

Local Government Act 1984

REPUBLIC OF KIRIBATI

LOCAL GOVERNMENT ACT 1984

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SCHEDULE

REPUBLIC OF KIRIBATI
(No. 2 of 1984)

I assent,

**AN ACT TO MAKE PROVISION FOR LOCAL GOVERNMENT
AND FOR CONNECTED PURPOSES (*AND AMENDMENTS*)**

Commencement: 1984

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

**PART I
PRELIMINARY**

Short Title

1. This Act may be cited as the Local Government Act 1984.

Interpretation

2. (1) In this Act, unless the context otherwise requires -

"basic rate" means the rate defined and imposed under section 77(1)(a);

"clerk to a council" means any person appointed as such under Part IX;

"cognisable offence" shall have the same meaning as in section 2 of the Criminal Procedure Code;

"committee" means a committee appointed under the provision of section 32 and shall include a committee appointed under section 33 and any sub-committee;

"council" means a local government council established under section 3,

"elected member" means a member of a council elected in accordance with section 6;

"executive officer" means any person appointed as such under Part IX;

"person resident" means, in relation to the area of authority of any council, a person ordinarily residing in such area:

Provided that a person shall not be held to have ceased to be so resident by reason only of a period of absence of less than 1 year:

and provided further that a person shall be held to be so resident who -

(a) not being a public officer, is within Kiribati but absent from such area in fulfilment of any obligation incurred by him under a contract of employment which provides expressly, or impliedly, for his repatriation to such area upon the termination of the contract or the happening of some earlier event;

(b) states himself, or is declared after determination, to have his domicile in such area, and who is for the time being a public officer serving, or person regularly employed, within Kiribati but outside the area of any council; in this paragraph "domicile" means the place of birth of the person whose domicile is in question, unless such person has a fixed habitation for himself and family in some other place, and the intention of making it his permanent home;

(c) the wife or dependant of a person referred to in either paragraph (a) or (b) of this proviso and who is accompanying him while he is so absent, serving or employed, as the case may be;

"president" shall include vice-president and in sections 24, 25 and 31 shall include any other person presiding at any meeting of a council;

"rate" includes any rate, tax, duty, toll, due or assessment of whatever description whether public, general or local, and whether uniform or not;

"resolution" means a resolution of the council duly passed, recorded and entered in the minutes in accordance with section 26;

"town council" means a council established in respect of an area described as a town in the warrant establishing the council;

"urban council" means a council established in respect of an area described as an urban area in the warrant establishing the council.

(2) For the purposes of this Act a person shall not be treated as holding, or acting in, a public office if he is on leave of absence pending relinquishment of a public office, or by reason only that he -

(a) is receiving a pension or other like allowance for public service;

(b) is receiving any remuneration or allowance as Beretitenti, Kauoman-ni-Beretitenti, Attorney General, Speaker, or a member of the Maneaba in Maungatabu; or

(c) holds or is acting in any office or place of profit in the gift or disposal of any council or of any board.

PART II ESTABLISHMENT OF LOCAL GOVERNMENT COUNCILS

Establishment of councils

3. The Minister acting in accordance with the advice of the Cabinet and after consultation with such persons who are and over 18 years of age and resident within the area of authority of such councils as are to be established, may by warrant under his hand establish such councils as he may deem necessary or expedient for the purposes of local government and may at any time by order amend, vary or cancel any such warrant.

Contents of warrant

4. (1) A warrant establishing a council shall -

(a) specify the name of the council and the date it shall be established;

(b) prescribe the device of the seal of the council;

(c) define the limits of the area of the authority of the council, and such area shall, unless otherwise specified in the warrant, include the Kiribati waters adjacent to it;

(d) provide for the number of elected members; and

(e) specify the functions of the council;

(2) A warrant establishing a council may -

(a) provide for the use of a rubber stamp in lieu of a seal until such time as a seal can be procured;

(b) generally make such other provision not inconsistent with this Act as the Minister may deem necessary or expedient for the establishment and conduct of the council and the proper performance of its functions.

Incorporation of council

5. Every council established under this Act shall be a body corporate having perpetual succession and a common seal and shall be capable in law of suing and being sued and of requiring, holding and disposing of movable and immovable property.

PART III COMPOSITION OF COUNCILS AND ELECTIONS

Election of elected members

6. All elected members of a council shall be elected by registered electors whose names appear on the register of electors for any ward of an electoral district constituted by the provisions of the Elections Ordinance 1977 which lies within the area of that council.

(12 of 1977)

Ex-officio and nominated members of town and urban councils

7. In the case of a town or urban council -

(a) every elected member of the Maneaba ni Maungatabu for an electoral district the whole or part of which lies within the area of authority of the council shall be a member of the council ex-officio;

(b) the council may by resolution appoint such persons as it considers suitable to be members of the council but the number of such nominated members shall in no case exceed one third of the number of elected members.

Ex-officio and nominated members of other councils

8. In the case of every council other than a town or urban council--

(a) every elected member of the Maneaba ni Maungatabu for an electoral district the whole or part of which lies within the area of authority of the council shall be a member of the council ex-officio;

(b) the council may by resolution appoint such persons as it considers suitable to be members of the council,

but in any case the number of ex-officio and nominated members together shall in no case exceed one third of the number of elected members.

Qualifications and disqualifications for members of elected councils

9. (1) Subject to subsection (2), (3), a person shall be qualified for election as a member of a council if he is entitled to be registered as an elector.

(2) A person shall be disqualified for election as a member of a council who--

(a) is a public officer and has not received the written authority of the Minister to stand for election; or

(b) unless authorised in writing by the Minister to stand for election, holds or is acting in any office in the gift or disposal of the council or a board; or

(c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth; or

(d) has within 5 years before the date of the election been surcharged under section 69 to an amount exceeding \$200; or

(e) is disqualified from registering as an elector or from voting by virtue of the provisions of paragraphs (a) and (b) of section 8(1) of the Elections Ordinance 1977; or
(12 of 1977)

(f) is disqualified for membership of a council by any law for the time being in force in Kiribati relating to offences connected with elections.

(3) For the purposes of this section and of section 11 -

(a) a person employed by a committee; and

(b) a person employed by 2 or more councils under the provisions of section 95.

shall be deemed to be a person holding or acting in or appointed to hold or act in an office or place of profit in the gift or disposal of the council concerned or of each of such councils, as the case may be.

Term of office of elected member of councils

10. (1) The term of office of the elected members of a council shall be 3 years from the date of election unless otherwise provided in this Act or in the warrant establishing the council; and such warrant may in particular provide for the retirement annually of one-quarter of the elected members of the council.

(2) Any person retiring under the provisions of subsection (1) may, if qualified, seek re-election for a further term of office.

(3) No person shall be elected to be a member of a council without his consent.

Tenure of office of elected members of councils

11. (1) Every elected member of a council shall, without prejudice to his re-election in accordance with this Act, cease to be a member of the council at the expiration of his term of office under section 10, or previously thereto if his seat becomes vacant under the provisions of this Act.

(2) The seat of an elected member of a council shall become vacant if--

- (a) by writing addressed to the president of the council he resigns his seat; or
- (b) he fails to attend 3 consecutive meetings of the council, or 3 consecutive meetings of any committee of the council, without having obtained before the termination of any such meeting the permission of the council, or, in the case of the meeting of any such committee, the permission of the council or of such committee, to be, or to remain, absent therefrom;
- (c) not having the authority in writing of the Minister to retain his seat, he is appointed to, or to act in, any public office;
- (d) not having the authority in writing of the Minister to retain his seat, he is appointed to, or to act in, any office or place of profit in the gift or disposal of the council or a board;
- (e) any circumstances arise that if he were not a member of the council would cause him to be disqualified for election as such by virtue of paragraphs (c), (d), (e) or (f) of section 9(2).

(3) Any person whose seat as an elected member of a council has become vacant may, if qualified, again be elected as a member of a council from time to time.

Tenure of office of nominated members of council

12. (1) Every nominated member of a council shall, without prejudice to his re-appointment in accordance with this Act, cease to be a member of the council on the revocation of his appointment by the council by resolution or at such time as may be specified in the notice by which he was appointed or previously thereto if his seat becomes vacant under the provisions of this Act.

(2) The seat of a nominated member of a council shall become vacant-

- (a) if by writing addressed to the President of the council he resigns his seat;
- (b) if he accepts nomination as a candidate for election to the council;
- (3) Any person whose seat as a nominated member in a council has become vacant may again be appointed as a member of a council from time to time.
- (4) The council by resolution may at any time revoke the appointment of a nominated member of a council.

Decision on questions as to membership

13. Subject to this Act and the Elections Ordinance 1977 all questions which may arise as to the right of any person to be or remain a member of a council shall be referred to and determined by the Minister whose decision shall be final.

Filling of vacancies of elected members

14. (1) Where a vacancy has occurred among the elected members of a council, a new member to fill such vacancy may be elected in the same manner as the person whose place he is to take was elected.

(2) A person elected under this section to fill a vacancy shall hold office until the date upon

which the person in whose place he is elected would ordinarily have retired and he shall then retire.

President of councils

15. (1) Every council shall have an elected president and an elected vice president.

