



LAWS OF KENYA

LOCAL GOVERNMENT ACT

CHAPTER 265

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CHAPTER 265**LOCAL GOVERNMENT ACT****ARRANGEMENT OF SECTIONS****PART I – PRELIMINARY***Section*

1. Short title.
2. Interpretation.

PART II – LOCAL GOVERNMENT AREAS

3. *Deleted.*
4. *Deleted.*
5. Powers of the Minister in regard to local authority areas.
6. Council may submit proposals for alterations.
7. *Deleted.*
8. Power to name townships.
9. Powers of Minister with respect to counties.
10. Electoral areas.
11. *Deleted.*

PART III – CONSTITUTION OF LOCAL AUTHORITIES*Municipal Councils*

12. Establishment and incorporation of municipal councils.
13. Qualification of mayor and tenure of office.
14. Election of mayor.
15. Deputy mayor.
16. Filling vacancy in office of mayor and deputy mayor.
17. Functions of deputy mayor.
18. Mayor and deputy mayor to make declaration of acceptance.
19. Allowance to mayor.
20. *Deleted.*
21. *Deleted.*
22. *Deleted.*
23. *Deleted.*
24. *Deleted.*
25. *Deleted.*
26. Number of councillors.
27. Terms of office of councillors.

County and Town Councils

28. Establishment and incorporation of county councils and town councils.
29. Election of chairman of county and town councils.
30. Vice-chairman of county and town councils.

Section

- 31. Terms of office of chairman and vice-chairman of county and town councils.
- 32. Filling vacancy in office of chairman and vice-chairman.
- 33. Functions of vice-chairman.
- 34. Allowance to chairman.
- 35. *Deleted.*
- 36. *Deleted.*
- 37. *Deleted.*
- 38. *Deleted.*
- 39. Number of councillors.
- 40. Term of office of councillors.

Urban Councils

- 41. Establishment and incorporation of urban councils.
- 42. Chairman and vice-chairman.
- 43. Term of office of chairman and vice-chairman.
- 44. Filling vacancy in office of chairman and vice-chairman.
- 45. Functions of vice-chairman.
- 46. Number of councillors.
- 47. Term of office of councillors.

Local Councils

- 48. *Deleted.*
- 49. *Deleted.*

Township Authorities

- 50. *Deleted.*
- 51. *Deleted.*

PART IV – LOCAL GOVERNMENT ELECTIONS AND MEMBERSHIP*Electoral Areas*

- 52. *Deleted.*
- 53. Qualifications for registration as a voter and for election as an elected councillor.
- 53A. Qualifications for nomination, etc., as a councillor other than an elected councillor.
- 53B. Disqualifications for councillors.
- 53C. Rules under sections 53, 53A and 53B.
- 54. Alteration of electoral areas.

Voters and Electoral Rolls

- 55. Preparation of electoral rolls.
- 55A. Additional disqualifications for candidates.
- 56. Only those on electoral rolls may vote.

Elections and Membership

- 57. Elections to be in accordance with Act and rules.
- 58. Election to coincide with parliamentary and presidential election.
- 59. Councillors may be re-elected, etc.
- 60. *Deleted.*

Section

- 61. Disputes to validity of elections.
- 62. Declaration by councillors.
- 62A. Members of the National Assembly not to be councillors.
- 63. Resignation of councillors and filling of vacancies among nominated and appointed councillors.
- 63A. Vacation of office as councillor.
- 64. Absence of councillors from meetings.
- 65. Tenure of seats of councillors.
- 66. Appeal against declaration under section 65.
- 67. Date of casual vacancies.
- 68. Filling of casual vacancies.
- 69. *Deleted.*
- 70. Term of office of person filling a casual vacancy.
- 71. *Deleted.*

Rules Respecting Elections

- 72. Rules for elections.
- 72A. Electoral code of conduct and application of Cap. 7.

PART V – MEETING AND PROCEEDINGS

- 73. Application and interpretation.
- 74. Annual and ordinary meetings.
- 75. Special meetings.
- 76. Notice of meetings.
- 77. Chairman to preside and have a casting vote.
- 78. Record of attendance and quorum.
- 79. Public officer may attend meetings.
- 80. Minutes to be kept and signed.
- 81. Meetings deemed to have been duly held.
- 82. Minutes open to inspection.
- 83. Adjournment of meetings.
- 84. Admission of press and public.
- 85. Standing Orders.
- 86. Summoning of public meetings.

**PART VA – LIMITATIONS AS TO POWERS AND LIABILITIES
OF MEMBERS AND OFFICERS OF LOCAL AUTHORITIES**

- 86A. Limitation of powers of members.
- 87. Exemption of members, etc., from personal liability.
- 88. Validity of acts of local authorities, members and officers.
- 89. Disability of members from voting on account of interest in contracts, etc.
- 90. Restriction on advocacy against, and acting as auditor for, local authorities and committees.

PART VI – COMMITTEES, JOINT COMMITTEES AND SUBCOMMITTEES***Committees***

- 90A. Interpretation of Part.

Local Government

Section

- 91. General power of local authorities to appoint committees.
- 92. Finance committees.

Joint Committees

- 93. Joint committees.
- 94. Expenses and accounts of joint committees.

Subcommittees

- 95. Subcommittees.

*General Provisions Respecting Committees,
Joint Committees, and Subcommittees*

- 96. Disability from voting on account of interest in contracts, etc.
- 97. Chairman to preside and have casting vote.
- 98. Validity of acts of committee, etc.
- 99. Exemption of members of committee, etc., from personal liability.
- 100. Notice of meetings of committees, etc.
- 101. Minutes of committees, etc.
- 102. Inspection of minutes and adjournment of meetings.
- 103. Staff committees and joint staff committees.

PART VII – JOINT BOARDS

- 104. Constitution, etc., of joint board.
- 105. Change of status of local authorities not to affect joint boards.
- 106. Meetings and proceedings at joint boards.

PART VIIA – LOCAL GOVERNMENT STAFF COMMISSION

- 106A. *Deleted.*
- 106B. *Deleted.*
- 106C. *Deleted.*
- 106D. *Deleted.*
- 106E. *Deleted.*
- 106F. *Deleted.*
- 106G. *Deleted.*
- 106H. *Deleted.*

PART VIII – OFFENCES*Municipal Officers*

- 107. Appointment of municipal officers.
- 108. Appointment of deputies to municipal officers.

County and Town Council Officers

- 109. Appointment of county and town officers.
- 110. Appointment of deputies to county and town officers.

Urban Council Officers

- 111. Officers for urban council.

*Provisions relating to Officers of all Councils**Section*

- 112. Appointment of other officers.
- 113. Appointment of seconded public officers.
- 114. Interpretation where Public Service Commission delegates.
- 115. *Deleted.*
- 116. *Deleted.*
- 117. *Deleted.*
- 118. *Deleted.*
- 119. *Repealed.*
- 120. *Repealed.*

Qualifications and Disqualifications of Officers

- 121. Members of local authorities not to be appointed as officers.
- 122. Qualifications of town clerk and clerk.
- 123. Qualifications of town treasurer and treasurer of county councils or town councils.
- 124. Qualifications of town engineers and engineers of county councils or town councils.
- 125. Qualifications of medical officers of health and public health officers.

Tenure of Office

- 126. *Deleted.*
- 127. *Deleted.*
- 128. *Deleted.*

Status and Duties of Certain Officers

- 129. Status, powers and duties of town clerk and clerk.
- 130. Status, powers and duties of chief financial officer.
- 131. Status, power and duties of medical officer of health.
- 132. Status, power and duties of town engineer and engineer.
- 133. *Repealed.*
- 134. *Repealed.*
- 135. Security to be given by officers.
- 136. Accountability of officers.
- 137. Disclosure by officers of interest in contracts.
- 138. Restriction on engaging in private practice, etc.
- 139. Transfers of pension and other rights.
- 140. Transfers in relation to the Local Authorities Provident Fund.
- 141. Right to attend meetings and require advice to be recorded in certain cases.
- 141A. Uniforms.
- 142. Transfer of officers.

PART IX – CERTAIN POWERS, DUTIES AND PROVISIONS
RELATING TO ALL LOCAL AUTHORITIES

- 143. Power to enter into contracts.
- 144. Acquisition of and dealings in land.
- 145. Miscellaneous powers of local authorities.
- 146. Grants of money.

Section

- 147. Miscellaneous powers of control.
- 148. Imposition of fees and charges.
- 149. Powers to guarantee tax liability and pay deposits in respect thereof, and to recover payments made respecting tax.
- 150. Power to pay allowances to councillors.
- 150A. Miscellaneous expenditure.

**PART X – CERTAIN POWERS, DUTIES AND FUNCTIONS
RELATING TO MUNICIPALITIES, COUNTIES AND TOWNSHIPS**

- 151. Powers with respect to pension, provident and benevolent funds.
- 152. Schools and bursaries.
- 153. Powers authorising omnibus and vehicle services.
- 154. Miscellaneous powers of municipal, county and township authorities.
- 155. Powers of county, municipal and town councils.
- 156. *Deleted.*
- 157. Payments of money in connexion with employment of magistrates, etc.
- 158. Freemen.
- 159. Shops in rural areas.

**PART XI – CERTAIN POWERS, DUTIES AND PROVISIONS RELATING
TO MUNICIPALITIES, TOWNSHIPS AND COUNTY DIVISIONS**

- 160. Miscellaneous functions of local authorities other than county councils and local councils.
- 161. Miscellaneous functions and powers of control.
- 162. Miscellaneous powers of control.
- 163. Powers to control trades and occupations.
- 163A. Business permits.
- 164. Applications for licences.
- 165. Powers to refuse to grant or renew licences and to cancel licences.
- 166. Planning.
- 167. Burials.

