identity number of each registered person;
- (iii) the name of each registered person in alphabetical order by surname;
- (iv) the address to which the claim for registration relates; and
- (v) the basis of qualification or entitlement - residence or property (the property qualification is obtained if a person is liable for the payment of rates, rent, service charges, or levies to the transitional authority concerned)

- 2.5 Every page of the voters' roll must be numbered consecutively and must identify the name of the transitional authority and the year to which the roll relates.

- 2.6 A voters' roll as certified and approved for a TLC or TMS must be divided into parts: one for each ward into which the area of the TLC or TMS has been divided. The voters' roll for the ward must also be divided into parts to provide a separate part for each voting station in the ward. The number of voters that may appear in each part of the voters' roll is limited by the upper limit of voters allowed in each voting station. Unless there is a direction from the Premier otherwise, these limits are:

- (i) in the former Black Local Authority areas (ie those areas **not** formerly under the control of the former a body set up under Section 84(1)(f) of the repealed Provincial Government Act, 1961) **not more than** 2500 enrolled voters;
- (ii) in area formerly under the control of white Local Authorities, or Coloured or Indian Management Committees (ie bodies set up under Section 84(1)(f) of the repealed Provincial Government Act, 1961) **not more than** 4000 enrolled voters.

- 2.7 The voters' roll as certified and approved for a TMC must be divided into parts according to the area of each TMS within the TMC, and then further into parts which correspond exactly with the wards and parts of wards into which each TMS is divided.
- 2.8 Where a voters' roll for a transitional authority is divided into parts:
- (i) each part must be in the same format as required for the transitional authority's voters' roll;
 - (ii) every page of each part must identify the ward and voting station to which it relates;
 - (iii) the serial number allocated to a name in the full transitional authority voters' roll must be retained with that name.

Entitlement to and Place of Voting (Reg 3(7))

- 2.9 A voter must vote only at the voting station in the ward, or voting station area within the ward, where his/her name appears on the voters' roll.
- 2.10 Claimants for registration may be qualified for registration for more than one place within the same transitional authority - by being both residentially qualified to register and by satisfying the property qualification (being liable to pay rates, rent, service charges or levies to that transitional authority) for one or more places within the transitional authority. However **a claimant may only register once** -for one of these places - **within a transitional authority**. The claimant may decide which of these addresses is to be entered on the voters roll. If the claimant does not, at the time of registration, select which one of his or her addresses he or she wishes to be registered for, the voters' roll officer must do so.

Provision and Uses of Information Required for Registration (Reg 3(8), (12))

- 2.11 Where the voter has not used Form ER1 to apply for registration, but the voters' roll officer is satisfied from the information provided that the claimant meets the requirements for registration, the voters' roll officer may include the person on the voters' roll.
- 2.12 Where an application for registration was made substantially in accordance with the requirements of Form ER1 but before the date announced for commencement of registration, the application shall be taken into account by the voters' roll officer as though made after the prescribed date and in the prescribed form on Form ER1.
- 2.13 Claims for registration received by the voters' roll officer after June 5, but which the voters' roll officer is satisfied were made and given on or before June 5 to another person, party or agency, for delivery to the voters' roll officer, must also be taken into account by the voters' roll officer as though made during the

prescribed period.

- 2.14 Where a person claims registration on the basis of liability to pay rates, rent service charges or levies for an address, this certification of liability for payment cannot be used as evidence in any legal action, claim or prosecution by a transitional authority, local government body or any other person(s).

Supply of Registration and Objection Forms

- 2.15 The voters' roll officer must ensure that, at every office of the transitional authority:

- (i) an adequate supply of Forms ER1 and ER2; and
- (ii) clearly identified, prominent places or secure receptacles for the receipt of Forms ER1 delivered by hand

are accessible and available to the public at all times during the normal office hours at every office of the transitional authority.

The voters' roll officer must also on request make available to parties reasonable quantities of ER1 forms if he or she is satisfied that the forms will be used to canvass, at no cost to the claimant, claims for registration.