(2) The president and vice president shall be –

- (a) elected by the council by secret ballot from among the elected members;
- (b) elected for a term of office for such period as the council may determine in accordance with the standing orders made under section 29 of this Act but no such period shall exceed 3 years nor be less than 2 years;
- (c) elected for a term of office for a period of 2 years where no standing orders are made under section 29 providing for the period referred to in section 15(2)(b) of this Act; and
- (d) eligible for re-election.

(3) No candidate for the office of the president and vice-president shall preside over the election for which he is a candidate.

(4) No person shall be elected president or vice-president without his consent to be re-elected.

(5) A president or vice-president of a council at any time during his term of office may resign or may be removed by resolution of not less than two-thirds of all the members of the council.

Filling of vacancies of president and vice-president

16. Whenever a vacancy occurs in the office of president or vice-president, an election to fill the vacancy shall be held at the next meeting of the council after the date on which the vacancy occurs. A person elected to fill such vacancy shall hold office until the date upon which the person in whose place he is elected would ordinarily have retired and he shall then retire but shall be eligible for re-election. In the temporary absence of both the president and vice-president the council may elect one of its members to act as president during such temporary absence.

Term of office

17. Subject to subsection (2) of section 15 of this Act, the term of office of a president or vice-president shall ordinarily not exceed 3 years nor be less than 2 years from the date of his election, and unless he resigns or is disqualified such person shall be deemed to continue in office until his successor is elected.

Notification of names of president and vice-president

18. The clerk to the council shall inform the Minister of the name and term of office of the persons elected to be president or vice-president of the council and shall cause such information to be published at the council's headquarters, and in some prominent place in each electoral ward.

**PART IV
MEETINGS AND PROCEEDINGS OF COUNCILS**

Number of meetings

19. A council shall meet at such times and at such places as the president thereof shall determine:

Provided that if a council fails to meet at least twice in any 1 year it may be taken as just cause for suspension of the council under section 47.

Convening of meetings

20. (1) The president of a council may call a meeting at any time either on his own motion or upon requisition of one-third of the members of the council.

(2) If the president of a council refuses to call a meeting of the council after a written requisition to do so signed by one third of the members of the council has been presented to him or if, without so refusing, such president does not, within 2 days after such requisition has been presented to him, call a meeting to take place within 3 weeks of the date of the requisition, the persons presenting the requisition may forthwith, on such refusal or on the expiration of 2 days, as the case may be, call a meeting of the council.

(3) 7 days at least before the day of any meeting called under subsection (1) or subsection (2)-

(a) notice of the time and place of the intended meeting shall be published at the office of the council and, where the meeting is called by members of the council, the notice shall be signed by those members and shall specify the business proposed to be transacted thereat;

(b) a summons to attend the meeting, signed by the clerk of the council shall be left at or sent by post to the usual place or abode of every member of the council and such summons shall, in the case of a meeting called by members of the council, state the business which they specified in the notice given by them as proposed for transaction thereat, and in the case of any other meeting, the business which is proposed by the president for the transaction thereat:

Provided that want of service of the summons on any member shall not affect the validity of a meeting.

(4) No business shall be transacted at a meeting called by members of a council other than that specified by them in their notice relating thereto unless agreed to by resolution of a majority of the members present and voting thereon at the meeting.

Presiding at meetings

21. (1) Subject to section 15(2), the president shall, if present, preside at meetings of the council.

(2) If the president is absent from a meeting of the council the vice-president if present or, in his absence, such member as the members of the council present shall choose, shall preside.

Quorum

22. No business shall be transacted at a meeting of a council unless at least one half of the whole number of the members of the council are present thereat.

Meetings

23. (1) Every meeting of a council shall, within the limits of available accommodation, be open to the public and to the duly accredited representatives of any newspapers:

Provided however that a council may at any time by resolution exclude the public or such representatives or one or the other of them.

(2) The proceedings of any committee of a council, or a joint committee, shall not be open to the public or to the representatives of any newspapers unless the council or councils appointing the committee or joint committee resolve to admit the public and duly accredited representatives of any newspapers or one or the other of them.

Decision on questions

24. (1) Subject to this Act and of the warrant establishing a council, all acts of a council and all questions coming or arising before a council shall be done and decided by a majority of the members present and voting thereon at a meeting of the council.

(2) The present of a council shall have an original vote and in the event of an equality of votes, shall have and exercise a second or casting vote.

(3) At the request of at least one-third of the members present at a meeting of a council the president shall order that the voting on any question before the council shall be conducted by secret ballot.

Breaches of order at meetings

25. (1) At any meeting of a council, if a member of the council shows disregard for the authority of the president or abuses the standing orders of the council by persistently and wilfully obstructing the business of the council or otherwise, the president shall direct the attention of the meeting to the incident mentioning by name the person concerned and may suspend such person from the exercise of his functions as a member of the council for the remainder of the meeting.

(2) In the case of grave disorder arising in any meeting of a council, the president may, if he thinks it necessary so to do, adjourn the meeting without question put or suspend any meeting for a time to be specified by him.

(3) The person presiding at any meeting of a committee may, if he thinks it necessary so to do, exercise the like powers as are conferred upon a president in relation to a council by subsections (1) and (2).

Minutes

26. (1) Minutes of the proceedings of every meeting of a council or of a committee shall be regularly entered in books kept for that purpose and shall be read and confirmed or amended, as the case may require, and signed by the person presiding at the same or next ensuing meeting of the council or committee, as the case may be, and any minute purporting to be so signed shall be received in evidence without further proof.

(2) The names of members of a council or of a committee present at a meeting of the council or committee as the case may be, shall be recorded in the minutes.

(3) Until the contrary be proved, a meeting of a council or of a committee, in respect of the proceedings whereof a minute has been made and signed as provided in subsection (1), shall be deemed to have been duly convened and held, and all members present at the meeting shall be deemed to have been qualified and, where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted and to have had power to deal with the matter referred to in the minutes.

Minutes to be open to inspection

27. The minutes of the proceedings of a council shall at all reasonable times be open to inspection and any person may obtain a copy thereof or an extract therefrom upon payment of such fee as may be specified by the council.

Vacancy, etc., not to invalidate proceedings

28. The proceedings of a council or committee shall not be invalidated by reason of any vacancy among its members or the want of qualification of any member.

Standing orders

29. (1) Subject to this Act, a council may, with the approval of the Minister, make standing orders for the term of office of the president, regulation of its proceedings and business and may, subject to such approval, amend, vary or revoke such orders.

(2) Such standing orders may provide for the payment of an annual honorarium to the president of the council and travelling and attendance allowances to him and other members of the council.

Pecuniary interest of members

30. If a member of a council or of any committee has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter and is present at a meeting of the council or the committee at which the contract or other matter is the subject of consideration, he shall at the meeting disclose such interest and shall not take part in the consideration or discussion of or vote on any question with respect to the contract or other matter and, if the president so directs, he shall withdraw from the meeting during such consideration or discussion:

Provided that this section shall not apply to an interest in a contract or other matter which a member of the council or committee may have as ratepayer or an inhabitant of the area.

Attendance of non-members

31. The president of a council may invite any person to attend and to speak upon any matter at any meeting of a council, but no such person shall vote upon any matter.

Appointment of committees

32. (1) A council may appoint such committee as it may deem fit for any general or special purpose which, in the opinion of the council, would be better regulated or managed by means of a committee and may delegate to a committee so appointed, with or without restrictions or conditions as it thinks fit, any power or function without restrictions or conditions as it thinks fit, any power or function exercisable by the council, either with respect to the whole or any part of the area of authority of the council, except the power of making bye-laws, approving annual estimates, levying a rate or borrowing or lending money.

(2) A council may concur with any one or more other councils in appointing a joint committee of such councils for any purpose in which they are jointly interested and may delegate to such committee with or without restrictions or conditions as they think fit, any power or function of the councils relation to the purpose for which the joint committee is formed except the power of making bye-laws, approving annual estimates, levying a rate or borrowing or lending money.

(3) The chairman and the number of members of a committee appointed under this section, their terms of reference, their term of office and the area within which the committee is to exercise its authority shall be specified by the council or councils, as the case may be, appointing the committee.

(4) A committee appointed under this section may include persons who are not council members, or may be authorised by the council or councils, as the case may be, appointing the committee to co-opt additional members not being council members:

Provided that at least two-thirds of the members of every such committee shall be council members.

(5) No person shall be appointed to be or be co-opted as a member of a committee appointed under this section except with his own consent.

(6) A committee appointed under this section may invite any person, including a council member who is not a member of the committee, to attend meetings and take part in the deliberations of the committee, but no such person shall vote upon any matter at any such meeting.

Special area committees

33. (1) Subject to this Act, a council may appoint such town, village or area committees within the area of its authority as it may deem necessary or expedient and may delegate to a committee so appointed, with or without restrictions or conditions as it thinks fit, any power or function exercisable by the council with respect to the area of authority of the town, village or area committee, except the power of making bye-laws, approving annual estimates, levying

a rate or borrowing or lending money.

(2) The chairman and the number of members of a town, village or area committee appointed under subsection (1), their term of office and method of selection, and the area within which the committee is to exercise its authority shall be specified by the council.

Standing orders for committees

34. (1) Subject to this Act, a council appointing a committee (including any town, village or area committee) and councils which concur in appointing a joint committee may make, amend, vary and revoke standing orders respecting the quorum, proceedings or place of meeting of the committee or joint committee. Subject to any such standing orders, the quorum, proceedings and place of meeting shall be such as the committee or joint committee may determine.