Sewerage and Drainage

- 168. *Deleted.*
- 169. *Deleted.*
- 170. *Deleted.*
- 171. *Deleted.*
- 172. *Deleted.*
- 173. *Deleted.*
- 174. *Deleted.*
- 175. *Deleted.*
- 176. *Deleted.*

Housing

- 177. Housing and advances for housing.

Water Supply

- 178. Water supply.

Section

- 179. Diversion and canalisation of streams, etc.
- 180. Additional powers relating to water.

Electricity Supply

- 181. Works of the supply of electricity, light, heat and power.

PART XII – CERTAIN POWERS, DUTIES AND
PROVISIONS RELATING TO ROADS AND FERRIES

- 182. Control and vesting of public streets in municipalities and townships.
- 183. *Deleted.*
- 184. Powers of local authorities to take materials for roads and works.
- 185. Power respecting the permanent closure, etc., of streets and roads.
- 186. Power relating to ferries and toll bridges.
- 187. *Deleted.*
- 188. *Deleted.*
- 189. *Deleted.*
- 190. *Deleted.*
- 191. *Deleted.*
- 192. Definition of vesting.
- 192A. Saving in respect of national and international roads.

PART XIII – CERTAIN PROVISIONS RELATING TO ADDITIONAL
POWERS AND TRANSFERS AND DELEGATIONS OF POWERS

- 193. Delegation of functions relating to trunk roads.
- 194. Transfer of road functions to road authority and arrangements for discharge of such functions.
- 195. *Deleted.*
- 196. Power of county councils, or town councils, to delegate functions.
- 197. Relinquishment of functions by urban councils.
- 198. *Repealed.*
- 199. Powers of county council where there is no county division.
- 200. *Deleted.*

PART XIV – BY-LAWS

- 201. Power to make by-laws.
- 201A. Licences, etc., to be resubmitted for new approvals.
- 202. Restrictions on making by-laws.
- 203. Procedure for making by-laws.
- 204. Submission of by-laws for approval.
- 205. Publication, communication and coming into operation of by-laws, etc.
- 206. Admissibility in evidence of signed copy of by-laws and certificates of clerks.
- 207. Deposit, inspection and supply of copies of by-laws.
- 208. Prosecution for contravention of by-laws.
- 209. Order to affix to premises notice of conviction for sale, etc., of unsound food.
- 210. Power to make adoptive by-laws.
- 211. Councils of county divisions may enforce by-laws of county councils.

PART XV – FINANCIAL PROVISIONS

Section

- 212. Annual and supplementary estimates.
- 213. Minister's powers respecting estimates.
- 214. Expenditure to be in accordance with estimates.
- 215. General and special expenses.
- 216. General rate fund, county fund and township rate fund.
- 217. Payments to and out of funds.
- 218. General reserve funds.
- 219. Renewal funds.
- 220. Capital funds.
- 221. Consolidated loans funds.

PART XVI – LOANS OF LOCAL AUTHORITIES

- 222. Borrowing powers.
- 223. Issue of stocks or bonds.
- 224. Appointment of receiver.
- 225. Temporary borrowing.
- 226. Lenders relieved from certain inquiries.

PART XVII – ACCOUNTS AND AUDIT

- 227. Financial year.
- 228. Accounts.
- 229. Balancing of accounts.
- 230. Audit report.
- 231. Appointment of inspectors.
- 232. *Deleted.*
- 233. *Deleted.*
- 234. Powers of Minister.
- 235. *Deleted.*
- 236. Powers and duties respecting surcharges.
- 237. Application for written reasons for inspector's decision.
- 238. Appeals against decision of inspector.
- 239. Applications for relief.
- 240. Payment and recovery of sums certified to be due.
- 241. Expenses of inspector.
- 242. Power of inspector to take evidence.
- 242A. *Deleted.*

PART XVIII – REPORTS, RETURNS AND INQUIRIES

- 243. Reports to be rendered by certain local authorities.
- 244. Minutes, etc., to be furnished to Minister.
- 245. Investigations, researches and inquiries.
- 245A. *Deleted.*

PART XIX – POWERS ARISING ON DEFAULT OF LOCAL AUTHORITIES

- 246. Power to direct performance of duties and in default to perform same.

Section

- 247. Power to require submission of proposals, and exercise by Minister of powers in default.
- 248. Power to give directions to local authorities.
- 249. Power to reduce grants.
- 250. Default powers to reduce grants or transfer functions respecting county divisions and local council areas.
- 251. Recovery by deduction from grants of debts due from local authorities.
- 251A. Recovery of debts due under loans provided or guaranteed by Government, etc.
- 252. Removal of members, appointment of commission and winding up of local authorities for certain reasons.
- 253. Procedure on winding up.
- 253A. Preparatory Commission.
- 254. Winding up of other local authorities where desirable.
- 255. Dissolution under sections 252 and 254.

PART XX – LEGAL PROCEEDINGS

- 256. Arbitration.
- 257. General penalties.
- 258. Appropriation of penalties.
- 259. Powers of arrest.
- 260. Conduct of prosecutions.
- 261. Books of local authorities as evidence.
- 262. Offences by corporations, societies, etc.
- 263. Actions by and against local authorities.
- 263A. Execution of process against local authority.
- 264. Recovery of charges for sanitary and refuse removal.

PART XXI – MISCELLANEOUS

- 265. Powers of entry.
- 266. Penalties for obstruction.
- 267. Service of documents.
- 268. Delegation of powers.
- 269. Succession of rights and liabilities, etc., on a local authority being replaced.
- 270. Succession of rights, liabilities, etc., where part of area is replaced.
- 271. Power to make rules.

SCHEDULES**FIRST SCHEDULE**

SECOND SCHEDULE –

STANDING ORDERS

THIRD SCHEDULE –

STATUTES, POWERS, DUTIES AND RESPONSIBILITIES OF CERTAIN OFFICERS

FOURTH SCHEDULE –

AMENDMENT OF WRITTEN LAWS

FIFTH SCHEDULE –

LOCAL AUTHORITIES ELECTION

CHAPTER 265

LOCAL GOVERNMENT ACT

[Date of commencement: 30th April, 1963.]

An Act of Parliament to provide for the establishment of authorities for local government; to define their functions and to provide for matters connected therewith and incidental thereto

[L.N. 256/1963, L.N. 279/1963, L.N. 283/1963, L.N. 342/1963, L.N. 383/1963, L.N. 607/1963, L.N. 621/1963, L.N. 634/1963, L.N. 742/1963, L.N. 749/1963, L.N. 2/1964, L.N. 86/1964, L.N. 148/1964, L.N. 191/1964, L.N. 34/1965, L.N. 105/1965, Act No. 9 of 1966, Act No. 21 of 1966, L.N. 107/1966, Act No. 11 of 1967, Act No. 9 of 1968, Act No. 13 of 1968, Act No. 31 of 1968, Act No. 38 of 1968, Act No. 61 of 1968, Act No. 13 of 1970, L.N. 35/1970, L.N. 36/1970, L.N. 41/1970, Act No. 21 of 1971, Act No. 31 of 1971, Act No. 5 of 1972, Act No. 4 of 1974, Act No. 5 of 1974, L.N. 72/1977, Act No. 19 of 1979, Act No. 8 of 1982, L.N. 22/1984, Act No. 11 of 1984, Act No. 18 of 1986, Act No. 13 of 1988, Act No. 10 of 1992, Act No. 11 of 1992, Act No. 8 of 1997, Act No. 10 of 1997, Act No. 5 of 1998, Act No. 9 of 2000, Act No. 11 of 2000, Act No. 7 of 2002, Act No. 8 of 2002, Act No. 11 of 2002, Act No. 12 of 2003, Act No. 3 of 2005, Act No. 6 of 2006, Act No. 17 of 2006.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Local Government Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**annual meeting**” means an annual meeting under section 74;

“**area**”, in relation to a local authority, means its area of jurisdiction;

“**Area Council**” *deleted by Act No. 11 of 1984, s. 3;*

“**building**” includes any erection in whatsoever manner constructed, and any part of a building;

“**business permit**” means a permit that allows the conduct of a business or trade including a profession or occupation, within the area of a local authority, and includes a single business permit and a consolidated business permit;

“**chief financial officer**” means the chief financial officer under section 130(1);

“**the City of Nairobi**” means the City Council of Nairobi and incorporated by Royal Charter dated the 20th March, 1950, and any reference in this Act or any other written law to a municipality or municipal council shall be construed as including a reference to the City of Nairobi or the City Council of Nairobi, as the case may require;

“**clerk**” includes the town clerk of a municipal council or the clerk of a county council or town council;

“**consolidated business permit**” means a permit in respect of one or more business activities each of which would otherwise require a separate permit;

“**contributory place**” means such area as the Minister may specify under section 215(3);

“control” includes regulate, inspect, supervise and license;

“councillor” *deleted by Act No. 9 of 1968, Sch.*;

“county” means an area declared under section 5 to be a county;

“county council” means a county council established under section 28;

“county division” means a county division established under this Act;

“demarcated forest” *deleted by L.N. 634/1963, First Sch.*;

“establish” includes acquire, erect, build, construct, hire, equip and furnish;

“financial year” means the period provided in section 227;

“forest area” has the meaning assigned to it under the Forests Act (Cap. 385);

“function” includes powers and duties;

“Gazette” *deleted by L.N. 749/1963, Sch.*;