Method of Applying for Registration

- 2.16 While a claim for registration may be delivered personally to a specified office by the claimant, there is no requirement for registration forms to be delivered personally. The claimant may post the claim by ordinary mail to the address designated on Form ER1, or arrange for it to be delivered to the voters' roll officer by someone else on their behalf.

Determination of Address by Transitional Authority

- 2.17 Where no address exists for a location for which a person wishes to register, the transitional authority must determine or identify an address description of the location., to be used on the registration form and the voters' roll.

CLAIMS AND OBJECTIONS (Reg 4)

- 3.1 The voters' roll officer must publish a notice giving information on the following matters, and take action to prepare the relevant preliminary voters' roll, materials and lists of further claimants and objections. The notice must be published by or on 16 June 1995, that is within the 11 days after the close of registration.

(i) Inspection of a copy of the preliminary voters' roll

The notice must state that the voters' roll, and any claims made before, but received by the voters' roll officer after, June 5, are available for inspection at:

- (a) the offices of the transitional authority during normal office hours; and
- (b) at any other places appointed by the voters' roll officer between the hours of 06:00 and 22:00 daily, including Saturday and Sunday and any public holiday;

for the period 24 June 1995 to 7 July 1995 inclusive (the "preliminary voters' list inspection period") - that is, 14 days.

The voters' roll officer must have the 'preliminary voters' list' prepared and ready for inspection not later than 23 June 1995 - that is, 78 days after the close of the registration period. Any claims that the voters' roll officer received after 5 June but which he/she is satisfied were made before 5 June are not to be included in the preliminary voters' list. This roll, and any of the above 'late' claims for registration must then be made available for inspection on 24 June 1995 and the "preliminary voters' list inspection period" continues up to and including 7 July 1995.

(ii) Making of written claims or objections

The same notice must advise that every person whose name does not appear on the 'preliminary voters' list' available for inspection and who believes that he or she is entitled to be enrolled as voter; or who has any objection to the enrolment of any person whose name appears on this 'preliminary voters' list' or amongst the claims made prior to, but received by the voters' roll officer after, June 5:

- (a) should lodge a written claim or objection, in the prescribed Forms ER1 or ER2. The voters' roll officer must ensure that these forms are made available at the office and places at which the roll is available for inspection; and
- (b) for those unable to write, may lodge an oral claim or objection in person at a place and time stated in the notice.

These further claims or objections must be lodged with the voters' roll officer not later than 22:00 hours on 7 July 1995 (*there is no requirement that they be received after the start of the inspection period on 24 June*).

(iii) Inspection of supplementary list of claimants and of objectors

This same notice must state that a list of the names of those claimants during the supplementary period (whose names were omitted from the preliminary voters' list), objectors and persons in respect of whom an objection has been lodged will be available for inspection:

- (a) during normal office hours at the office of the transitional authority; and
- (b) at any other places appointed by the voters' roll officer between the hours of 06:00 and 22:00 daily, including Saturday and Sunday and any public holiday

during the period 14 July 1995 to 17 July 1995 inclusive (a period of 4 days).

After the end of the period for making objections or further claims for registration, the voters' roll officer must prepare, on or by 73 July, a list setting out the name and particulars of every person claiming registration, making an objection, or who has had an objection lodged against him/her, during that 74 day period for objections and further claims. The voters' roll officer must then make this list available for inspection by the public on 74 July 1995 and the "supplementary voters' list inspection period" continues up to and including 77 July 1995.

(iv) **Objection to the enrolment of any person**

This same notice must request any person who has any objection to the enrolment of any person whose name appears on the supplementary list of claimants referred to in (iii) above to:

- (a) lodge a written objection in Form ER2; and
- (b) for those unable to write, to lodge an oral objection in person at a place and time stated in the notice.

These objections must be lodged with the voters' roll officer not later than 22:00 hours on 17 July.