(2) Without prejudice to the generality of the powers conferred by subsection (1), standing orders made under this section shall provide -

- (a) that all acts of a committee or joint committee shall be done and decided by a majority of members present and voting thereon at a meeting of such committee or joint committee; and
- (b) that the chairman or other person presiding at a meeting of a committee or joint committee shall, in the event of an equality of votes, have and exercise a second or casting vote.

(3) Standing orders made under this section shall not be inconsistent with the standing orders of the council concerned made under section 29.

Committees to report

35. Every committee or joint committee appointed under the provisions of this Part shall report its proceedings to the council or councils appointing such committees.

PART V FUNCTIONS OF COUNCILS

Duty to discharge functions

36. (1) It shall be the duty of every council established under this Act to discharge the functions conferred by this or any other Act and generally to maintain order and good government within the area of its authority, and for these purposes a council may, within the limits of the functions so conferred, either by its own officers or by duly appointed agents do all such things as are necessary or desirable for the discharge of such functions.

(2) Any function conferred upon a council shall be exercisable over all persons within the area of its authority save as is otherwise expressly provided in this Act or in any regulations or bye-laws made thereunder or in the warrant establishing the council.

Prevention of crime

37. It shall be the duty of every council to prevent the commission of any offence within the area of the authority by any person.

Power to accept gifts

38. A council may accept, hold and administer any gift of property for any public purpose or for the benefit of the inhabitants of the area of its authority or any part thereof and may execute any works (including works of maintenance and improvement) incidental to or consequential on the exercise of the powers conferred by this section.

Fees

39. A council may charge fees for any service or facility provided by the council or for any licence or permit issued by such council under the provisions of this Act or of any regulations or bye-laws made thereunder.

Remission of fees, etc.

40. A council may for good cause authorise the remission in whole or in part of any fees or other charges imposed under the provisions of this Act or any regulations or bye-laws made thereunder.

Power to a contract

41. A council may enter into any contract necessary for the discharge of any of its functions under this or any other Act.

Insurance

42. A council may insure all or any of its property against risks of any type and may insure itself and any of its members, officers or servants against any liability on account of loss of life or injury, or loss or damage of property, either, sustained or caused by any such member, officer or servant arising out of or in the course of his duty as such member, officer or servant.

Provision of buildings by councils

43. (1) A council may -

(a) build, acquire, provide or hire and furnish buildings within the area of its authority to be used for the purpose of transacting the business of the council and for public meetings and assemblies, or

(b) combine with any other council for the purpose of building, acquiring, providing or hiring and furnishing any such buildings; or

(c) contribute towards the expenses incurred by any other council in building, acquiring, providing or hiring and furnishing any building within the area of the authority of such council suitable for use for any of the aforesaid purposes.

(2) A council may build, provide or hire and maintain quarters or houses for any officer or employee of -

(a) the council; and

(b) the Government posted for the time being to work within the area of authority of the council.

Acquisition of and dealings in land

44. (1) A council may, for the purpose of any of its functions under this Act or any other Acts, by agreement acquire, whether by way of purchase, lease, gift or exchange, any land situate within or without the area of its authority, whether such land is immediately required or not:

Provided that a council shall not acquire land outside the area of its authority without the prior approval of the Minister.

(2) Where any land is required by a council for the purpose of any of its functions and by reason of disputes or doubts as to the ownership of the land required or inability of the parties to agree the terms or for any other cause the acquisition of the land is being hindered, the Minister may, on the application of the council concerned and on being satisfied that the purpose for which the land is required is of public benefit or importance, declare the land to be acquired for a public purpose under the provisions of the State Acquisition of Lands Ordinance, and direct the transfer of such land to the council on payment by the council of all expenses incurred and compensation paid in respect of the acquisition of such land.

(3) Any land acquired under subsection (1) may, until it is required for the purpose for which it was acquired, be held and used for the purpose of any of the functions of the council.

(4) Any land belonging to a council and not required for the purpose for which it was acquired may be appropriated for any other purpose, except that in the case of land compulsorily acquired under subsection (2) the consent of the Minister shall be required.

(5) The Minister may vest on such terms as he may deem just any State and in a council where in the opinion of the Minister it appears desirable to do so to enable the council to carry out its functions, and a council shall surrender the same to the Minister at any time when called upon to do so:

Provided that a council shall receive reasonable compensation for any improvements affected by it to any State land so surrendered.

Functions

45. (1) A warrant establishing a council may provide that, subject to such limitations and conditions as may be specified therein, a council either shall perform or may perform call, any or any part of the functions listed in the Schedule. (Schedule)

(2) The Minister, acting in accordance with the advice of Cabinet may by order amend the Schedule.

(3) Nothing in this section shall be deemed to confer on any council authority to perform any act which would constitute a contravention of the terms of any Act.

Powers of public officer

46. The Minister may by order direct that specified public officers, or categories of public

officers, shall be deemed to be officers of any council for the purposes of giving effect to and enforcing any bye-laws made by such council.

Power to enforce functions of councils

47. (1) If the Cabinet is satisfied that any council has made default in the performance of any function conferred or imposed upon it by or under this Act or any other Act for the time being in force, the Minister, acting in accordance with the advice of Cabinet, may make an order declaring the council to be in default and may, by the same or any other order -

(a) for the purpose of removing the default direct the council to perform such of its functions in such manner and within such time or times as may be specified in the order; or

(b) transfer to such person or body as the Minister, acting in accordance with the advice of Cabinet, may deem fit such of the functions of the council in default as may be specified in the order.

(2) If a council in respect of which an order has been made under subsection (1)(a) fails to comply with any requirement thereof within the time limited thereby for compliance with that requirement, the Minister, acting in accordance with the advice of Cabinet, may make an order under subsection (1)(b).

(3) Where an order has been made under subsection (1)(b), the Minister, acting in accordance with the advice of Cabinet, may by the same or any other order, dissolve the council or suspend the council for such time as he may think fit from the performance of such of its functions as may be specified in such order.

Expenses in respect of transferred functions

48. Where any functions of a council are transferred to any person or body under the provisions of section 47(1)(b), the expenses incurred by such person or body in discharging those functions shall be a debt due from the council in default to such person or body, as the case may be.

Powers in emergency

49. In the event of any sudden disaster or emergency endangering the life or property of any persons within the area of authority of a council, the president shall make such decisions and take such steps as may be reasonably necessary to deal with the situation and may so act without prior reference to the council. In any such event, the president shall immediately report the circumstances to the Minister and to the council concerned.

PART VI BYE-LAWS

Bye-laws

50. (1) A council may from time to time make and having made amend, vary or cancel bye-laws, having the force of law in the area of authority of the council, for the carrying into effect and for the purposes of any function conferred upon it by virtue of this Act or any other Ordinance and may in such bye-laws specify a fine not exceeding \$100 or, in default of

payment, imprisonment not exceeding 6 weeks for any breach of any such bye-laws and, in the case of a continuing offence, a further penalty not exceeding \$2 for each day on which the offence is continued after written notice of the offence has been served on the offender.

(2) Such bye-laws may further provide that, in addition to any penalty specified in subsection (1), any expense incurred by the council in consequence of any breach of the bye-laws, or in the execution of any work directed by any bye-law to be executed by any person and not executed by such person shall be paid by the person committing such breach or failing to execute such work and shall be recoverable as a civil debt.

(3) Bye-laws may make provision for the payment of such fees or charges as shall to the council seem fit:

Provided that, if a council shall make bye-laws relating to the licensing of any occupation, trade, business or industry within the area of its authority, no person shall be required to take out a licence or to pay any licence fee for a licence entitling him to follow or exercise such occupation, trade, business or industry if such occupation, trade, business or industry is also required to be licensed under the provisions of any Ordinance for the time being in force other than the Foreign Investment Act.

(No 24 of 1997)

(4) Any bye-law made by a council under this section shall be read and construed subject to the provisions of this Act and of any other law for the time being in force in Kiribati:

Provided that, where a bye-law makes provision for any matter for which provision is made in any other Ordinance for the time being in force, such bye-law shall not be deemed to be invalid unless there be any conflict between the provisions of such bye-law and such Ordinance, in which event the provisions of the Ordinance shall prevail.

(5) Any bye-law made under this Act may require acts or things to be performed or done to the satisfaction of a specified person and may empower a specified person to issue orders to any other person requiring acts or things to be performed or done, imposing conditions and prescribing periods and dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

(6) Any bye-law made under this Act may confer upon a council and any of its officers and employees specified in such bye-law such powers of inspection and inquiry and such power to execute any work as may be reasonably necessary for the proper carrying out or enforcement of such bye-law.

(7) Any bye-law may specify that it shall apply to the whole or any part of the area of authority of the council or to all or any class of persons in such area and, failing such specification, a bye-law shall be deemed to apply to tall parts of the area of the authority of the council and to all persons therein.

Method of making bye-laws

51. (1) Bye-laws shall be made under the common seal of the council and shall be signed by the president after formal resolution of the council, the date of which shall be recorded in the bye-law.

(2) No council shall proceed to consider any proposed bye-law or amendment of any bye-law after its first reading until the next or subsequent meeting unless such bye-law is certified as urgent by the majority of all the members of the council present and voting.