“hawker” includes a person who, whether as principal, agent or employee—

- (a) for the purpose of carrying on trade by the sale or exchange of goods, wares, merchandise or refreshments places himself in any street or public place or unenclosed land (other than in shop premises approved as such by a local authority) or goes about in streets or public places or from premises to premises; or
- (b) by any of the means aforesaid carries on trade by the sale or exchange, or the offer or exposing for sale or exchange, of any goods, wares, merchandise or refreshments,

but does not include a person who seeks or takes orders for subsequent delivery or who delivers goods, wares, merchandise or refreshments to premises for the purpose of resale;

“inspector” means an inspector appointed under section 231;

“land” includes any interest in land, any buildings on land, land covered with water, any easement or right in, to or over land;

“licence” includes a permit, but excludes a business permit; and

“local authority” means a municipal, county, town or urban council;

“local council” *deleted by Act No. 11 of 1984, s. 3*;

“local council area” *deleted by Act No. 11 of 1984, s. 3*;

“maintain” includes carry on, manage, operate and keep in repair;

“medical officer of health” includes a deputy medical officer of health and an assistant medical officer of health;

“member”, in relation to a local authority, means a mayor, deputy mayor, chairman, vice-chairman or councillor thereof;

“municipal council” means a municipal council established under section 12;

“municipality” means an area declared under section 5 to be a municipality;

“occupier” includes any person in actual occupation of land or premises without regard to the title under which he occupies, and, in the case of premises

divided and let to lodgers or various tenants, includes also the person receiving the rent payable by the lodgers or tenants whether on his own account or as agent for any person entitled thereto or interested therein;

“officer” includes a servant;

“official language” means English and such other language as the Minister may declare to be an official language either generally or in respect of any particular local authority or group or class of local authorities;

“owner” means—

- (a) in the case of freehold land, the person (other than the Government) owning such land;
- (b) in the case of land held under a lease—
 - (i) for a period of not less than ten years; or
 - (ii) for the natural life of any person; or
 - (iii) which is renewable from time to time at the will of the lessee indefinitely; or
 - (iv) which is renewable from time to time at the will of the lessee for periods which together with the first period thereof amount in all to not less than ten years,

the person holding such land under such lease and includes any agent who receives rents or profits from any such person and also any superintendent, overseer or manager of any such lessee in respect of the holding on which he resides as such superintendent, overseer or manager;

“premises” includes any land, building, room, structure, tent, van, vehicle, stream, lake, dam, pool, drain or ditch (open or enclosed) whether public or private;

“public health officer” includes a chief public health officer, a deputy public health officer and a senior public health officer;

“public place” includes any road, street, thoroughfare, foot pavement, footpath, sidewalk, lane, square, open space, garden, park or enclosed space and vested in a local authority under this Act;

“public road” has the meaning assigned to it in the Public Roads and Roads of Access Act (Cap. 399);

“public street” means an adopted street as defined in section 3(1) of the Streets Adoption Act (Cap. 406), and includes a public street as defined in section 16(9) of that Act;

“the Regional Assembly” *deleted by L.N. 105/1965, r. 2;*

“revenues”, in relation to a local authority, includes the county fund or general rate fund, as the case may be, and all rates, Government contributions and other revenues, whether arising from land or undertakings or from any other source, receivable by the local authority;

“single business permit” means a permit issued in respect of a class of business activities in lieu of the separate licences which would otherwise require to be issued in respect of each activity;

“street trading” includes the selling of newspapers, matches, flowers, food and drink and other articles, the distribution of handbills or other advertisements, and shoe-cleaning and any other like occupation carried on in any public place;

“township” means an area declared by the Minister under section 5 to be a township;

“town council” means a town council established by section 28;

“urban council” means an urban council established under section 41.

[L.N. 383/1963, r. 2, L.N. 634/1963, First Sch., L.N. 749/1963 Sch., L.N. 34/1965, o. 2, L.N. 105/1965, r. 2, Act No. 9 of 1968, Sch., Act No. 31 of 1971, s. 2, L.N. 72/1977, Act No. 11 of 1984, s. 3, Act No. 5 of 1998, s. 42.]

PART II – LOCAL GOVERNMENT AREAS

3. Deleted by L.N. 634/1963, First Sch.

4. Deleted by Act No. 11 of 1984, s. 4.

[Act No. 31 of 1971, Sch.]

5. Powers of the Minister in regard to local authority areas

(1) The Minister, acting in consultation with the Electoral Commission may, either on receiving proposals under section 6 or without any such proposals, by order exercise all or any of the following powers—

- (a) establish any area to be or to cease to be a municipality, county or township;
- (b) assign a name to a municipality, county or township;
- (c) define the boundaries of a municipality, county or township;
- (d) alter the boundaries of a municipality, county or township, whether by adding or subtracting from its area or otherwise;
- (e) alter the name of a municipality, county or township;
- (f) amalgamate two or more counties into one county;
- (g) transfer a part of a county to another county or to a municipality;
- (i) transfer a part of a municipality to a county or township;
- (j) *repealed by Act No. 10 of 1997, Sch.*

Provided that a municipality, county or township shall not extend outside a single province.

(2) Every order made under subsection (1) shall make such provision for protecting the interests of the officers of any council affected by the order as the Minister, acting in consultation with the Electoral Commission considers just.

(3) Before making an order under subsection (1), the Minister, acting in consultation with the Electoral Commission, shall, if proposing to exercise any of the powers specified in paragraphs (a), (c), (d), (f), (g), (h) and (i) of that subsection, and may in any other case, appoint a public officer or some other person to inquire into and report on the advisability of the exercise of any of the powers; and for the purpose of the inquiry the Minister, acting in consultation with the Electoral Commission, may confer upon the officer or person the like powers as are enjoyed by a commissioner under the Commissions of Inquiry Act (Cap. 102).

(4) Notice of such an appointment and particulars of the powers proposed to be exercised shall be published in the *Gazette* and in at least one newspaper circulating in the area to which the proposal relates.

[L.N. 634/1963 First Sch., L.N. 34/1965, o. 2, Act No. 31 of 1968, s. 5, Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch., , Act No. 11 of 1992, Sch., Act No. 10 of 1997, s., 5, Sch.]

6. Council may submit proposals for alterations

(1) A municipal council, county council or town council may make a proposal to the Minister that he should exercise his power under section 5 in the manner specified in the proposal.

(2) Upon receiving a proposal under subsection (1), the Minister, unless for any special reason he considers that the proposal should not be entertained, shall, if the proposal relates to the exercise of any of the powers specified in paragraphs (a), (c), (d), (f), (g), (h) and (i) of section 5(1), and may in any other case, appoint a public officer or some other person to inquire into and report on the advisability of the exercise of any of the powers in the manner proposed or in any other manner, and for the purposes of the inquiry the Minister may confer upon the officer or the person the like powers as are enjoyed by a commissioner under the Commissions of Inquiry Act (Cap. 102).

(3) Notice of such an appointment and particulars of the proposal shall be published in the *Gazette* and in at least one newspaper circulating in the area to which the proposal relates.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 31 of 1968, s. 4, Act No. 31 of 1971, Sch.]

7. Deleted by L.N. 634/1963, First Sch.

8. Power to name townships

The Minister may assign a name to any township and may at any time alter the name of any township.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2.]

9. Powers of Minister with respect to counties

(1) The Minister, acting in consultation with the Electoral Commission may, by order, exercise all or any of the following powers—

- (a) establish one or more county divisions in a county;
- (b) assign a name to a county division or alter the name of a county division;

- (c) define the boundaries of a county division, or alter or amend the boundaries of a county division, whether by adding to or subtracting from an area thereof or otherwise;
- (d) amalgamate two or more county divisions within the county into one county division;
- (e) divide a county division into two or more county divisions;
- (f) transfer a part of a county division to another county division within the same county;
- (g) *repealed by Act No. 10 of 1997, Sch.*

(2) Before exercising any of the powers conferred by subsection (1), the Minister, acting in consultation with the Electoral Commission, shall, if proposing to exercise any of the powers specified in paragraphs (a), (c), (d), (e) and (f) of that subsection, and may in any other case, appoint a public officer or some other person to inquire into and report on the advisability of exercising the powers and notice of such an appointment and particulars of the power proposed to be exercised shall be published in the *Gazette* and in at least one newspaper circulating in the area to which the proposal relates.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 31 of 1968, s. 4, Act No. 11 of 1992, Sch., Act No. 10 of 1997, Sch.]

10. Electoral areas

(1) The Electoral Commission may, by order in the *Gazette* divide any municipality, county, township or county division into electoral areas having such boundaries and names as may be prescribed by the order.

(2) The principles and matters set out in subsections (3) and (5) of section 42 of the Constitution relating to the division of Kenya into constituencies shall, *mutatis mutandis*, guide the Electoral Commission in the exercise of its powers and the performance of its functions under this section.

[L.N. 634/1963, First Sch., Act No. 31 of 1968, s. 5, Act No. 10 of 1997, Sch.]

11. Deleted by Act No. 11 of 1984, s. 4.

[L.N. 634/1963, First Sch., Act No. 31 of 1971, Sch.]

PART III – CONSTITUTION OF LOCAL AUTHORITIES

Municipal Councils

12. Establishment and incorporation of municipal councils

(1) For every municipality there shall be a municipal council established under this Act and every municipal council shall consist of such number of councilors as may be elected, nominated or appointed under section 26.

(2) The Minister, in consultation with the Electoral Commission shall, by order, establish a municipal council in respect of any municipality for which there is not in existence a municipal council established under this Act.

(3) Every municipal council shall, under the name of “The Municipal Council of,” be each and severally a body corporate with perpetual succession and a common seal (with power to alter such seal from time to time), and shall by such name be capable in law of suing and being sued, and of acquiring, holding and alienating land.