The voters' roll officer must prepare a list setting out the name and particulars of all objectors objecting to names on the 'supplementary voters' roll, and of all those on this 'supplementary voters' list' whose names have been objected to. Preparation of this list must be completed on or by 22 July 1995.

(v) **Sittings of Revision Court**

This same notice must advise the days and places for the sittings of the

Revision Court to hear claims and objections. Dates fixed for the sitting of the court must be during the period 20 July to 29 July 1995 inclusive. At least one sitting day must be a Saturday or Sunday. At least one place where the court sits must be outside the jurisdiction of any former white Local Authority or Coloured or Indian Management Committee (ie an institution or body covered by Section 84(1)(f) of the repealed Provincial Government At 1961).

Objections by Voters' Roll Officer to Claimants for Registration

- 3.2 The voters' roll officer must lodge with the revision court objections to the enrolment of all claimants whom he or she has reason to believe are not entitled to be enrolled as voters.

Notice Given to Claimants and Objectors

- 3.3 The voters roll officer must ensure that, not less than four days before the date of the sitting of the revision court:
- (i) every person on the roll or the supplementary list of claimants against whose enrolment an objection has been lodged;
 - (ii) the objector concerned; and
 - (iii) any claimant for enrolment whose claim has been objected to or rejected by the voters' roll officer.

is served a written notice that:

- (iv) states the reasons for the objection or rejection;
- (v) advises the date on which the revision court will consider the objection or rejection;
- (vi) invites the person on the roll, claimant or objector to attend the sitting; and
- (vii) advises that the objection will not be considered by the court unless the objector attends this sitting and, if the hearing is adjourned, every other sitting at which the objection is considered.

"Serving" a notice includes delivery by hand to the person; delivery to the person's last known place of residence, business or occupation; or posting the notice by prepaid registered or certified mail to the person's last known place of residence, business or occupation.

Depending on the dates of the revision court sittings, these notices must be served during the period 16 July 1995 to 25 July 1995.

- 3.4 If the address of any of these claimants or objectors is not sufficiently precise to

allow service of the notice, the voters' roll officer may publish a substantially similar notice in a newspaper or newspapers. Where there are limitations on the availability of newspapers, this notice may be displayed at the municipal office closest to the address of the claimant or objector.

- 3.5 The failure to receive a notice advising of the hearing of an objection by the revision court, or an error in the publication of a substitute notice advising those persons to whom a notice cannot be served, does not invalidate the voters' roll or any decision by the revision court.

Powers of Premier

- 3.6 The Premier, taking into account the date of the election (that is, the need to meet pre-election day deadlines contained in the regulations). may direct a voters' roll officer to increase the number or the locality of places for inspection of the preliminary voters' roll and the lodging of further claims and objections. The Premier may also extend the expiry date of the period during which the revision court may sit and direct the voters' roll officer to increase the number of revision court sittings.

REVISION COURT (Reg 5)

Constitution of Revision Court (Reg 5(2))

- 4.1 A revision court is established under the Regulations for the purposes of dealing with claims and objections in respect of each voters. roll. The Premier may authorise and establish more than one revision court for each voters' roll or part of the voters' roll.
- 4.2 The revision court for each voters' roll or part of the voters' roll must consist of three persons appointed by the transitional authority concerned. The members of the revision court must be appointed not later than 31 May 1995. At least one member of the revision court must be an advocate, attorney or other legally qualified person who will be the presiding officer of the court.
- 4.3 The transitional authority must also appoint alternates to take the place of any member of the revision court who is absent or incapacitated and is required to determine the order of precedence of such alternates. At least one of the alternates must have the legal qualifications as stated in paragraph 4.2 above.
- 4.4 However where no suitable legally qualified persons are available to fill the positions of presiding officer and alternate, the Premier may approve in writing a written application from a transitional authority to appoint some other suitably qualified persons to these positions.

- 4.5 The appointment of members and alternates to a revision court must be decided by a resolution of the council adopted by a majority of at least two-thirds of all its members.