(3) The proposed bye-law or amendment of a bye-law as the case may be referred to in subsection of this section shall be publicised widely, debated and discussed at public meetings of persons resident within the area of authority of the council proposing or causing the making or amendment of such bye-law as the case may be.

(4) A bye-law made or amended under this Act shall not have effect unless and until approved by the Minister who, before approving, may amend the same. The Minister may approve or refuse to approve any bye-law and may in approving determine the date on which the bye-law is to come into operation.

(5) The Minister may, at any time after having given to a council reasonable notice and having considered the representations, if any, of the council thereon, make or amend any bye-law which such council is empowered by this Act to make, or cancel any bye-law made by such council.

Publication

52. (1) A copy of every bye-law when approved by the Minister shall be deposited at the office of the council by which the bye-law was made and shall at all reasonable times be open to public inspection without payment; and a copy thereof shall, on application, be furnished to any person on payment of such sum as the council may determine.

(2) Every bye-law approved under this Act shall be published by exhibiting publicly a copy of it, and a translation thereof in the vernacular approved by the Minister, at the office of the council by which the bye-law was made and shall come into operation on the date of such publication, or on such later date as may be specified; and the council may give such other notice as it thinks requisite for bringing it to the attention of the persons affected thereby.

Evidence of bye-laws

53. A copy of a bye-law purporting to be made by a council, upon which endorsed a certificate purporting to be signed by the president or such other officer of the council authorised in that behalf, stating -

- (a) that the bye-law was made and published by the council in the prescribed manner;
- (b) that the copy is a true copy of the bye-law; and
- (c) that on a specified date the bye-law was duly approved by the Minister and came into operation on a specified date,

shall be admitted in evidence in any court without further proof, and such certificate shall be

evidence of the facts stated therein without further proof and without proof of the hand-writing or official position of the person purporting to sign the certificate.

PART VII FINANCIAL PROVISIONS AND AUDIT

Establishment of council funds

54. (1) Every council shall set up a general fund into which shall be paid all revenue and other moneys accruing to the council and from which shall be paid all expenditure properly and lawfully incurred by such council.

(2) Notwithstanding anything contained in this section a council may establish a special fund for any specific purpose.

Revenue of councils

55. (1) The revenues or other funds of a council are hereby declared to be as follows -

(a) all sums of money formerly vested in any council established under the Native Government Ordinance or the Town Councils Ordinance 1958 within or partly within the area of authority of a council;

(b) revenue accruing to a council from the following sources -

(i) moneys derived from any rate imposed by the council by virtue of the provisions of this Act;

(ii) moneys derived from licences, permits, dues, charges or fees specified by any bye-law made by a council;

(iii) moneys payable to a council under the provisions of any other Ordinance;

(iv) receipts derived from any public utility concern or any service or undertaking belonging to or maintained by a council either in whole or in part;

(v) rents derived from the letting or leasing of any building or land belonging to a council;

(vi) grants-in-aid out of the Consolidated Fund or other public revenue;

(vii) any particular public revenue which may lawfully be assigned to a council;

(viii) any sums of money which may lawfully be assigned to a council by any public corporation;

(ix) interest on the invested funds of a council;

(x) moneys which may accrue from loans received under section 57;

(xi) moneys granted to a council by way of gift for any public purpose or for the welfare of all or any of the inhabitants of the area of authority of the council;

(xii) all moneys derived from tax collected under the Landowners Taxation Ordinance;

(Cap. 49)

(xiii) registration fees under the Dogs Ordinance due and payable within the area of authority of a council; and

(Cap. 46 of 1973)

(xiv) notwithstanding section 17 of the Licences Ordinance, stores' and hawkers' licences issued under the said Ordinance due and payable within the area of authority of a council.

(Cap. 56 of 1973)

(2) Any other moneys lawfully derived by a council from any other source whatsoever not hereinbefore specifically mentioned shall be and form part of the revenue and funds of such council.

Expenditure

56. Subject to this Act, a council may incur all expenditure necessary for and incidental to the carrying out of any functions conferred upon it under this or any other Ordinance or by the warrant establishing such council.

Power to borrow money

57. (1) A council may from time to time, in accordance with a resolution of the council in that behalf, raise loans within Kiribati of such amounts, from such sources, in such manner, for such purposes and upon such conditions as the council may approve.

(2) Such loans shall be charged indifferently upon all rates and revenues of the Council, and shall be repaid within such period as the council may by resolution determine.

Overdraft

58. A council may obtain advances from banks by overdraft charged indifferently upon all the rates and revenues of such council.

Power to lend money

59. A council may from time to time, in accordance with a resolution of the council in that behalf, lend money within Kiribati of such amounts, from such sources, in such manner, for such purposes and upon such conditions as the council may impose.

Investments of funds

60. A council may invest all or any portion of the moneys of the council in such investments as the council may by resolution from time to time approve.

Deposit and advance accounts

61. A council may by resolution make advances and operate deposit and suspense accounts.

Accounts to be kept

62. Every council shall keep proper accounts and other records in relation thereto and immediately after the end of each financial year shall cause its accounts for that year to be

brought to a balance and a balance sheet to be prepared with respect thereto, together with a statement or abstract of such accounts.

Financial instructions

63. The Minister acting in accordance with the advice of Cabinet shall issue written instructions (to be called Financial Instructions) not inconsistent with this Act, for regulating and for controlling the making of receipts and payments of councils, for regulating and controlling operation of the bank accounts of councils and for the better control and management of the financial business of councils; and such instructions may be issued either generally or with respect to any particular council or with respect to the councils in any particular area and shall be observed and obeyed by the council or councils with respect to which such instructions have been issued.

Estimates of councils

64. (1) Every council shall, not less than 2 months before the expiry of each financial year, pass detailed estimates of revenue and expenditure of the council for the next financial year.

(2) Such estimates shall be passed by formal resolution at a meeting of the council specially convened for the purpose and shall be submitted to the Minister for approval as soon as possible thereafter.

(3) The Minister may either approve or disapprove such estimates as a whole or disapprove, amend or reserve any item or items contained therein and shall notify the council accordingly:

Provided that, if such notification is not received by the council before the commencement of the financial year for which such estimate is prepared, the council may incur expenditure on recurrent heads of expenditure in accordance with the approved estimates for the previous year.

(4) The Minister may by Financial Instructions issued under section 63 of this Act and imposing such conditions as he deems fit, empower any council to appropriate supplementary sums if in respect of any financial year it is found by any such Council that expenditure for any specified purpose is desirable and no or insufficient provision therefore has been made in the estimates for such year.

(5) No council shall collect revenue or incur expenditure which has not been approved in accordance with this act except with the sanction of the Minister; and any council member, officer or servant who has applied or connived at or concurred in the collection or application of moneys for purposes which have not been lawfully approved shall be liable to be surcharged and to account for such moneys.

(6) The annual estimates and all supplementary estimate shall be submitted in such form and manner and shall contain such information as may be specified in Financial Instructions issued under section 63.

Joint funds

65. A joint committee appointed under section 32(2) may, with the approval of and subject to

any conditions imposed by the councils appointing the committee, operate a fund in accordance with this Part and to such extent such committee shall be deemed to be a council.

Access to records of councils

66. The Minister may authorise any person to have access to the records of any council; and any person so authorised shall at all reasonable times have access to and be entitled to inspect all books, accounts and records of the council and may advise the council thereon and submit reports to the Minister in connection therewith.

Audit of accounts

67. The powers conferred and the duties imposed by this Part shall be in addition to and shall in no way derogate from the powers conferred and the duties imposed by the Public Finance (Control and Audit) Ordinance.

Transmission of reports, etc.

68. The Director of Audit shall transmit to the Minister and to the Minister responsible for finance together with every report prepared by him on the examination and audit of the accounts kept by a council the annual statement or abstract of such accounts prepared under section 62 and shall transmit a copy of every report to the council.

Powers and duties of Director of Audit

69. (1) The Director of Audit at every audit held by him may -

- (a) disallow any item of expenditure which is contrary to law;
- (b) surcharge the amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditure;
- (c) surcharge any sum which has not been duly brought into account upon the person by whom that sum ought to have been brought into account;
- (d) surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred:

Provided that no item of expenditure incurred by a council shall be disallowed by the Director of Audit if it has been sanctioned by the Minister.

(2) It shall be the duty of the Director of Audit -

- (a) to certify the amount due from any person upon whom he has made a surcharge; and
- (b) to certify at the conclusion of the audit his allowance of the accounts, subject to any disallowance or surcharges which he may have made.

Special relief for officers and servants

70. Notwithstanding section 69, no liability to surcharge shall be incurred by an officer or servant of the council who can prove to the satisfaction of the Director of Audit that he acted

in pursuance of and in accordance with the terms of a resolution of the council or a committee duly appointed by the council or on instructions of any officer of the council to whom he is subordinate.

Director of Audit may take evidence

71. (1) For the purposes of any examination under this Part the Director of Audit or other person duly authorised by him under section 30(1) of the Public Finance (Control and Audit) Ordinance may take evidence and examine witnesses upon oath or affirmation (which oath or affirmation the Director of Audit or other person so authorised is hereby empowered to administer) and may, by summons under his hand, require all such person as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers, including the minutes of the proceedings of the council or of any committee thereof, as he may consider necessary for such examination.