(4) *Deleted by Act No. 9 of 1968, Sch.*

[L.N. 634/1963, First Sch., Act No. 9 of 1968, Sch.,
Act No. 11 of 1984, Sch., Act No. 10 of 1997, Sch.]

13. Qualification of mayor and tenure of office

(1) The mayor of a municipal council shall be elected by the council from among the councillors at the first meeting of the council and subsequently at each second annual meeting of the council and, a mayor elected in the year 1968 or later shall hold office until the next annual meeting but one of the council.

(2) Subject to section 16, the mayor shall, unless he resigns or ceases to be qualified or becomes disqualified continue in office until his successor is elected and assumes office.

(3) During his term of office, the mayor shall continue to be a member of the council, notwithstanding the provisions of this Act and any rules made thereunder relating to the retirement of members of the council.

(4) A retiring mayor shall be eligible for re-election.

[Act No. 9 of 1968, Sch., Act No. 38 of 1968, Sch., Act No. 13 of 1970, s. 2.]

14. Election of mayor

(1) The mayor shall be elected by the councillors present, by secret ballot, and such election shall be the first business transacted at the first meeting of the council, and thereafter at each second annual meeting of the council.

(2) On the election of the mayor the outgoing mayor shall preside:

Provided that at the first meeting of the council after its constitution, and subsequently if the office of the outgoing mayor is vacant from any cause, or if the outgoing mayor is a candidate for re-election as mayor, or if the mayor is for any reason unable to attend, the councillors present shall elect a chairman from among themselves (other than a candidate for the office of mayor) who shall preside for the purposes of such election.

(3) The person presiding at the election of the mayor shall have a deliberative vote only, and, in the case of equality of votes for two or more candidates, the election shall be determined by lot between those candidates.

(4) Notwithstanding subsection (1), no person who is a candidate for election to the office of mayor shall be entitled to speak or vote in the election.

[Act No. 9 of 1968, Sch., Act No. 38 of 1968, Sch.]

15. Deputy mayor

(1) A deputy mayor shall be elected by secret ballot by the council from among the councillors at the first meeting of the council, and thereafter at each second annual meeting of the council (immediately after the election of mayor).

(2) Subject to section 16, the deputy mayor shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor is elected and assumes office.

(3) During his term of office, the deputy mayor shall continue to be a member of the council, notwithstanding the provisions of this Act and any rules made thereunder relating to the retirement of members of the council.

(4) A retiring deputy mayor may be re-elected to the office which he is vacating.

(5) On the election of the deputy mayor, the newly elected mayor or, in his absence, a councillor elected as chairman by councillors present, shall preside, but he shall have a deliberative vote only, and in case of equality of votes for two or more candidates, the election shall be determined by lot between those candidates.

(6) Notwithstanding subsection (1), no person who is a candidate for election to the office of deputy mayor shall be entitled to speak or vote in the election.

[Act No. 9 of 1968, Sch., Act No. 38 of 1968, Sch., Act No. 11 of 1984, s. 5.]

16. Filling vacancy in office of mayor and deputy mayor

(1) In the event of the office of mayor or deputy mayor becoming vacant from any cause whatsoever during the term of office of such mayor or deputy mayor, a successor shall, at the next meeting but one of the council after the vacancy occurs, be elected by the councillors from amongst themselves, by secret ballot, and the person so elected shall, subject to section 18, forthwith enter upon his office and shall serve as mayor or deputy mayor, as the case may be, for the remainder of the period of which the mayor or deputy mayor whose office became vacant, had been elected.

(2) Subsections (2), (3) and (4) of section 14 shall apply *mutatis mutandis* with respect to any election under this section.

[Act No. 9 of 1968, Sch.]

17. Functions of deputy mayor

(1) The deputy mayor shall, whenever it shall be necessary owing to the death, resignation, absence, illness or incapacity of the mayor, have authority to exercise all the powers and discharge all the duties vested in and imposed upon the mayor under and by virtue of this Act.

18. Mayor and deputy mayor to make declaration of acceptance

(1) A person who has been elected mayor or deputy mayor shall, within seven days after the day of election and before he acts in that office make before and deliver to the clerk a declaration of acceptance of office in Form A in the First Schedule:

Provided that in the absence of the clerk the declaration shall be made before and delivered to such other person as the Minister may in writing specify for the purpose of this section.

(2) Where the declaration of office is not made or delivered as aforesaid the office of the mayor or deputy mayor, as the case may be, shall thereupon become vacant.

[L.N. 607/1963, r. 2.]

19. Allowances to mayor

(1) A municipal council may vote out of the revenues of the council as a personal allowance to the mayor such sum, not exceeding such maximum as the Minister may determine, as it thinks reasonable.

(2) The amount of the allowance shall be fixed at the commencement of the mayor's term of office and shall not be altered.

(3) The expenditure out of the allowance shall not be subject to any audit, but the mayor's signature therefor shall be sufficient.

(4) Whenever the duties of the office of mayor are performed, for any continuous period not being less than one month, by the deputy mayor under any of the circumstances mentioned in section 17, the allowance under this section shall be paid for that period to the deputy mayor.

[Act No. 9 of 1968, Sch.]

20. Deleted by Act No. 9 of 1968, Sch.

21. Deleted by Act No. 9 of 1968, Sch.

22. Deleted by Act No. 9 of 1968, Sch.

23. Deleted by Act No. 9 of 1968, Sch.

24. Deleted by Act No. 9 of 1968, Sch.

25. Deleted by Act No. 9 of 1968, Sch.

26. Number of councillors

(1) The number of councillors of a municipal council shall be as follows—

- (a) such number of councillors as the Minister may, by order determine, elected for each electoral area by the electorate thereof; and
- (b) such number of councillors nominated by the Minister to represent the Government, or any special interests, as the Minister may, by order determine; and
- (c) where the municipal council in its discretion so agrees with the council of any contiguous county, one councillor from amongst the councillors of each such county council, to be appointed by the county council:

Provided that the total number of councillors nominated or appointed under paragraphs (b) and (c) shall not exceed one-third of the number of elected councillors under paragraph (a) or where the number of elected councillors is not divisible by three the next lowest number so divisible.

(2) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall *mutatis mutandis* apply to the nomination of councillors under this section.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 9 of 1968, Sch., Act No. 11 of 1984, Sch., Act No. 13 of 1988, Sch., Act No. 10 of 1997, Sch.]

27. Terms of office of councillors

(1) The term of office of the elected councillors specified in section 26(a) shall be five years.

(2) The term of office of every councillor nominated under section 26(b) shall be five years or such shorter period as the Minister may, at the time of nomination, specify:

Provided that the Minister may at any time in his discretion terminate the nomination of a councillor by notice in writing delivered to the councillor, and thereupon his office shall become vacant.

(3) The term of office of every councillor appointed under section 26(c) shall be five years or such shorter period as may, at the time of appointment, be specified by the council which appoints such councillors:

Provided that where the councillor ceases to be a councillor of the county council which appointed him he shall forthwith cease to be a councillor of the municipal council.

[L.N. 634/1963, First Sch., Act No. 11 of 1967, s.
2, Act No. 9 of 1968, Sch., Act No. 11 of 1984, s. 6.]

County and Town Councils

28. Establishment and incorporation of county councils and town councils

(1) For every county or township there shall be a county or town council established under this Act, and every county or town council shall consist of such number of councillors as may be elected, nominated or appointed under section 39.

(2) The Minister, in consultation with the Electoral Commission shall, by order, establish a county or town council in respect of any county or township for which there is not in existence a county or town council established under this Act and may in like manner assign a name and alter the name of any county or town council.

(2A) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall *mutatis mutandis* apply to the nomination of councillors under this section.

(3) Every county or town council shall, under the name of “the County Council of” or “the Town Council of,” as the case may be, be each and severally a body corporate with perpetual succession and a common seal (with power to alter such seal from time to time) and shall by such name be capable in law of suing and being sued, and acquiring, holding and alienating land.

(4) *Deleted by Act No. 9 of 1968, Sch.*

[L.N. 634/1963, First Sch., Act No. 9 of 1968, Sch., Act No. 31 of 1971, Sch.,
Act No. 11 of 1984, Sch., Act No. 10 of 1997, Sch.]

29. Election of chairman of county and town councils

(1) The chairman of a county or town council shall unless he is nominated under subsection (7), be elected by the council from among the councillors at the first meeting of the council and subsequently at each second annual meeting of the council.

(2) A retiring chairman shall be eligible for re-election.

(3) The chairman, if elected, shall be elected by the councillors present at the meeting by secret ballot and the election shall be the first business transacted at the meeting.

(4) On the election of the chairman, the outgoing chairman shall preside:

Provided that at the first meeting of the council after its constitution, and subsequently if the office of the outgoing chairman is vacant from any cause, or if

the outgoing chairman is a candidate for re-election as chairman, or the chairman is for any reason unable to attend, those present and entitled to vote at the election shall elect a person from amongst themselves (other than a candidate for the office of chairman) who shall preside for the purpose of that election.

(5) The person presiding at the election of the chairman shall have a deliberative vote only, and, in the case of equality of votes for two or more candidates, the election shall be determined by lot between those candidates.

(6) Notwithstanding subsection (3), no person who is a candidate for election to the office of chairman shall be entitled to speak or vote in the election.

(7) The Minister may, in respect of any county or town council, nominate the chairman thereof from amongst the members of the council or persons qualified to be members of the council.

