

Local Government (Amendment) Act 2004

An act to amend the Local Government Act 1997¹

ENACTED BY THE PARLIAMENT OF LESOTHO

Short Title

1. This Act may be cited as the Local Government (Amendment) Act 2004.

General amendment

2. The Local Government Act 1997 (hereinafter referred to as “the principal law”) is amended –

- (a) by deleting the words “he”, “his” and “him” wherever they appear and substituting the words “he or she”, “his or her” and “him or her”;
- (b) by deleting the words “Rural Council” wherever they appear and substituting the words “District council”;
- (c) by deleting the word “Chairman” wherever it appears and substituting the word “Chairperson”.

Interpretation

3. The Principal law is amended in section 2 by –

- (a) inserting the following definitions in their alphabetical order:
 - “**Administrative Boundaries Commission**” means the boundaries commission established under section 82;
 - “**Council**” means a Community Council, a District Council, an Urban Council or a Municipal Council constituted for any area in accordance with, or for the purpose of, this Act;
 - “**Director of Elections**” means a person appointed as such under section 9D of the National Assembly Election Act 1992²;
 - “**Planning Officer**” means a public officer appointed as such by the Public Service Commission or the Local Government Service Commission, as the case may be;”.
- (b) deleting the definition of “elections officer.”

Composition of Councils

4. The principal law is amended by deleting section 4 and substituting the following:

“4(1) In accordance with the provisions of this Act there shall be constituted the following Councils:

- (a) a Community Council which shall consist of not less than 9 elected members but not exceeding 15 elected members and not exceeding 2 gazetted chiefs who shall be nominated by other Chiefs within a Community Council area;
 - (b) an Urban Council which shall consist of not less than 9 elected members but not exceeding 13 elected members and not exceeding 2 gazetted chiefs who shall be nominated by other Chiefs within an Urban Council area;
 - (c) a Municipal Council which shall consist of not less than 8 elected members but not exceeding 15 elected members and not exceeding 3 gazetted chiefs who shall be nominated by other Chiefs within a Municipal Council area;
 - (d) a District Council which shall consist of such number of members as the Minister may, by notice published in the Gazette, determine, representing Community Councils, provided such members shall include at least—
 - (i) the Chairperson of each Community Council;
 - (ii) a member of each Community Council elected by the Councillors from amongst themselves; and
 - (iii) 2 gazetted chiefs, representing all Community Councils in the District.
- (2) For the avoidance of doubt, the 2 gazetted chiefs referred to in sub-section (1)(d)(iii) shall not be from each Community Council, but shall be representative of all the Community Councils within the District Council.
- (3) Notwithstanding anything in this Act, not less than one third of the seats in a council shall be reserved for women.
- (4) The total number of members of a Council, including gazetted chiefs, shall be an odd number.”.

Functions of Local Authorities

5. The principal law is amended in section 5 by deleting subsection (2)

and substituting the following:

- “(2) A Community Council shall perform the functions specified in the Second Schedule.”

Electoral Divisions

6. The principal law is amended by deleting section 6.

Commencement of term of office of Council and date of constitution of such Council

7. The principal law is amended by deleting section 9 and substituting the following:

“9”(1) The term of office of each Council shall commence on such date as the Minister may appoint by Notice published in the Gazette.

(2) The commencement date referred to in subsection (1) shall not be later than 28 days from the date of declaration of the election results.”

Term of office of Councillors

8. The principal law is amended by deleting section 10 and substituting the following:

“10. (1) The term of office of each Councillor elected at a Local Government election shall be for a period not exceeding five years from the date of elections.

(2) Notwithstanding subsection (1), in the case of a by-election, the member elected shall serve for the period remaining up to the next Local Government election.”

Refusal or vacation or resignation of office

9. The principal law is amended in section 11 by deleting the words “elections officer” in subsection (1)(a) and substituting the words “Director of Elections”.

Filling of casual vacancies

10. The principal law is amended in section 12 by deleting the words “Elections Officer” in the fourth line and substituting the words “Director of Elections”.

First meeting and election of Mayor, Deputy Mayor, Chairperson and Vice-Chairperson

11. The principal law is amended in section 13 by deleting subsection (6) and substituting the following:

- “(6) Whenever the office of Mayor, Deputy Mayor, Chairperson or Vice-Chairperson falls vacant in any manner other than by removal of Mayor, Deputy Mayor, Chairperson or Vice-Chairperson under section 16, information of the occurrence of the vacancy shall, forthwith, be given, in writing, to the Councillors by the Town Clerk in the case of a Municipal Council or Urban Council and the Council Secretary in the case of a Rural or Community Council who, after receipt of such information, shall, within fourteen days, proceed to fill the vacancy in the manner prescribed under section 14.”.