Provided that no person shall be bound to incriminate himself and every witness shall in respect of any evidence given by him before the Director of Audit or other person so authorised be entitled to the same privileges to which he would have been entitled if giving evidence before a court.

(2) Any person who, when so required, without reasonable excuse -

- (a) neglects or refuses to comply with the terms of such summons; or
- (b) having appeared, refuses to be examined on oath or affirmation or to take such oath or affirmation; or
- (c) having taken such oath or affirmation, refuses to answer such questions as are put to him,

shall be liable for every such neglect or refused, to a fine of \$100, or in default of payment, to imprisonment for 3 months.

Payment of sums certified to be due

72. Every sum certified by the Director of Audit to be due from any person shall be paid by that person to the council concerned within 60 days after it has been so certified or, if an appeal with respect to that sum has been made, within 30 days after the appeal is finally disposed of or abandoned or fails by reason of the non-prosecution thereof.

Recovery of sums certified to be due

73. (1) Any sum which is certified by the Director of Audit to be due and has become payable shall, on complaint made by the council be recoverable by the council as a civil debt.

(2) In any proceedings for the recovery of such a sum a certificate signed by the Director of Audit shall be conclusive evidence of the facts certified and a certificate signed by the president of the council concerned or other officer whose duty it is to keep the accounts that the sum certified to be has not been paid to him shall be conclusive evidence of non-payment, unless it is proved that the sum certified to be due has been paid since the date of the certificate.

(3) Unless the contrary is proved, a certificate purporting to be signed by the Director of Audit or the president of the council or other officer whose duty it is to keep the accounts shall be deemed to have been signed by the Director of Audit, president or other officer, as the case may be.

Appeals against decisions of Director of Audit

74. (1) Any person who is aggrieved by a decision of the Director of Audit on any matter with respect to which he made an objection at the audit and any person aggrieved by a disallowance or surcharge made by the Director of Audit may appeal to a magistrates' court, unless such decision, disallowance or surcharge relates to an amount exceeding (\$3,000 in which case an appeal shall be to the High Court:

Provided that no appeal shall be allowed unless, within 60 days of the date of decision or the certificate of disallowance or surcharge of the Director of Audit, as the case maybe, the appellant serves upon the Director of Audit a notice of appeal and files such appeal in the magistrates' court or the High Court, as the case may be, in conformity with any rules of court relating thereto.

(2) A magistrates' court or the High Court on such appeal shall have power to confirm, vary or quash the decision of the Director of Audit and to remit the case to the Director of Audit with such directions as it thinks fit for giving effect to the decision on appeal; and, if the decision of the Director of Audit is quashed or is varied so as to reduce the amount of surcharge to \$200 or less, the appellant shall not be subject by reason of the surcharge to the disqualification imposed by section 9 or section 11.

Publication of statement of accounts and report of Director of Audit

75. Every council shall, within 6 months of the receipt of the Director of Audit's report, at its own offices publish -

- (a) the annual balance sheet or statement or abstract of accounts prepared under section 62; and
- (b) any report on such accounts and statement or abstract transmitted by the Director of Audit under section 68.

PART VIII RATES

Rating authority

76. For the purposes of this Act every council shall be the rating authority for the area of its authority and, subject to section 57 or except as may be otherwise specifically provided in this Act or any other Ordinance, no authority other than the council shall have power to make or levy any rate in the area of authority of such council, notwithstanding any customary law to the contrary.

Types of rate

77. (1) Subject to the approval of the Minister and to any regulations made under section 79, a council may make and levy annually general rates based on any one or more of the following systems, that is to say -

- (a) a rate, which may be referred to the basic rate, at a uniform or graduated amount per capital on any person or persons, of or above the age of 18 years being persons resident within the area of its authority;
- (b) a rate at a uniform amount per dollar on the assessed value of immovable property situated within the area of its authority or any part of such area;
- (c) a rate assessed on the possessions or any category of possessions of persons within the area of its, authority or any part of such area.

(2) In addition to making and levying a general rate under section (1) a council may, subject to the approval of the Minister and to any regulations made under section 79, make and levy a rate which may be referred to as a special rate, at a uniform or graduated amount per capita on any person or class or person resident within the area of its authority or any part of such area, in order to provide for some specific purpose within such area or any part of such area; and may make and levy a rate, which may be referred to as a water rate.

Duty to make rates

78. Unless a formal resolution to refrain from so doing shall have been passed by the council, every council shall make and levy one or more of the rates specified in section 77(1), as will be sufficient to provide for such part of the total estimated expenditure to be incurred by the council during the period in respect of which the rate is made as is to be met out of moneys raised by rates, together with such additional amount as is, in the opinion of the council, required to cover expenditure previously incurred or to meet contingencies or to defray any expenditure which may fail to be defrayed before the date on which the money to be received in respect of the next subsequent rate will become available.

Rating regulations

79. Subject to section 80, the Council with the approval of the Minister may make regulations providing generally for the making and levying of rates by the council on persons resident or temporarily resident in the area of authority of such council and, without prejudice to the generality of the foregoing, providing in particular for -

- (a) the basis and incidence of any rate to be levied under section 77;
- (b) the notice to be given by a council of its intention to make and levy a rate;
- (c) the procedure for the appointment of assessment committee appointed under section 91 and the procedure, powers and duties of such committees;
- (d) the method of assessment of property or possessions for the purposes of any rate to be levied under this Act;
- (e) the hearing of appeals against any such assessment;
- (f) the preparation of rating rolls and the rendering of returns by or the registration of persons liable to pay any rate;
- (g) the dates and places for the payment of any rate;
- (h) to whom payment shall be made;

- (i) the exemption of any category of persons from liability to pay the whole or any part of any rate;
- (j) the imposition of pecuniary penalties for non-payment or late payment of any rate.

Basic rate

80. (1) Notwithstanding any regulations made under section 79, this section shall apply to the making, levying and payment of a basic rate imposed under section 77(1)(a).

(2) (a) Any person or above the age of 18 years on the 1st January in every year or 1 month after the publication by the Council of a notice given under regulations made hereunder of the basic rate to be levied, whichever is the later, become liable, unless generally or specifically exempted, to pay the basic rate (if any) imposed by the council in the area of authority of which he is a person resident on such 1st January.

(b) Any person who, being so liable, fails to pay such basic rate on or before the 30th June in the year to which the rate relates or 6 months after the publication of the notice referred to in paragraph (a), whichever is the later, shall become liable in addition, unless generally or specifically exempted, to pay a penalty of \$2.

(3) (a) Notwithstanding subsection (2), any person temporarily resident in the area of authority of a council which has imposed a basic rate may, in lieu of paying the basic rate of the council to which he is liable under subsection (2)(a), pay the basic rate of the council in the area of authority of which he is temporarily resident, and such council shall remit such basic rates, less a collection fee not exceeding 10 per cent of the rate, to the council in the area of authority of which such person is a person resident.

(b) Any person temporarily resident in the area of authority of a council who, being liable to pay, fails on or before the 30th June or 6 months after the publication of the notice referred to in subsection (2)(a), whichever is the later, to pay either the basic rate to which he is liable under subsection (2)(a) or the basic rate of the council in the area of authority of which he is temporarily resident under paragraph (a) of this subsection, shall become liable, unless generally or specifically exempted, to pay the basic rate of the council in the area of authority of which he is temporarily resident at any subsequent date together with any penalty accruing thereon; and such council shall remit the rate less any penalty accruing thereon (which may be retained by such council to the council to which the basic rate was due and payable under subsection (2)(a)).

(4) Notwithstanding the other provisions of this section, a person visiting Kiribati for a period of less than 6 months shall not be liable to pay a basic rate.

Payment of rates

81. (1) (a) Subject to any regulations made under section 79, it shall be the duty of every person liable to pay any rate to a council to pay the amount of such rate to a rate collector or other person duly appointed or authorised by the council concerned to collect and receive the same at such time and at such place as may from time to time be specified by the council.

(b) If no person has been appointed or authorised to collect and receive rates, the payment of rates shall be made to the clerk to the council.

(c) If no time nor place for payment shall have been specified the time shall be deemed to be on or before the 30th April in every year and the place shall be deemed to be the usual place of office of the clerk to the council.

(2) For the purposes of any proceedings for the recovery of any rate imposed under this Act, if any question arises as to whether or not a person is under a specified age, or resides in the area of authority of any particular council, or has or has not any income of any particular amount, the burden of proving that he is under such age, or does not so reside, or has no such income shall lie upon the person alleging the same.

Exemptions from and remissions of rates

82. (1) Notwithstanding any other provisions of this Act, if any person, who would otherwise be liable for payment of a basic rate to any council, produces to the executive officer to such council or to a rate collector appointed by such council a valid receipt issued by or on behalf of any other council in evidence of the payment by him of a basic rate levied by such other council for the current year, being a basic rate which he was liable to pay under this Act, he shall be deemed not to be liable for payment of the basic rate for such year levied by such first-mentioned council.

(2) The following tenements shall be exempt from assessment and rating under this Act -

- (a) lands and buildings appropriated exclusively for the purpose of public worship;
- (b) cemeteries and burial grounds;
- (c) charitable and educational institutions; and
- (d) any other immovable property specifically or generally exempted by the Minister by order.

(3) A council may reduce or remit payment of any rate on account of the poverty of any person liable to the payment thereof or for any other good reason.