[Act No. 9 of 1968, Sch., Act No. 38 of 1968, Sch.,
Act No. 13 of 1970, s. 3, Act No. 31 of 1971, Sch.]

30. Vice-chairman of county and town councils

(1) A vice-chairman shall be elected by secret ballot by the county or town council from among the councillors at the first meeting of the council and subsequently at each second annual meeting of the council (immediately after the election of the chairman, if a chairman is being elected):

Provided that where the Minister has nominated the chairman of a county or town council the election of the vice-chairman shall be the first business transacted at the first meeting of the council or at the annual meeting of the council, as the case may be.

(2) A retiring vice-chairman may be re-elected to the office which he is vacating.

(3) Subsections (3), (5) and (6) of section 29 shall, *mutatis mutandis*, apply in respect of the election of the vice chairman.

[Act No. 9 of 1968, Sch., Act No. 38 of 1968, Sch.,
Act No. 31 of 1971, Sch., Act No. 11 of 1984, s. 7.]

31. Terms of office of chairman and vice-chairman of county and town councils

(1) Subject to section 32, the chairman and the vice-chairman of a county or town council shall, unless, he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor is nominated or elected, as the case may be.

(2) During their terms of office the chairman and vice-chairman shall continue to be members of the council notwithstanding the provisions of this Act, and any rules made thereunder, relating to the retirement of members.

[Act No. 31 of 1971, Sch.]

32. Filling vacancy in office of chairman and vice-chairman

(1) In the event of the office of chairman or vice-chairman of a county or town council becoming vacant from any cause whatsoever during the term of office of such chairman or vice-chairman, then, unless a successor is nominated under subsection (2), a successor shall, at the next meeting but one of the council after

the vacancy occurs, be elected by the council from amongst the councillors and the person so elected shall, subject to subsection (4), forthwith enter upon his office and shall serve as chairman or vice-chairman, as the case may be, for the remainder of the period for which the chairman or vice-chairman had been elected or nominated.

(2) In the event of the office of chairman of a county or town council becoming vacant as aforesaid, the Minister, may nominate a successor from amongst the members or persons qualified, to be members of that council, and the person so nominated shall, subject to subsection (4), forthwith enter upon his office and shall serve as a chairman for the remainder of the period for which the chairman had been elected or nominated.

(3) Subsections (3), (5) and (6) of section 29 shall, *mutatis mutandis*, apply in respect of the election of a chairman and a vice-chairman under this section.

(4) Section 18 shall apply to a person elected or nominated to be chairman or vice-chairman equally as it applies to a person elected to be mayor or deputy mayor.

[Act No. 9 of 1968, Sch., Act No. 31 of 1971, Sch.]

33. Functions of vice-chairman

The vice-chairman of a county or town council shall, whenever it is necessary owing to the death, resignation, absence, illness or incapacity of the chairman, have authority to exercise all the powers and discharge all the duties vested and imposed upon the chairman under and by virtue of this Act.

[Act No. 31 of 1971, Sch.]

34. Allowance to chairman

(1) A county or town council may vote out of its revenues as a personal allowance to the chairman such sum, not exceeding such maximum as the Minister may determine, as it thinks reasonable.

(2) The amount of the allowance shall be fixed at the commencement of the chairman's term of office and shall not be altered during that term.

(3) The expenditure of the allowance shall not be subject to any audit, but the chairman's signature therefor shall be sufficient.

(4) Whenever the duties of the office of chairman are performed, for a continuous period not being less than one month, by the vice-chairman under any of the circumstances mentioned in section 33, the allowance under this section shall be paid for such period to the vice-chairman.

[Act No. 9 of 1968, Sch., Act No. 31 of 1971, Sch.]

35. Deleted by Act No. 9 of 1968, Sch. 37.

36. Deleted by Act No. 9 of 1968, Sch. 37.

37. Deleted by Act No. 9 of 1968, Sch. 37.

38. Deleted by Act No. 9 of 1968, Sch. 37.

39. Number of councillors

(1) The number of councillors of a county or town council shall be as follows—

- (a) such number of councillors (if any) as the Minister may, by order determine, elected for each electoral area by the electorate thereof;
- (b) where the Minister by order so determines, in lieu of the councillor or councillors to be elected by any electoral area within a county or township, a councillor or the same number of councillors, appointed by the council of a county division within which that electorate area wholly falls;
- (c) such number of councillors nominated by the Minister to represent the Government, or any special interests as the Minister may, by order determine;
- (d) where the county or town council in its discretion so agrees with the council of any contiguous municipality or county, one councillor from amongst the councillors of that council appointed by that council:

Provided that the total number of councillors nominated or appointed under paragraph (b) and (c) shall not exceed one-third of the number of elected councillors under paragraph (a) or where the number of elected councillors is not divisible by three the next lowest number so divisible.

(2) Every councillor appointed under paragraph (b) of subsection (1) shall, for all the purposes of this Act, be deemed to be an elected councillor of the county or town council.

[L.N. 342/1963, r. 4, L.N. 634/1963, First Sch., Act No. 9 of 1968, Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch., Act No. 13 of 1988, Sch.]

40. Term of office of councillors

(1) The term of office of every councillor nominated under section 39(1)(c) shall be five years or such shorter period as the Minister may, at the time of nomination, specify:

Provided that the Minister may at any time in his discretion terminate the nomination of such a councillor by notice in writing delivered to the councillor and thereupon his office shall become vacant.

(2) The term of office of every councillor appointed under paragraph (b) or (d) of section 39 shall be five years or such shorter period as may, at the time of appointment, be specified by the council which appoints such councillor:

Provided that, where any such councillor ceases to be a councillor of the urban or area council or, as the case may be, of the municipal council which appointed him, he shall forthwith cease to be a councillor of the county or town council.

(3) The term of office of the elected councillors specified in section 39(1)(a) shall be five years.

[Act No. 11 of 1967, s. 2, Act No. 9 of 1968, Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, s. 8.]

Urban Councils

[Act No. 11 of 1984, Sch.]

41. Establishment and incorporation of urban councils

(1) For every county division there shall be an urban council established under this Act, and every urban council shall consist of—

- (a) the chairman;
- (b) the vice-chairman;
- (c) such number of councillors as may be elected, 10 nominated and appointed under section 46.

(2) The Minister, in consultation with the Electoral Commission shall, by order establish an urban council in respect of any county division for which there is not in existence such council established under this Act and may in like manner assign a name or alter the name of the council.

(3) Every urban council shall under the name of “The Urban Council” be each and severally a body corporate with perpetual succession and a common seal (with power to alter such seal from time to time), and shall by such name be capable in law of suing and being sued, and of acquiring, holding and alienating land:

Provided that the Minister may in any particular case approve the use of any other name.

[L.N. 283/1963, r. 2, L.N. 634/1963, First Sch., Act No. 9 of 1968, Sch., Act No. 11 of 1984, Sch., Act No. 10 of 1997, Sch.]

42. Chairman and vice-chairman

At the first meeting of an urban council and subsequently at each second annual meeting of the council, the chairman and vice-chairman shall be elected in the manner provided in section 29 and section 30, respectively, for the election of the chairman and vice-chairman of a county council and sections 29 and 30 shall apply to the office of the chairman and vice-chairman of an urban council equally as to the offices of the chairman and vice-chairman of a county council.

[Act No. 11 of 1984, s. 9.]

43. Term of office of chairman and vice-chairman

(1) Subject to section 44, the chairman and the vice-chairman of an urban council shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor is elected.

(2) During their terms of office, the chairman and vice-chairman shall continue to be members of the council, notwithstanding the provisions of this Act and any rules made thereunder relating to the retirement of members.

[Act No. 11 of 1984, Sch.]

44. Filling vacancy in office of chairman and vice-chairman

In the event of the office of the chairman or vice-chairman of an urban council becoming vacant from any cause during the term of office of the chairman or vice-chairman, then a successor shall, at the next meeting of the council after the vacancy occurs, be elected by the council from amongst the councillors and the

person so elected shall enter upon his office and shall serve as chairman or vice-chairman, as the case may be, for the remainder of the period for which the chairman or vice-chairman had been elected.

[Act No. 11 of 1984, s. 10.]

45. Functions of vice-chairman

The vice-chairman of an urban council shall, whenever it is necessary owing to the death, resignation, absence, illness or incapacity of the chairman, have authority to exercise all the powers and discharge all the duties vested and imposed upon the chairman under and by virtue of this Act.

[Act No. 11 of 1984, Sch.]

46. Number of councillors

The number of councillors of an urban council shall be as follows—

- (a) such number of councillors as the Minister may, by order determine, elected for each electoral area by the electorate thereof; and
- (b) such number of councillors nominated by the Minister to represent the Government, or any special interests; and
- (c) such number of councillors (if any) appointed from amongst its councillors by the county council in whose area the urban or area council is situated:

Provided that the total number of councillors nominated or appointed under paragraphs (b) and (c) shall not exceed one-third of the number of elected councillors under paragraph (a) or where the number of elected councillors is not divisible by three the next lowest number so divisible.

(2A) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall *mutatis mutandis* apply to the nomination of councillors under this section.

[L.N. 283/1963, r. 46, L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 9 of 1968, Sch., Act No. 11 of 1984, Sch., Act No. 13 of 1988, Sch., Act No. 10 of 1997, Sch.]

47. Term of office of councillors

(1) The term of office of every councillor nominated under section 46(b) shall be five years or such a shorter period as the Minister may, at the time of nomination, specify:

Provided that the Minister may at any time in his discretion terminate the nomination of a councillor by notice in writing delivered to the councillor, and thereupon his office shall become vacant.

(2) The term of office of every councillor specified in section 46(a) shall be five years.