Disqualifications from Membership of Revision Court

- 4.6 A person may not become a member of a revision court if he or she:
- (i) is the holder of an office in a party;
 - (ii) is a member or councillor or employee of the transitional authority concerned; or
 - (iii) is not eligible to be enrolled as a voter for a transitional authority.
- 4.7 A member of a revision court no longer remains a member of the court if he or she:
- (i) becomes disqualified for appointment as a member of such court;
 - (ii) tenders his or her resignation to the chief executive; or
 - (iii) dies.
- 4.8 Any vacancy caused by a member leaving the court in any of the above ways must be filled from the alternate members appointed. If no alternates have been appointed, the transitional authority must fill the vacancy as soon as possible with another person who has substantially the same qualifications as his or her predecessor.

Conduct of Revision Court Hearings

- 4.9 The revision court determines the manner in which it conducts its business. All sittings of the court must be open to the public and the press. The court can decide to adjourn its sittings.
- 4.10 Whenever there is a change in the membership of the revision court, and there are claims for registration or objections on which the court has started, but not completed, its hearings, the court must, if requested by the claimants or objectors, disregard the proceedings that had occurred and recommence the hearing of these previously part-heard claims for registration or objections, from the beginning.
- 4.11 Administrative work supporting the functions of the voters. roll officer and a revision court must be performed by the chief executive of the transitional authority concerned or by officials of the authority who hold written appointments from and act under the control of that chief executive.
- 4.12 Not later than 31 May 1995, the Premier must determine the basis of remuneration for members of a revision court. If this has not been done, the

basis of remuneration is set by resolution of the transitional authority.

Powers, Functions and Duties of a Revision Court (Reg.6)

- 4.13 The revision court considers and determines claims for registration received and included on the supplementary voters' roll and all objections to the enrolment of persons as voters. It must sit to do this on the day or days and at the place or places that have been published by the voters' roll officer for the sitting of the court.
- 4.14 The revision court is required to add to or insert in the roll the name of every claimant:
- (i) whom it is satisfied is entitled to be enrolled; or
 - (ii) to whose enrolment no objection was lodged; or
 - (iii) the court has determined to dismiss an objection to their enrolment.
- 4.15 The revision court may also place the names of claimants meeting these conditions on a supplementary list showing the same details for each claimant as would the voters' roll and add this supplementary list to the roll.
- 4.16 The revision court is also required to delete or remove from the roll the name of every claimant:
- (i) in respect of whom an objection was lodged; and
 - (ii) who is shown to its satisfaction not to be entitled to be enrolled as a voter.
- 4.17 The revision court may also decide to correct any error or add any information omitted from an entry on the voters' roll.
- 4.18 Where a name is added to or inserted in the roll, the serial number allocated to this name must be a number which has not been previously allocated to any other name or claimant.
- 4.19 Where a name is deleted or removed from the roll, the serial number allocated to that name must not be allocated to any other name or claimant.

Conduct of Hearings of Claims and Objections Before the Revision Court

- 4.20 The revision court must not consider any claim or objection unless the claim or objection was lodged in accordance with the regulations, and by the following deadlines:
- (i) where the claim or objection is based on the preliminary voters' roll, it was

received by the voters' roll officer within the 14 day period for lodging of objections and further claims - that is on or before 7 July 1995; or

- (ii) where the objection is based on the list of claimants and objections to the preliminary roll (ie objections to names on the 'supplementary' voters' roll), it was received by the voters' roll officer within the period 14 July 1995 to 17 July 1995 inclusive.

4.21 The revision court must be satisfied that there are exceptional circumstances relating to the late submission of a claim or objection for it to consider a claim or objection lodged after the deadlines stated in paragraph 4.19 above.

Attendance at Revision Court

4.22 The following rules govern attendance at the revision court:

- (i) the objector must attend all sittings of the revision court at which the objection is to be considered and be prepared to support the objection. If the objector does not attend court, the court will not consider the objection;
- (ii) the voters' roll officer is entitled to attend all sittings of the revision court and be heard while the claimants or objectors are present;
- (iii) claimants and objectors and persons opposing claims and objections, are entitled to be heard in person by the court, or to be represented by someone they have authorised in writing to do so. They may give evidence, and have others present evidence on their behalf. All evidence must be given on oath or affirmation.