(4) Subject to any regulations made under section 79 a council may exempt women from the liability to pay any rate.

Claim for amount of rate

83. If any person fails to pay any rate for which he is liable on or before the date on which it is payable, the council concerned may recover the same as a civil debt together with such costs and such penalty as may be prescribed under this Act or any regulations made thereunder:

Provided that no demand shall be made for any rate or penalty nor shall any proceedings for the recovery thereof be commenced more than 3 years after the date on which such rate became due and payable.

Evidence of rate

84. In any proceedings to recover a rate levied under this Act the rate books and other records of the council concerned and all certified copies of entries made therein purporting to be signed by the president of the council shall, upon production thereof, be prima facie evidence

of such rate and of the matters stated therein without further evidence that the requirements of this Act have been complied with:

Provided that it shall be competent for any person proceeded against to offer evidence to prove the contrary.

Penalty for refusal to pay rates and wilful misrepresentation

85. (1) Any person who, without lawful justification or excuse, the proof of which shall lie on the person charged, refuses or wilfully neglects to pay any rate payable by him under the provisions of this Act, shall be liable to a fine of \$100 and to imprisonment for 6 months.

(2) Any person who wilfully misrepresents in any way his rateable capacity shall be liable to a fine of \$100 and to imprisonment for 6 months.

(3) The conviction of any person of an offence under subsection (1) shall not affect, bar, prejudice or limit the power to bring any civil proceedings for the recovery of any rate under section 83; and a person so convicted shall remain liable for the payment of such rate notwithstanding that he has paid any fine or served any sentence imposed upon such conviction, nor shall such conviction affect, bar, prejudice or limit the power to lay a further charge under subsection (1) for a separate offence of refusal or wilful neglect to pay such rate subsequent to the date of such conviction.

Penalty for inciting a person to refuse to pay rates

86. Any person who, without lawful justification or excuse, the proof of which shall lie on the person charged, incites any person to refuse to pay any rate payable by him under the provisions of this Act or who incites or assists any person to misrepresent in any way his or any other persons rateable capacity shall be liable to a fine of \$200 and to imprisonment for 12 months.

Penalty for unauthorised collection of rates

87. Any person who -

- (a) not being authorised under this Act or by the council concerned so to do, collects or attempts to collect any rate imposed under this Act; or
- (b) collects or attempts to collect any rate other than a rate prescribed in this Act or authorised by any other Ordinance.

shall be liable to a fine of \$200 and to imprisonment for 6 months.

Duty to give information

88. (1) Any person who may be required so to do shall give all such information as may reasonably be required of him by any council, rate collector or assessment committee for the purpose of obtaining information for the assessment or collection of a rate.

(2) Any person having been required to give information under subsection (1) who wilfully

misleads or attempts to mislead any council rate collector or assessment committee or their agents on any matter connected with the collection of a rate shall be liable to a fine of \$100 and to imprisonment for 6 months.

(3) Any person having been required to give information under subsection (1) who refuses or wilfully neglects to give such information shall be liable to a fine of \$100 or, in default of payment, to imprisonment for 6 months.

Rate collectors and duties

89. (1) A council may in writing appoint any suitable person to be a rate collector in respect of any specified area within the council's area of authority.

(2) It shall be the duty of every rate collector-

(a) to furnish orally or in writing to the council concerned a nominal roll of all rateable persons or immovable property, as the case may be, in the area for which he has been appointed;

(b) to collect and receive from each person liable for the payment of rates in the area to which he has been appointed the rates payable by each such person;

(c) to pay all amounts so collected to the council concerned; and

(d) to report to the council concerned the name of any person who has failed to pay the amount due from him for rates.

Offences by rate collectors

90. Any rate collector who -

(a) fails to deposit with the council concerned any sum of money collected by him as rates; or

(b) knowingly demands from any person an amount in excess of the duly assessed rates; or

(c) knowingly or recklessly renders false returns, whether orally or in writing, of the number of ratepayers or the amounts of rates collected or received by him; or

(d) wilfully fails to carry out any duty imposed upon him as a rate collector by section 89(2),

shall be liable to a fine of \$200 and to imprisonment for 12 months.

Assessment committees

91. A council may appoint such assessment committee or committees as it thinks fit for the purpose of assessing the liability of a person or persons for payment of any rate levied or to be levied under the provisions of this Act.

Legal proceedings

92. Proceedings for the recovery of any rate or penalty under this Part may, without prejudice to the right of any other person or authority to institute criminal proceedings, be taken by the president of the council responsible for the collection of the rate or by any other person duly appointed by him in that behalf.

**PART IX
OFFICERS AND STAFF, ETC**

Executive officers of councils

93. The Minister after consultation with the council concerned may appoint from among public officers or employees one or more such officers or employees to each council and the sole or senior executive officer to any council shall be called the clerk to the Council.

Other staff

94. (1) The Minister after consultation with the council concerned may appoint from among public officers or employees a treasurer to any council who shall be called the council treasurer.

(2) Subject to any instructions under section 101, a council may appoint such other officers in addition to those appointed by the Minister under this section and employ such other persons as it shall think necessary for the efficient discharge of its functions and may, subject as aforesaid, dismiss any officer so appointed or other person so employed.

(3) A council may, subject to any instructions as aforesaid, pay to any officer appointed or other person employed under this section such reasonable remuneration as it may determine:

Provided that no council shall pay any remuneration to any such officer or other person whose remuneration is paid by the Government.

Joint appointments and employment by councils

95. A council may agree with any one or more councils on the joint employment of any staff or the appointment of any officer.

Interest of officer in contract

96. Any officer or employee of a council who is in any wise concerned or interested directly or indirectly by himself or his partner (otherwise than as a minority shareholder in a company) in any contract or work made with or executed for the council shall forthwith declare such concern or interest to the council:

Provided that this section shall not apply to an interest in a contract or other work which an officer or employee of a council may have as a ratepayer or inhabitant of the area.

Appointment of seconded public officers

97. Notwithstanding the other provisions of this Part a council may, with the approval of the Minister and with the consent of the officer concerned, appoint to any office in its service a public officer or employee seconded to the service of the council for that purpose for such period and on such terms and conditions as the Minister may approve.

Security may be demanded of officers

98. A council may, in the case of an officer or person, other than a public officer appointed under section 97, in its employment, whether under this Act or any other Ordinance and whether appointed or employed jointly with another council or not, or, in the case of a person not in its employment but who is likely to be entrusted with the custody or control of money or property belonging to the council, either require him to give or itself take such security for the faithful execution of his office and for his duly accounting for all money or property which may be entrusted to him as the council thinks sufficient.

Accountability of officers

99. (1) Every officer employed by a council, whether under this Act or any other Ordinance, shall, at such times during the continuance of his office or within 3 months after his ceasing to hold it and in such manner as the council directs, make out and deliver to the council, or as it directs, a true account in writing of all money and property committed to his charge and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connection with his office, showing the amount due from or to each.

(2) Every such officer shall pay all money due from him to the council, or otherwise as such council may direct.

(3) If any such officer -

(a) refuses or wilfully neglects to make any payment which he is required by this section to make; or

(b) after 3 days' notice in writing signed by the president of the council or by 3 members thereof and given or left at his usual or last known place of residence, refuses or wilfully neglects to make out or deliver to the council, or as it directs, any account or list which he is required by this section to make out and deliver, or any voucher or other document of record relating thereto, or to give satisfaction respecting it to the council, as it directs,

a magistrates' court may, on complaint, order him to make such payment or delivery or to give such satisfaction.

(4) Any person who fails to comply with any such order shall be liable to a fine of \$100 and to imprisonment for 6 months.

(5) Nothing in this section shall effect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against under the provisions of this section for the same cause.

Powers of interdiction

100. Subject to any instructions issued under section 101, the president of a council may interdict any officer or employee of the council from the duties and emoluments of his office or employment for incapacity, neglect or misconduct, pending the decision of the council as to his removal and in the event of his removal, such officer or employee shall be deemed to have been removed from office or employment as from the date of such interdiction:

Provided that no public officer or employee seconded or appointed by the Government to any office or post in any council shall be subject to the provisions of this section nor section 101 of this Act.

Staff instructions

101. Subject to this Act a council by resolution may issue written instructions (to be called Staff Instructions) providing, either generally or in relation to any particular officer or employee, for the employment, control and conditions of service of officers and employees in particular, without prejudice to the generality of the foregoing, such instructions may -

- (a) provide for maintaining discipline, including withholding or deferring of increments, or reduction in rank or salary, or deductions from salary in respect of damage to or loss of property of the council by misconduct or breach of duty;
- (b) require, direct and regulate appointments, remuneration, promotion, termination of appointments, interdiction, suspension from duty, dismissals and leave;
- (c) provide for regulating the rates, conditions and payment of allowances and gratuities granted, the grant of advances and the terms and conditions of service generally;
- (d) such other matters relating to departmental procedure and the duties and responsibilities of officers and employees as the council considers can best be regulated by such instructions.

A council an employer in terms of Cap. 78A

102. Subject to section 103, section 104, and section 105 of the Constitution, for the avoidance of any doubt every council established under this Act shall be deemed to be an employer for the purposes of Part IV and any other relevant provisions of the Provident Fund Ordinance.