(3) The term of office of every councillor specified in section 46(c) shall be five years or such shorter period as may, at the time of appointment, be specified by the council which appoints such councillor:

Provided that where the councillor ceases to be a councillor of the county council which appointed him he shall forthwith cease to be a councillor of the county division council.

[Act No. 11 of 1967, s. 2, Act No. 9 of 1968, Sch., Act No. 11 of 1984, s. 11.]

Local Government

Local Councils

48. Deleted by Act No. 11 of 1984, s. 12.

[L.N. 383/1963, r. 3, L.N. 634/1963, First Sch.]

49. Deleted by Act No. 11 of 1984, s. 12.

Township Authorities

50. Deleted by Act No. 31 of 1971, Sch.

[Act No. 9 of 1968, Sch.]

51. Deleted by Act No. 31 of 1971, Sch.

PART IV – LOCAL GOVERNMENT ELECTIONS AND MEMBERSHIP*Electoral Areas*

52. Deleted by Act No. 31 of 1968, s. 5.

[L.N. 105/1965, r. 3.]

53. Qualifications for registration as voter and for election as an elected councillor

(1) Each electoral area established under this Act shall, in such manner as the Electoral Commission may after consultation with the Electoral Commission, by order prescribe, elect to the local authority for a local authority area of which it forms part or which it constitutes one or more elected councillors as may be so prescribed.

(2) The qualifications and disqualifications for registration as a voter in elections of elected councillors shall be as set out in paragraphs 1 and 2 of the Fifth Schedule.

(3) Every person who is registered in any electoral area as a voter in elections of elected councillors shall, unless he is disqualified by any rules made by the Electoral Commission from voting in such elections on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such offence by the Court trying an election petition, be entitled so to vote in that electoral area in accordance with any rules in that behalf made by the Electoral Commission, and no other person may so vote.

(4) Notwithstanding subsections (1), (2) and (3), the Electoral Commission may by rules provide that, in lieu of the councillor or councillors to be elected to any county council by any electoral area within the county, there shall be a councillor or the same number of councillors appointed by any urban council within which that electoral area wholly falls; and references in this Act to an elected councillor or to the election of any person or the nomination of any person for election as an elected councillor shall be construed as including references to a person appointed as a councillor in pursuance of this subsection or to the appointment of a person or the nomination of a person for appointment as councillor in pursuance of this subsection.

(5) A person is qualified to be elected and to be a councillor of a local authority if, and is not qualified unless—

- (a) at the date of his nomination he is of full age and registered as a voter in elections of elected councillors of that local authority or, in the case of an urban council, he is registered as a voter in elections of elected councillors of the county council of the county within which the urban or area council has jurisdiction; and
- (b) he is not disqualified for election under any of the other provisions of this Act or any other written law; and
- (c) he is a member of a political party taking part in the elections and has been nominated by that political party in accordance with the constitution or rules of that political party relating to the nomination of candidates for local government elections.

(6) For the purposes of this section, the term “political party” has the meaning ascribed to it by section 123(1) of the Constitution.

(7) *Deleted by Act No. 8 of 1982, s. 6.*

(8) *Deleted by Act No. 8 of 1982, s. 6.*

[L.N. 634/1963, First Sch., L.N. 105/1965, o. 3, Act No. 31 of 1968, s. 2, Act No. 13 of 1970, s. 4, Act No. 19 of 1979, s. 9, Act No. 8 of 1982, s. 6, Act No. 11 of 1984, Sch., Act No. 1 of 1992, s. 8, Act No. 10 of 1997, Sch.]

53A. Qualifications for nomination, etc., as a councillor other than an elected councillor

Subject to the Fifth Schedule, any rule made by the Electoral Commission may prescribe, or may provide for the prescription of qualifications to be possessed by persons who are to be nominated, appointed or otherwise selected as councillors for any local authority and may prescribe, or may provide for the prescription of, different qualifications for different classes of such councillors.

[L.N. 105/1965, o. 3, Act No. 10 of 1997, Sch.]

53B. Disqualifications for councillors

(1) The Electoral Commission may by rules prescribe, or may provide for the prescription of, disqualifications for nomination for election as an elected councillor or for nomination, appointment or other selection as a councillor of a local authority additional to those specified in the Fifth Schedule and may prescribe, or may provide for the prescription of, different disqualifications for different classes of councillors.

(2) Without prejudice to the generality of subsection (1), rules made by the Electoral Commission may provide that a person who, at the date of his nomination for election holds or is acting in any office that is specified in those rules and the functions of which involve responsibility for, or in connection with, the conduct of any election to a local authority or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected councillor of that local authority.

(3) Without prejudice to the generality of subsection (1), rules made by the Electoral Commission may provide that a person who is convicted by any court of any offence that is prescribed by law that is connected with election of members of the National Assembly or of a local authority or who is reported to be guilty of

such an offence by the Court trying an election petition shall not be qualified to be nominated for election as an elected councillor or to be nominated, appointed or otherwise selected as a councillor of a local authority for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the Court as may be so prescribed.

[L.N. 105/1965, o. 3, Act No. 10 of 1997, Sch.]

53C. Rules under sections 53, 53A and 53B

Any rules made by the Electoral Commission under sections 53, 53A, or 53B may, in order to permit any person who has been adjudged or declared to be of unsound mind, sentenced to death or imprisonment, or adjudged or declared bankrupt, or any person who has been convicted of an offence referred to in paragraph 2(d) of the Fifth Schedule, to appeal against the decision in accordance with any law, provided that, subject to such conditions as may be prescribed by any rules made by the Electoral Commission, the decision shall not, as regards registration in any local authority area, take effect for the purposes of paragraph 2 or, as the case may be, paragraph 3 of the Fifth Schedule until such time as may be prescribed.

[L.N. 105/1965, o. 3, Act No. 10 of 1997, Sch.]

54. Alteration of electoral areas

(1) A county, town or municipal council may at any time make a representation to the appropriate authority for the alteration of the boundaries of any electoral area, or the alteration of the number of electoral areas, in its area.

(2) Where an urban council has made proposals to the county council and is aggrieved by the refusal or neglect of that council to make a representation to the appropriate authority under subsection (1), the urban council may itself make a representation to the appropriate authority as to the whole or any part of the proposals.

(3) In the case of a representation relating to electoral areas of a county or of a county division or of a local council area, the council making the representation shall as soon as the representation has been made—

- (a) in the case of a representation relating only to the alteration of the boundaries of electoral areas, send a copy thereof to the council of every county division in the county which is wholly or in part comprised in any of the electoral areas proposed to be altered; and
- (b) in every other case, send a copy thereof to the council of every county division in the county; and
- (c) if the representation is made by an urban council send a copy thereof to the county council.

(4) The council making the representation shall forthwith publish in one or more local newspapers circulating in the area concerned a notice stating that the representation has been made and that a copy thereof is open to inspection at a specified place within the municipality or county and that petitions with respect thereto may be made to the appropriate authority within six weeks after the publication of the notice.

(5) For the purpose of this section the appropriate authority shall be the Electoral Commission.

[L.N. 634/1963, First Sch., Act No. 31 of 1971,
Sch., Act No. 11 of 1984, Sch., Act No. 1 of 1992, s. 9.]

*Voters and Electoral Rolls***55. Preparation of electoral rolls**

For the purpose of elections to local authorities there shall be an electoral roll or rolls in respect of each such local authority, compiled and revised in accordance with this Act and any rules made under section 72.

55A. Additional disqualifications for candidates

A person who is convicted of an election offence or who is reported guilty of an election offence by the Court trying an election petition shall not be qualified to be nominated as a candidate for re-election as a member of any local authority during the remainder of the life of the relevant local authority following the conviction or, as the case may be, following the report of the Court:

Provided that a person disqualified as a result of a conviction or report for an election offence, other than under the provisions of this section, prior to the general elections held in the year 1997 shall cease to be so disqualified and shall, unless otherwise lawfully disqualified, be entitled to have the Electoral Commission enter his name in the appropriate register of electors.

[L.N. 742/1963, r. 8, Act No. 10 of 1997, Sch.]

56. Only those on electoral rolls may vote

The persons entitled to vote at an election shall be those persons whose names appear on the electoral roll in force for that election.

*Elections and Membership***57. Elections to be in accordance with Act and rules**

The elected councillors of every local authority under this Act shall be elected as councillors as by this Act is prescribed or directed, whether by rules or otherwise.

58. Election to coincide with parliamentary and Presidential election

(1) Whenever there is a general election under the National Assembly and Presidential Elections Act, there shall simultaneously be held an election of all councillors required to be elected under this Act and for that purpose the Minister shall, forthwith upon the dissolution of parliament, dissolve all local authorities.

(2) The provisions of the National Assembly and Presidential Elections Act (Cap. 7) relating to the powers, responsibilities and duties of the Electoral Commission shall apply *mutatis mutandis* to the conduct of elections under this Act and section 42A of the Constitution.

[Act No. 31 of 1968, s. 2, Act No. 10 of 1997, Sch.]

59. Councillors may be re-elected, etc.

A councillor of any local authority ceasing to hold any office to which he is elected, nominated or appointed under this Act shall, unless he is not qualified or is disqualified, be eligible for re-election, re-nomination or re-appointment.

60. Deleted by L.N. 105/1965, s. 5.

[L.N. 634/1968, First Sch., L.N. 742/1963, r. 9.]

61. Disputes to validity of elections

(1) If the validity of an election to a local authority under this Act is brought into question by any person qualified either to be elected or to vote at the election or by the returning officer on any grounds or for any cause whatsoever, that person or the returning officer, as the case may be, may at any time within fifteen days after the publication of the result of the election, apply to a Resident Magistrate's Court within or nearest to the area of the local authority to set the election aside.