Mode and manner of election of Mayor, Deputy Mayor, Chairperson or Vice Chairperson

12. The principal law is amended in section 14(2) –

- (a) by deleting the words “Elections Officer” in the second line and substituting the words “designated officer presiding at the meeting as may be prescribed in the Regulations”;
- (b) by deleting the words “which the election takes place”.

13. The principal law is amended by adding the following section after section 14:

“Oaths of Mayor, Deputy Mayor, Chairperson, Vice Chairperson and Councillors

14A (1) At the meeting convened under section 13(1), all members of the Council shall take an oath administered by the Town Clerk or Council Secretary in the manner prescribed by the Third Schedule.

(2) In the case of the Mayor, Deputy Mayor, Chairperson or Vice Chairperson, the Town clerk or Council Secretary shall cause such persons after their election as prescribed by section 13(5) to take an oath in the manner prescribed by the Third Schedule.”.

Removal of Mayor, Deputy Mayor, Chairperson, Vice Chairperson from Office by Resolution of the Council

14. The principal law is amended by deleting section 16 and substituting the following:

- “16 (1) The Mayor, Deputy Mayor, Chairperson, Vice-Chairperson may be removed from office by the relevant

Council on any of the following grounds:

- (a) abuse of office;
- (b) corruption;
- (c) incompetence;
- (d) misconduct;
- (e) failure or refusal without justifiable reason to implement lawful Council decisions; and
- (f) in the case of the Chairperson or the Mayor, failure to call a Council meeting for more than three months without reasonable cause.

(2) For purposes of removing the Mayor, Deputy Mayor, Chairperson or Vice Chairperson from office under subsection (1), a written notice signed by not less than half of all members of the Council shall be submitted to the Town Clerk or council Secretary, as the case may be-

- (a) stating their intention to pass a resolution of the Council to remove the Mayor, Deputy Mayor, Chairperson or Vice Chairperson from office on any or all grounds set out in subsection (1);
- (b) setting out the grounds for removal, supported by necessary documents, where applicable, on which it is claimed that the Mayor, Deputy Mayor, Chairperson or Vice Chairperson be removed from office.

(3) The Town Clerk or Council Secretary, as the case may be, shall, within fourteen days, acknowledge receipt of the notice and make arrangements for the meeting in which the Council intends to remove the member from office.

(4) The Town Clerk or Council Secretary, as the case may be, shall preside at the meeting for the removal of a Mayor, Deputy Mayor, Chairperson or Vice Chairperson.

(5) The Mayor, Deputy Mayor, Chairperson or Vice Chairperson who is the subject of removal shall be given an opportunity to defend himself or herself against the accusations before a vote is taken on the resolution by the Council.

(6) The Town Clerk or Council Secretary, as the case may be, shall, after ascertaining that the provisions of this section have been complied with, declare the office of the Mayor, Deputy mayor, Chairperson or Vice Chairperson, which the person removed was occupy-

ing to be vacant. Councillors present at the meeting shall forthwith proceed to the election of, and shall elect one of their members to be the Mayor, Deputy mayor, Chairperson or Vice Chairperson in terms of section 14.”.

General Meetings

15. The principal law is amended in section 18 -
- (a) in subsection (1), by deleting the words “ upon such day or days every month as may be fixed by a Council” and substituting the words “once a month”;
 - (b) by adding the following subsection after subsection (2):
“(3) Subject to the provisions of subsection (2), the general meeting in question shall not be more than two times in a month.”.

Minutes

16. The principal law is amended by deleting section 21 and substituting the following:

- “21. (1) All acts performed, decisions made and orders issued at all meetings of a Council shall be entered in a book of minutes kept for that purpose and shall be signed after each meeting by persons presiding at such meeting.
- (2) The minutes shall be confirmed, with such amendments as may be necessary at the next ordinary meeting of the Council, and a copy thereof or extracts therefrom certified by the Mayor or Chairman as a true copy may be made accessible to the public.”.

Municipal or Urban Town Clerk or Council Secretary of Rural or Community Council

17. The principal law is amended by deleting section 34 and substituting the following:

- “34. (1) There shall be a Town Clerk for each Municipal or Urban Council and a Council Secretary for each Rural or Community Council who shall be the Chief Executive Officer of the Council and all other officers and servants shall be subordinate to him.

(2) Before the commencement of the term of office of any Council, the Local Government Service Commission shall appoint a Town

Clerk for each Municipal or Urban Council and a Council Secretary for each Rural or Community Council.