Attachment of pensions, gratuities or allowances

103. No pension, gratuity or other allowance granted in pursuance of this Part shall be assignable or transferable, or liable to be attached or sequestrated, or levied upon, for or in respect of any debt or claim whatsoever:

Provided that this section shall not affect the right of the council or the Government to recover from any sums due or payable to or in respect of any officer or employee any amount owing to the council or the Government by such officer or employee.

Protection of council members, officers and employees

104. No matter or thing done and no contract entered into by a council and no matter or thing done by any member, officer or employee, of a council or other person whomsoever acting under the direction of a council shall, if the matter or thing was done or the contract was entered into bona fide for the purposes of this Act, subject any member, officer or employee of the council or any person acting under the direction of the council personally to any action, liability, claim or demand whatsoever.

Notice of suit to be given by plaintiff

105. (1) No suit shall be commenced against a council until 1 month at least after written notice of intention to commence the same has been served upon the council by the intending plaintiff or his agent.

(2) Such notice shall state the cause of action, the name and address of the intending plaintiff and the relief which he claims.

Limitation of suits against councils

106. When any suit is commenced against any council for any act done in pursuance or execution of an Ordinance or of any public duties or authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, duty or authority, such suit shall not lie or be instituted unless it is commenced within 12 months next after the act, neglect or default complained of or in the case of a continuance of damage or injury, within 12 months next after the ceasing thereof.

Appearance of council in legal proceedings

107. In any prosecution by or on behalf of a council and in any civil cause or matter in which a council is a party the council may be represented by any member, officer or employee duly authorised in that behalf by the council.

Mode of service on council

108. The notice referred to in section 105 and any summons, notice or other document authorised to be served on a council in connection with any suit by or against such council shall be served by delivering the same to or by sending it by registered post addressed to the president at the principal office of the council:

Provided that the court may with regard to any particular suit or document order service on the council to be effected otherwise and in that case service shall be effected in accordance with the terms such order.

Description of property

109. Wherever in any criminal process or proceeding it is necessary to refer to the ownership or description of property belonging to or under the management of a council, such property may be described as the property of the council.

Name of council, etc., need not be proved

110. In any proceedings instituted by or against a council it shall not be necessary to prove the corporate name of the council or the constitution and limits of its area.

Onus of proof in certain cases

111. Where in any proceedings under this Act any person is summoned or otherwise dealt with as the occupier of any premises or lodging and such person shall allege that he is not the

occupier, the proof of such allegation shall be upon such person.

Publication of notices

112. Subject to this Act or any other Ordinance, any member, officer or servant of a council duly authorised in writing for the purpose by the council may, at all reasonable times and, if required, upon production of his authority, enter into or upon any land, buildings or premises within the area in which such council is established for the purpose of carrying out any inspection, inquiry or the execution of works under the provisions of this Act or of any regulation, bye-law or order made under the provisions of this Act.

Publication of notices

113. Save as in this fact is otherwise expressly provided, the publication of any notice or other document required by this Act to be published shall be deemed to be duly made if it is fixed, for a reasonable time, in some conspicuous place on or near the outer door of the office of the council during office hours and also in some other conspicuous place or situation within the area of the authority of the council.

Service of notice by the council

114. (1) Subject to this section, any notice, order or other document required or authorised by this Act or any other Ordinance to be served by or on behalf of a council or by an officer of the council on any person shall be deemed to be duly served -

(a) where the person to be served is a company, if the document is addressed to the secretary of the company at its registered office or at its principal office or place of business and is either -

(i) sent by registered post; or

(ii) delivered at the registered office or at the principal office or place of business of the company;

(b) where the person to be served is a partnership, if the document is addressed to the partnership at its principal place of business, identifying it by the name and style under which its business is carried on, and is either -

(i) sent by registered post; or

(ii) delivered at that office;

(c) where the person to be served is a public body, a local authority, or a corporation, society or other body, if the document is addressed to the clerk, president, secretary, treasurer or other principal officer of that body, authority, corporation or society at its principal office and is either —

(i) sent by registered post; or

(ii) delivered at that office;

(d) in any other case, if the document is addressed to the person to be served and is either sent to him by registered post or delivered at his usual residence or place of business.

(2) Any document which is required or authorised to be served on the owner or occupier of any premises may be addressed to "the owner" or "the occupier", as the case may be, of those premises (naming them) without further name or description, and shall be deemed to be duly served -

(a) if the document so addressed is sent or delivered in accordance with subsection (1) (d); or
(b) if the document so addressed or a copy thereof so addressed is fixed to some conspicuous part of the premises.

(3) Where a document is served on a partnership in accordance with the provisions of this section, the document shall be deemed to be served on each partner.

(4) For the purpose of enabling any document to be served on the owner of any premises, the council may by notice in writing require the occupier of the premises to state the name and address of the owner thereof, and if the occupier refuses or wilfully neglects to do so or wilfully mistakes the name and address of the owner he shall, unless in the case of a refusal he shows cause to the satisfaction of the court for his refusal, be guilty of an offence and shall be liable in respect of each offence to a fine of \$20 or, in default of payment, to imprisonment for 6 weeks.

(5) In this section the word "document" means any notice, order or other document which is required or authorised to be served as specified in subsection (1).

Authentication and execution of documents

115. (1) Every notice, order or other document requiring authentication by a council shall be deemed to be sufficiently authenticated if signed by the clerk to the council or by any member or other officer of a council duly authorised in that behalf by the president or by the council.

(2) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of a council by any person generally or specifically authorised by such council for that purpose.

(3) Any document purporting to be a document duly executed or issued under the seal of a council or on behalf of a council shall, unless the contrary is proved, be deemed to be a document so executed or issued, as the case may be.

PART XI MISCELLANEOUS

Powers of council may be conferred upon public officer in certain circumstances *(Schedule)*

116. (1) The Minister may by order confer on any public officer in any area in which there is no council for any reason, power to perform all or any of the functions listed in the Schedule and to give any necessary orders for the purpose of carrying into effect any such function; and any person failing to comply with any order of such public officer made in exercise of the power conferred upon him by this section shall be liable to a fine of \$20 or, in default of payment, to imprisonment for 6 weeks and, in the case of continuing offence further penalty or \$2 for each day on which the offence is continued after written notice of the offence has been served on the offender.

(2) Notwithstanding the other provisions of this Act, where the warrant establishing a council

is cancelled under section 39 the moneys in the general fund of such council shall thereupon vest in the Republic and may be expended by the Minister for any purpose which could have been approved by such council had its warrant not been cancelled, or he may pay the whole or any portion of such moneys to such council or councils as he may determine.

(3) Any money vested in the Republic under subsection (2) shall be paid into a Special Fund to be established for the purpose, and may be expended or paid in accordance with that subsection and section 13 of the Public Finance (Control and Audit) Ordinance 1976.

Transfer of powers of public officers to councils

117. A council may exercise any powers and may perform any duties, for the time being vested in or imposed upon any public officer, which the Minister may by order declare to be exercisable by such council, and such council may thereupon authorise any officer or servant in its employ to exercise such powers.

Determination of age

118. (1) Where for the purposes of the imposition or collection of rates under Part VIII any question shall arise as to the age of any person the age of such person shall be determined by the rate collector concerned. In determining the age of any person, the rate collector concerned shall determine such age to be the person's apparent age, unless such person shall prove to the satisfaction of such rate collector (the onus whereof shall lie on such person) that his age is an age other than his apparent age.

(2) Any question as to the age of any person arising in the application of any regulations, bye-laws or orders made under the provisions of this Act shall be determined by such person as may be authorised in that behalf by such regulations, bye-laws or orders.

(3) Any person who is aggrieved by a determination made under subsection (1) or (2) may appeal to the Minister whose decision shall be final.

Obstruction of officers, etc.

119. Any person who -

(a) wilfully obstructs any member, officer or servant of a council in the execution of his duty as such; or

(b) being the occupier of any premises, prevents the owner of such premises from complying with any requirements of a council,

shall be liable to a fine of \$50 and to imprisonment for 3 months.

Penalty for unqualified person sitting or voting

120. (1) Any person who -

(a) having been elected as a member of a council but not having been at the time when he was elected, qualified to be so elected, sits or votes in the council; or

(b) sits or votes in a council after his seat therein has become vacant or he has become disqualified from sitting or voting therein,

knowing, or having reasonable grounds for knowing, that he was so disqualified or that his seat had become vacant, as the case may be, shall be liable to a penalty of \$2 for every day upon which he so sits or votes.

(2) Such penalty shall be recoverable by action at the suit of council concerned.

Supply of information

121. It shall be the duty of every council to furnish the Minister with such information as he may require in relation to the provisions of this Act.

General penalty

122. (1) Any person who is convicted of an offence under this Act for which no other penalty is expressly provided shall be liable to a fine of \$20 or, in default of payment, to imprisonment for 6 weeks, and, in the case of a continuing offence, a further penalty of \$2 for each day on which the offence is continued after written notice of the offence has been served on the offender.

(2) In addition to any penalty imposed under subsection (1) any expense incurred by a council in consequence of the commission of an offence under this Act shall be paid by the person committing such offence and shall be recoverable as a civil debt by the council.

Regulations applying within area of authority of any council

123. Notwithstanding the other provisions of this Act the Minister in consultation with the council or councils concerned may make regulations which shall apply within the area of authority of any council for the better carrying into effect of the foregoing provisions of this Act.