(2) The Resident Magistrate's court shall, after due inquiry declare whether the candidate whose election is questioned, or any and what other person, is duly elected, or whether the election is void.

(3) If the election is declared void, a new election shall be held.

(4) The Chief Justice may make rules for the conduct of an inquiry by a Resident Magistrate's court under this section.

[L.N. 621/1963, r. 2, Act No. 11 of 1967, s. 3, Act No. 13 of 1970, s. 5, Act No. 10 of 1997, Sch.]

62. Declaration by councillors

(1) A person who is elected, nominated or appointed as a councillor of a local authority shall, before attending a meeting or otherwise acting as a councillor of the authority and within two months of his election, nomination or appointment, as the case may be, sign a declaration in Form B in the First Schedule before the clerk of the local authority, or before such other person as the Minister may specify, and any person attending a meeting or otherwise acting as a member of the authority before signing such a declaration, and any person who signs such a declaration knowing any statement therein to be false, shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding two months or to both.

(2) If such a declaration is not made within two months after the election, nomination or appointment, as the case may be the office of the person elected, nominated or appointed shall at the expiration of that time become vacant.

62A. Members of the National Assembly not to be councillors

Notwithstanding the provisions of this Part, no person who is a member of the National Assembly shall be capable of being elected, nominated or appointed, or being, a councillor.

[Act No. 11 of 1967, s. 4, Act No. 13 of 1970, s. 6, Act No. 1 of 1992.]

63. Resignation of councillors and filling of vacancies among nominated and appointed councillors

(1) A councillor elected, nominated or appointed to any office under this Act may at any time resign his office by writing signed by him and delivered to the clerk of the council, and his resignation shall take effect upon the receipt by that officer of such notice of resignation.

(2) Whenever a vacancy is caused by the death, retirement, disqualification or resignation of a nominated or appointed councillor, the clerk shall forthwith notify the person by whom the nomination or appointment was made and such person may nominate or appoint another duly qualified person to fill the vacancy.

63A. Vacation of office as councillor

(1) A councillor of a local authority who at his election as such stood with the support, or as a member, of a particular political party—

- (a) resigns from; or
- (b) otherwise leaves or ceases to be associated with that party, shall forthwith vacate his office as councillor and the Minister shall, after consultation with the relevant local authority, declare the office to be vacant.

(2) Any person who is aggrieved by the declaration made under subsection (1) may, within twenty-eight days of the declaration being made, appeal in writing to a magistrate with power to hold a subordinate court of the first class in the area of the local authority and the magistrate may reject the appeal or set the declaration.

[Act No. 11 of 1967, s. 5, s. 10, Act No. 8 of 1982, s. 7, Act No. 1 of 1992.]

64. Absence of councillors from meetings

(1) If a councillor of a local authority without having obtained leave from the local authority, fails throughout a period of four consecutive months to attend any meeting (including committee meetings) of the local authority, he shall, unless the failure was due to some reason approved by the local authority, become disqualified from continuing to be a councillor of the local authority:

Provided that attendance as a member at a meeting of any committee or subcommittee of the local authority, or at a meeting of any joint committee, joint board or other body to which any of the functions of the local authority have been delegated or transferred, shall be deemed for the purpose of this subsection to be attendance at a meeting of the local authority.

(2) For the purposes of subsection (1) the period of four months shall be calculated from, and include, the date of the first meeting of the local authority or the committee, as the case may be, next after the last meeting at which the councillor was present.

(3) Where any councillor of a local authority other than a councillor nominated by the Minister, leaves Kenya for a period of not less than two nor more than eight months, the local authority may co-opt a fit and proper person to discharge the duties of such councillor during his absence:

Provided that if a councillor or member of a local authority is absent from Kenya for a period exceeding eight months his seat shall become vacant.

[L.N. 634/1964, First Sch.]

65. Tenure of seats of councillors

(1) An elected councillor of a local authority shall vacate his seat on that authority if any circumstances arise that, if he were not such a councillor, would render him not qualified to be elected as such under section 53 or the Fifth Schedule or under any rules made under section 53B.

(2) A councillor (other than an elected councillor) of a local authority shall vacate his seat on that authority—

- (a) if any circumstances arise that, if he were not such a councillor, would cause him to be disqualified to be nominated, appointed or otherwise selected as such councillor under the Fifth Schedule or any rules made under section 53B; or

- (b) in the case of a councillor belonging to a class of councillors for which by virtue of any rules made under section 53B(1) different disqualifications have been prescribed from those prescribed for other classes of councillors, if any circumstances arise that, if he were not a councillor of that class, would cause him to be disqualified under that law to be nominated, appointed or otherwise selected as such.

(3) Where any councillor vacates his seat under this section the local authority shall at the next meeting declare the seat of that councilor to be vacated and shall forthwith notify the Electoral Commission of the vacancy; and the vacancy shall be a casual vacancy.

[L.N. 105/1965, o.4, Act No. 8 of 1982, s. 8, Act No. 10 of 1997, Sch.]

66. Appeal against declaration under section 65

(1) Any councillor whose seat has been declared vacant by any local authority under section 65 may appeal against such declaration to a magistrate with power to hold a subordinate court of the first class in the area of that local authority, and the magistrate may reject the appeal or may set aside the declaration, and, subject to any rules made under this section may make such order as to costs as he may deem just.

(2) Every appeal shall be made in the form of a petition in writing and shall be entered within fourteen days of the day on which the declaration is made, and a copy thereof shall within the same period be served upon the clerk to the local authority.

(3) The local authority or councillor may within seven days of the magistrate's decision or order, appeal to the High Court against such decision or order and the High Court's decision thereon including any order as to costs, shall be final.

(4) The Chief Justice may make rules regulating appeals under this section, and for matters incidental thereto and connected therewith.

[Act No. 10 of 1997, Sch.]

67. Date of casual vacancies

For the purpose of filling a casual vacancy in any office for which an election is held under this Act or any rules made thereunder, the date on which the vacancy shall be deemed to have occurred shall be—

- (a) in the case of non-acceptance of office by any person who is required to sign a declaration under section 62, upon the expiration of the period appointed for the signing of the declaration;
- (b) in the case of resignation, upon the receipt of the notice of resignation by the clerk;
- (c) in the case of death, upon the date of the death;
- (d) in the case of disqualification by reason of a surcharge or conviction, upon the expiration of the ordinary period allowed for making an appeal or application with respect to the surcharge or conviction or,

- (e) in the case of an election being declared void under section 61, upon the date of publication in the *Gazette* of the notice declaring the election to be void;
- (f) in the case of a person ceasing to be qualified to be a councillor of a local authority, or becoming disqualified for any reason other than those mentioned in paragraphs (a) to (e), or ceasing to be a councillor of the local authority under or by virtue of section 65, upon the date on which his office is declared by the local authority to be vacated.
- (h) *deleted by Act No. 8 of 1982, s. 9.*

[Act No. 11 of 1967, s. 6, Act No. 8 of 1982, s. 9.]

68. Filling of casual vacancies

(1) Whenever a casual vacancy occurs in the office of an elected councillor, the local authority concerned shall give notice of the vacancy in the prescribed manner and subject to this section, an election shall thereupon be held, in the same manner as an ordinary election, to fill the vacancy.

(2) Where a casual vacancy occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, an election under this section shall not be held to fill the vacancy, but the vacancy shall be filled at the next ordinary election:

Provided that—

- (i) if upon a vacancy or a number of simultaneous vacancies so occurring, the total number of unfilled vacancies in the membership of the local authority exceeds one-third of the whole number of members, then unless the local authority proceeds or has proceeded under paragraph (ii), the provisions of this subsection shall not apply to that vacancy or to those vacancies;
- (ii) the local authority may co-opt a fit and proper person to discharge the duties of the member to whose office he is co-opted; and for the purpose of this Act and any rule made thereunder, such person shall be deemed to have been duly elected on an election to fill a casual vacancy to the office.

(3) Where more than one casual vacancy in the office of a councillor in any electoral area is filled at the same election, the person elected by the smallest number of votes shall be deemed to be elected in place of the councillor who would regularly have retired first, and the person elected by the next smallest number of votes shall be deemed to be elected in place of the councillor who would regularly next have retired, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of retirement shall be determined by lot; and where more than one casual vacancy in any electoral area is filled at the same time by co-option under paragraph (ii) of the proviso to subsection (2), the local authority shall stipulate at the time of such co-option, the vacancy which each co-opted councillor shall fill.

(4) Where an election to fill one or more casual vacancies in the office of councillor of a local authority is combined with an ordinary election of councillors, the following provisions shall apply—

- (a) where the election is contested—
 - (i) the persons who are elected by the smallest number of votes shall be deemed elected to fill the casual vacancies;
 - (ii) in the case of an equality of votes between the persons who are elected by the smallest number of votes, the persons who shall be deemed elected to fill the casual vacancies shall be determined by lot;
 - (iii) if the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the smallest number of votes, or, if the votes are equal, such person as is determined by lot, shall hold office for the shorter period;
- (b) where the election is not contested, the persons who shall be deemed to be elected to fill the casual vacancies shall be determined by lot.

(5) Where under this section any question is required to be determined by lot, the lots shall be drawn at the next practicable meeting of the local authority after the question has arisen, and the drawing of lots shall be conducted under the direction of the person presiding at the meeting.

(6) This section shall not apply in respect of a casual vacancy among the members of a local council.

[Act No. 13 of 1970, s. 7.]