(3) Notwithstanding subsection (2), where the Local Government Service Commission has not yet been appointed or where it has been appointed but has not yet assumed office, the appointments referred to in that subsection shall be made by the Minister.”.

Powers to make by-laws

18. The principal law is amended in section 42 by deleting subsection (3) and substituting the following:

“(3) A by-law made by a Council may provide the penalty of a fine or imprisonment for any contravention thereof, such fine not exceeding one thousand maloti or imprisonment for a period not exceeding six months, in the case of an individual, and a fine not exceeding five thousand maloti in the case of a corporate body, for any act or omission constituting such contravention, and in the case of a continuing contravention an additional fine not exceeding one thousand maloti, in the case of an individual and not exceeding five thousand maloti in the case of a corporate body, for every day, during which the contravention continues after conviction thereof by a court of competent jurisdiction or after service of a written notice from the Mayor or Chairperson or other authorised Officer directing attention to such contravention.”.

Power of Council to Impose Taxes, etc.

19. The principal law is amended in the heading to section 57 by deleting “etc.”

20. The principal law is amended by adding the following section after section 62:

“Tender Board

62A (1) There shall be a Tender Board in each District which shall provide tender services to the Local Authority.

(2) The Tender Board shall consist of at least six members who shall be appointed by the District Council, at least one of whom shall be designated as Chairperson by the Council.

(3) At least one third of the members of the Tender Board shall be women and at least one member shall be a disabled person.”.

Audit

21. The principal law is amended in section 63 -

(a) by deleting subsection (1) and substituting the following:

“(1) The account of every Council shall be audited once in each financial year by the Government auditor or by such other professionally qualified auditor as may be appointed by the Minister.”.

(b) by adding the following after subsection (3);

“(4) The Minister may at anytime, cause to be examined or audited the accounts or records of the Council or any part thereof, but this shall not affect the holding of the annual audit as provided for in section 63.”.

Inquiries

22. The principal law is amended by deleting section 64(2) and substituting the following:

“(2). For purposes of any inquiry under this section, the commission of inquiry shall be appointed in terms of Commissions of Inquiry Act 1994.”.

District Development Coordinating Committees, Constitution and Composition of a District Development Coordinating Committee

23. The principal law is amended in section 78 –

(a) by deleting the word “three” in subsection (2) (c) and substituting the word “two”;

(b) by adding the following paragraph after paragraph (d):

“(e) such persons from the non-governmental Organizations and disadvantaged groups as may be determined by the Minister who shall be nominated by their respective organizations, hereinafter referred to as “the nominated members.”

24. The principal law is amended by deleting section 79 and substituting the following:

“Term of office of elected and nominated members of a committee

79 (1) The term of office of the elected members and nominated members of a Committee shall be for the period such members have been elected or nominated, as the case may be, to the Council.

(2) Where a person is elected or nominated, as the case may be, in the place of an elected member or nominated member, as the case may be, of a committee member who has died, resigned, or otherwise vacated his office, he or she shall, subject to this Act; hold office for the unexpired period of the term of office of his predecessor.”

Meetings of the committee

- 25. The principal law is amended in section 80(1) by inserting the words “and nominated members” immediately after the words “elected members” in the second line.
- 26. The principal law is amended in section 82-
 - (a) by deleting the heading thereof and substituting the following: “Administrative Boundaries Commission”;
 - (b) in subsection (1), by deleting the words “a Boundaries Commission” and substituting the words “an Administrative Boundaries Commission”.

Functions of the Commission

- 27. The principal law is amended in section 83 by deleting the words “and electoral” and “or electoral” wherever they appear in that section.

Regulations

- 28. The principal law is amended in section 84 by deleting subsection (4).
- 29. The principal law is amended by deleting section 95.

Schedules

- 30. The principal law is amended –
 - (a) by renumbering the “Third Schedule” as the “Fourth Schedule”;
 - (b) by inserting the following new Schedule:

“THIRD SCHEDULE

Oath of Mayor, Deputy Mayor, Chairperson or Vice Chairperson (Section 14A)

I, do swear/solemnly affirm that I shall faithfully exercise the functions of the Mayor, Deputy Mayor, Chairperson or Vice Chairperson of Municipal, Urban, Rural or Community

Council and shall uphold, preserve, protect and defend the constitution and observe the laws of Lesotho and that I shall promote the welfare of the people of this Municipal, Urban, Rural or Community Council. (So help me God)

OATH OF A COUNCILLOR

I, do swear/solemnly affirm that I will give faithfully service to this Council and support and uphold the Constitution of Lesotho as by law established. (So help me God).”.

NOTE

1. Act No. 6 of 1997

2. Act No. 10 of 1992