State rights

124. Save as is otherwise expressly provided, nothing in this Act shall affect prejudicially any estate, right, privilege or exemption of the State.

Repeal

125. The Local Government Ordinance (Cap. 51) is repealed.

SCHEDULE

(Sections 45 and 116)
(Incorporating amendments as at 1984)

FUNCTIONS OF COUNCILS

1. Agriculture, Livestock and Fisheries -

- (a) to provide services for the improvement of agriculture;
- (b) to control plant diseases, weeds and pests;
- (c) to control or exterminate insect, animal or other pests detrimental to
- (d) crops;
- (e) to control methods of husbandry;
- (f) to regulate areas and methods of planting and types of crops and trees;
- (g) to provide service for the improvement of livestock;
- (h) to prohibit, restrict or regulate the keeping of livestock in or through
- (i) the council area;
- to prohibit, restrict and regulate the keeping of livestock of any
- (+j) description;
- (k) to establish, maintain and control pounds, seize and impound any stray
- (l) animal, and provide for the payment of compensation for damage
- (m) done by such animal;
- (n) to prohibit cruelty to animals and any specified acts of cruelty to
- (o) animals;
- to establish, erect, maintain and control slaughter houses;
- to provide for the control destruction and licensing of dogs;
- to prevent and control the outbreak or the prevalence of any disease among animals;
- to provide for the improvement and control of fishing and related industries;
- to prohibit, restrict or regulate the hunting, capture, killing or sale of animals, reptiles, birds or fish or any specified kind of animal, reptile, bird or fish.

2. Buildings and Town or Village Planning –

- (a) to regulate and control the erection and construction, demolition, re-erection and reconstruction, conversion and re-conversion, alteration, repair, sanitation and ventilation of public and private buildings and
- (b) structure;
- (c) to provide for building lines and the layout of buildings;
- to make advances upon such conditions as may be approved by the
- (d) Minister for the purpose of enabling persons to build or buy dwelling houses;
- (e) to prepare and undertake or otherwise control schemes for improved housing layouts and settlement;
- (f) to prescribe the conditions to be satisfied by a site for any building or for any class of building;
- (g) to prohibit the construction of any new building unless and until the approval of the council has been obtained;
- (h) to provide for the demolition of dangerous buildings and for the recovery of any expenses incurred in connection therewith;

- (l) to prohibit or regulate the use in any defined area of any inflammable material in the construction or repair of any building;
to build, equip and maintain social or sporting centres, public libraries
- (j) and museums, communal feeding centres, restaurants, rest houses, or
- (k) buildings designed and used for public or educational purposes;
- (l) to build, equip, maintain and let shops;
to prohibit or regulate the making of babai-pits or other excavations;
- (m) to control and regulate the sitting of advertisements and hoardings or
- (n) other structures designed for the display of advertisements;
to regulate the use of natural building and constructions materials;
- (o) to establish, erect and maintain public monuments and to make
collections of money towards the establishment or maintenance
- (p) thereof;
- (q) to restrict the use of barbed wire and the use of broken glass or the like
on fences and walls;
to name streets and public places;
to lay out and adorn any public place by any architectural scheme or
ornamentation, including the erection of statues, fountains or other
structures.

3. Education -

- (a) to build, equip, maintain or manage any kindergarten, primary school
or any other class of school which may be approved by the Minister;
- (b) to grant sums of money towards the establishment, equipment or
maintenance of any primary school or any other class of school which
- (c) may be approved by the Minister;
to grant and maintain scholarships or bursaries to suitable persons to
- (d) attend any school or other educational institution in Kiribati or
elsewhere;
- (e) to provide for the compulsory education of children or of specified
categories of children between the ages of 5 and 15 years;
to grant sums of money towards the establishment or maintenance of
any public library or museum or to any association existing for the
promotion of arts and crafts, or recreation and sport, or educational
purposes generally.

4. Forestry and trees -

- (a) to establish, preserve, maintain, improve and control tree nurseries,
forests and woodlands and to sell the produce thereof;
- (b) to plant and tend trees in, and remove trees from, any public place.

5. Land -

- (a) to prevent and control erosion of land by the sea or other cause;

- (b) to provide for the fencing of land and for the maintenance and repair of
- (c) such fencing;
to engage in and promote the reclamation of land from the sea.

6. Relief of famine and drought -

- (a) to regulate the areas and methods of planting and types of crops in areas which are liable to drought or famine.

7. Markets -

(a) to build, equip, open, close and maintain markets, to prohibit the erection of stalls in places other than markets, and to prevent the sale and purchase of goods or stock near established markets;

(b) to regulate and control markets, including the fixing of and collection of stallages, rents and tolls;

(c) to fix the days and hours during each day on which a market may be held and to prevent the sale and purchase of goods in markets on any day or any hour except those fixed.

8. Public health -

- (a) to safeguard and promote public health, including the prevention of and the dealing with any outbreak or the prevalence of any disease;
- (b) to regulate the number of persons permitted to reside in a building or room of any particular size, construction or design;
- (c) to build, equip and maintain, or grant sums of money towards the establishment, equipment or maintenance of any health centre or clinic, or any other medical institution which may be approved by the
- (d) Minister;
to build, equip and maintain, or grant sums of money towards the establishment, equipment or maintenance of any institution or
- (e) settlement for the aged, destitute or in firm or for orphans or lepers;
- (f) to exterminate and prevent the spread of mosquitoes, rats, bugs and
- (h) other vermin;
to establish and operate ambulance services or to make grants towards such services;
- (i) to control and provide for offences in respect of any act or omission
- (j) by any member of the public detrimental to the sanitary condition of the council area or any part thereof;
- (k) to provide, erect and maintain a public water supply, and impose
- (l) water rates;
to establish, maintain and control public wells, springs, bathing
- (m) places, wash houses and swimming pools;
to regulate or prohibit the sinking of wells and provide for the closing of wells;

- (n) to prevent the pollution of any water, and to prevent access to any
- (o) polluted source of water;
to regulate the production or preparation for sale and sale of foodstuffs, and to provide for the inspection of such foodstuffs and the places or premises used for their production, preparation or sale;
to establish, maintain and control cemeteries or burial grounds;
to provide for the cleaning and clearing of any public place.

9. Public order, peace and safety -

- (a) to prohibit any act or conduct which is likely to cause a riot or any disturbance or any breach of the peace;
- (b) to prohibit, regulate or restrict the carrying or possession of weapons;
- (c) to prevent, abate and control fires;
- (d) to prohibit, control and restrict the storage of inflammable or offensive materials in any specified area;
- (e) to regulate the services of guides, porters and carriers;
- (f) to prevent and remove public nuisances;
- (g) to control the movement of beggars and vagrants in public places;
- (h) to regulate and control public collections in public places;
- (i) to prohibit, restrict, control or licence hawking;
- (j) to control the movement of children and other young persons in public places during the hours of darkness.

10. Communications and public utilities -

- (a) to make, alter, divert and maintain roads, streets, parking areas, paths, culverts, causeways, bridges, drains and watercourses;
- (b) to provide or arrange for lighting in public places and to provide, construct and maintain an electricity supply;
- (c) to make, alter and maintain wharves and jetties;
- (d) to make, alter and maintain aerodromes;
- (e) to provide postal and wireless telegraphic services;
- (f) to erect and maintain navigational aids;
- (g) to establish, acquire and maintain transport services by land or water,
- (h) including ferries;
to prohibit, restrict or control the access of motor traffic to any road or parking area maintained by the council and to impose speed limits in
- (i) respect of any road maintained by the council;
- (j) to licence bicycles;
to regulate or prohibit the planting, cutting or destruction of any trees
- (k) or vegetation growing along any street, road, path or in any public place;
to provide that the owner or occupier, or several such persons jointly,
- (l) or any land or tenements, maintain, clear and keep free from vegetation and rubbish such land or tenements or the road, streets, paths or public places adjoining such land or tenements;

to prevent damage or obstruction to any roads, streets, paths, or open spaces maintained by the council.

11. Trade and industry -

- (a) to establish, maintain and control collection centres, storage depots and processing services for agricultural produce;
- (b) to provide for the control, regulation, inspection, supervision and licensing of all places of entertainment and recreation, lodging and eating-houses, and any premises in which any profession, trade or business is carried on;
- (c) to provide for the control, regulation, supervision and licensing of any other occupation;
- (d) to prescribe the conditions under which any offensive trade or industry may be carried on.

12. Miscellaneous -

- (a) to establish, maintain and provide information and publicity services;
- (b) to require the marriage, birth or death of any person within the area of authority of the council to be reported to or registered with the council and to appoint registration officers and registers for such purposes;
- (c) to promote and regulate the development of an arts and crafts industry;
- (d) to protect, preserve, prohibit or control the removal from any place of any antique artefact;
- (e) to establish, control and manage recreation grounds, open spaces and parks;
- (f) to provide for or grant sums of money towards the maintenance and welfare of children, young persons, the aged, destitute or infirm;
- (g) to enter any contract with any other council or with any other body or person to secure or further the carrying on of any work or undertaking which the council is authorised to carry on;
- (h) to fix tariffs or charges for services rendered in connection with the achievements of any of the council's purposes;
- (i) to perform any other function, whether similar to those enumerated in this Schedule or not, which may be specifically conferred upon the council by the Minister.