Cancellation of Revision Court Sittings

4.23 If no claims or objections are lodged within the periods stipulated [see paragraph 4.19 above), the voters' roll officer must immediately post a notice at the offices of **the** transitional authority cancelling the sitting of the revision court.

PREPARATION OF FINAL VOTERS ROLL

Certification and Signature of Roll (Reg.7)

- 5.1 The roll, including any amendments made by the revision court, must be certified and signed by the presiding officer of the revision court by noon on 31 July 1995.
- 5.2 This certified, signed roll will be the voters. roll for the transitional authority concerned until a new voters. roll has been prepared in a way that complies with the regulations.

- 5.3** The appearance of persons' names on a document purporting to be a roll signed and certified by the presiding officer of the revision court, or on a copy of the roll certified by the chief executive of a local authority, is conclusive proof that those persons are entitled to exercise any right given to voters by the Local Government Election Regulations, unless it can be proven that the document is not the voters' roll, or a true copy of it.
- 5.4** Immediately after certification, the certified voters. roll is to be taken to the offices of the transitional authority and must be kept there, open for inspection by members of the public, during normal office hours of the transitional authority or during such extended hours and times as the transitional authority may determine by resolution.
- 5.5** Any voter or candidate or party may obtain a copy of the voters. roll, or a part of the roll applicable to a ward. The transitional authority may determine by resolution the price of these copies.

Revision of Voters' Roll (Reg. 8)

- 5.6** Every transitional authority shall ensure that its voters' roll is updated not less than six months prior to either:
- (i) the expiration of the three year term of office of the council; or
 - (ii) the date of the next election of the council.
- 5.7** Every revision of the voters' roll must be done in the manner specified in regulations 3 to 7.

Omission of Name From Roll (Reg. 9)

- 5.8** The omission of the name of a person from the voters' roll does not invalidate that roll or any election held under the Local Government Election Regulations.

Expenditure on Voters' Roll (Reg. 10)

- 5.9** A transitional authority may spend what it considers necessary, to fulfill the requirements of the regulations, in connection with the making, revision or adjustment of any voters' roll by it, or any legal proceedings arising from these actions..

Agency by Local Government Body (Reg. 11)

- 5.10** After written consultation with the authorities or bodies concerned, the Premier may direct any transitional authority or local government body, or any other body, to:

prepare a voters' roll; or/and
conduct or manage part or all of the election

as agent for another transitional authority (whether proclaimed or not) or any other local government body(ies), and to perform all or some of the duties that the election regulations require that other authority to do.

- 5.11 Any such instruction by the Premier may include instructions and other arrangements for preparing the other authority's voters. roll. The instruction must include directions on how costs are to be split between the authorities and recovered by the authority doing the work.

Coordination of Election - Powers of TMSs

- 5.12 Following delimitation of a TMS in terms of section 8 of the Local Government Transition Act, the Premier may authorise any person, committee or TMS to do everything necessary for the conduct of the election for the members of the transitional council of that TMS.

- 5.13 This includes the power, for the area so delimited, to:

- (i) amalgamate voters' rolls prepared or being prepared for the area;
- (ii) prepare a voters roll;
- (iii) constitute a revision court ;
- (iv) establish an election committee;
- (v) appoint a returning officer; and

in respect of any former transitional metropolitan substructure that may now form part of the area now delimited as a TMS under section 8 of the LGTA, the power to:

- (vi) disestablish any revision court;
- (vii) disestablish any election committee;
- (viii) terminate the appointment of any returning officer; and
- (ix) recover any election coordination costs from the former TMS concerned.

Offences (Reg. 12, Reg 111(2)))

- 5.13 A person who gives information that is false on a registration form, in an objection, or with regard to any information required for the preparation of the