69. *Deleted by Act No. 11 of 1984, s. 13.*

70. Term of office of person filling a casual vacancy

A person elected or co-opted under this Act to fill a casual vacancy shall hold office until the date upon which the person in whose place he is elected or co-opted would regularly have retired, and he shall then retire.

71. *Deleted by L.N. 634/1963, First Sch.*

Rules Respecting Elections

72. Rules for elections

(1) The Electoral Commission shall make rules for the carrying out of elections to any local authority which, under section 55 is required or directed to prepare an electoral roll for the purposes of elections, and particularly, but without prejudice to the generality of the foregoing, such rules may provide for all or any of the following matters, that is to say—

- (a) *deleted by Act No. 9 of 1968, Sch.;*
- (b) the authority or person responsible for, and generally the procedure in regard to, the preparation and revision of electoral rolls, and the making and disposing of claims and objections and appeals;
- (c) the appointment of returning and other officers, their powers and duties;

- (d) the giving of notice of elections;
- (e) the procedure in regard to the taking of polls at contested elections;
- (f) the forms to be used in connection with the matters dealt with in this section or in any rules made under this section;
- (g) the nomination of candidates for election including the payment of a deposit by candidates of such sum as may be prescribed, being not more than one thousand shillings;
- (h) *repealed by Act No. 10 of 1997, Sch.*;
- (i) for the determination, where any electoral area for a local authority contains more than one place of registration, of the place in which any person who has applied and is qualified to be registered in more than one of those places shall be registered;
- (j) generally, for the better carrying out of elections and for all matters connected therewith.

(2) Different rules may be made under any of the provisions of subsection (1) in respect of different classes of local authorities and in respect of different local authorities of the same class.

(3) For the avoidance of doubt and notwithstanding section 31(c) of the Interpretation and General Provisions Act (Cap. 2), the rules made by the Minister under this section shall, unless earlier revoked and replaced, continue in force and shall be deemed to have been made by the Electoral Commission.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, L.N. 105/1965, o. 6, Act No. 9 of 1968, Sch., Act No. 19 of 1979, s. 9, Act No. 8 of 1982, s. 10, Act No. 10 of 1997, Sch., Act No. 10 of 1999, Sch.]

72A. Electoral code of conduct and application of Cap. 7

Section 34A and the Fourth Schedule to the National Assembly and Presidential Elections Act (Cap. 7), relating to the Electoral Code of Conduct shall apply to local government elections.

[Act No. 10 of 1997, Sch.]

PART V – MEETING AND PROCEEDINGS

73. Application and interpretation

This Part of this Act shall apply to every local authority and the terms “chairman” and “vice-chairman” shall, in respect of a municipal council, be deemed to refer, respectively, to the mayor and deputy mayor.

[Act No. 9 of 1968, Sch.]

74. Annual and ordinary meetings

(1) A local authority shall in every year hold an annual meeting and at least three other meetings, which shall be as near as may be at regular intervals, for the transaction of general business:

Provided that any local authority other than a county council or a municipal council, may hold such lesser number of meetings as the Minister may approve.

(2) The annual meeting shall be held as soon as may be after 30th June, but not later than 15th August, in every year on such day and at such hour as may be appointed by the local authority or, if no hour is so appointed, at twelve noon.

(3) The other meetings shall be held on such days and at such hours as the local authority may from time to time appoint.

[Act No. 11 of 1984, Sch.]

75. Special meetings

(1) The chairman may at any time, and shall within five days of receiving a request in writing signed by not less than one-third of the members of the local authority, call a special meeting of the local authority to be held not later than fourteen days from receipt of the request.

(2) If the chairman, upon receipt of a request as aforesaid, refuses or neglects within five days to call a meeting to be held not later than fourteen days from receipt of the request, the clerk shall forthwith call a special meeting of the council.

76. Notice of meetings

(1) Notice in writing of the time and place, and the business proposed to be transacted at every meeting of a local authority shall be published at the offices of the local authority and be served by the clerk of the local authority on every member thereof, and, in the case of an urban council, on such persons as the Minister may specify, either personally or by post or by leaving the same at his usual place of residence or at his business address; and every such notice shall be served in the case of a meeting of a municipal council not less than twenty-four hours before the meeting and, in the case of a meeting of any other local authority, not less than seven days before the meeting:

Provided that the accidental omission to serve notice of any meeting required to be served under this subsection shall not effect the validity of that meeting.

(2) Except in the case of business required by this Act or any other written law to be transacted at the annual meeting of a local authority or as provided by the standing orders of the local authority, no business shall be transacted at a meeting of a local authority other than that specified in the notice relating thereto.

[Act No. 11 of 1984, Sch.]

77. Chairman to preside and have a casting vote

(1) Save where otherwise in this Act provided, at every meeting of a local authority the chairman, or in his absence the vice-chairman, shall preside; and in the absence of both the chairman and the vice-chairman, the members present shall elect a chairman from amongst themselves to preside at such meeting, and such election shall, in the event of equality of votes for two or more candidates, be determined by lot between those candidates.

(2) Save where otherwise provided in this Act or in any other written law, the chairman of the meeting shall have a second or casting vote.

[L.N. 634/1963.]

78. Record of attendance and quorum

(1) The names of the members present at a meeting of a local authority shall be recorded.

(2) Save as otherwise provided by this Act or any other written law, all acts, matters and things authorised or required to be done by a local authority, and all questions that may come before a local authority, shall be done and decided by the majority of the members present and voting thereon at any meeting of the local authority at which there are present not less than one-half of the members or such larger proportion thereof as such local authority may from time to time by standing order fix.

[L.N. 634/1963, First Sch.]

79. Public officer may attend meetings

A public officer appointed by the Minister under section 245 shall be entitled to attend any meeting, including a committee meeting, of a local authority and to take part in the proceedings thereof but not to vote at the meeting.

80. Minutes to be kept and signed

(1) Minutes of the proceedings of every meeting of a local authority shall be regularly entered in books kept for that purpose, and such minutes shall be confirmed at the same or the next meeting.

(2) The minutes of the proceedings of a meeting of a local authority, when signed by a member describing himself as or appearing to have been chairman of the meeting at which the minutes are confirmed, shall, in the absence of proof of error, be deemed to be a correct record of the proceedings of the meeting of which they purport to be the minutes.

81. Meetings deemed to have been duly held

Whenever the minutes of the proceedings of a meeting of a local authority have been recorded and confirmed, such meeting shall, until the contrary is proved, be deemed to have been duly convened and held, and all the members present at such meeting shall be deemed to have been duly qualified.

82. Minutes open to inspection

The minutes of the proceedings of a local authority shall at all reasonable times be open to the inspection of any ratepayer or voter of the area of the local authority, and the ratepayer or voter may obtain a copy thereof or an extract therefrom; and for the purposes of this section the minutes of any committee which have been formally adopted shall be deemed part of the minutes of the proceedings of the local authority.

83. Adjournment of meetings

The members present at any meeting of a local authority may from time to time adjourn such meeting and, if at any meeting a sufficient number of members are not present to exercise the powers vested in the local authority, the members present, or if there are no members present, the clerk, shall adjourn the meeting and may appoint for the adjourned meeting such day and time as may be considered suitable.

84. Admission of press and public

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

(2) The proceedings of any committee, including a committee of the whole council, or a joint committee shall not be open to the public or the press unless the council or councils appointing the committee or joint committee or the council in the case of a committee of the whole house resolve to admit the public and the press or one or other of them.

[L.N. 634/1963, First Sch.]

85. Standing Orders

(1) The standing orders contained in Part I of the Second Schedule shall, so far as applicable, be standing orders of every local authority, and, where so provided therein, of every committee and subcommittee of a local authority and of every joint committee established under section 93 and of every joint board constituted under section 104, for and in respect of the matters, proceedings and business to which they relate in the same manner and to the same extent as if they were duly made under this section but shall not be capable of any revocation, exclusion or variation by a local authority; and any resolution, by-law or standing order of a local authority purporting to exclude, revoke or vary any such standing order of a local authority inconsistent with any such standing order shall, to the extent of such inconsistency, be void and of no effect.

(2) Subject as aforesaid and to the provisions of this Act, a local authority may with the approval of the Minister make standing orders for the regulation of its proceedings and business and the proceedings and business of any committee appointed by it and of any subcommittee appointed by any of its committees, and, jointly with the local authority or authorities which concur in appointing a joint committee or in constituting a joint board, for regulating the proceedings and business of that joint committee or joint board, and may, in like manner, from time to time vary or revoke any such standing orders.

(3) A local authority may, with the approval of the Minister adopt, with or without modifications, all or any of the standing orders contained in Part II of the Second Schedule, and may from time to time vary or revoke with the approval of the Minister any such standing order adopted as aforesaid.

(4) If no standing orders are made by a local authority, or, if standing orders are made by a local authority, then, in so far as those standing orders do not exclude or modify the standing orders contained in Part II of the Second Schedule, the standing orders contained in Part II of that Schedule shall, so far as applicable, be the standing orders of the local authority for and in respect of the matters, proceedings and business to which they relate in the same manner and to the same extent as if they were duly made by the local authority under this section.

(5) The Minister in respect of the Second Schedule may from time to time, by order, amend the said Schedule whether by adding thereto or inserting therein any new standing order or by amending, varying or revoking any standing order contained therein or otherwise; and any such amendment may be in respect of any particular local authority or any class of local authorities or of local authorities generally.

[L.N. 634/1963, Third Sch.]

86. Summoning of public meetings

(1) The chairman of a local authority may, from time to time, summon at such place and time as he may determine, public meetings of the inhabitants of the

area of jurisdiction of the local authority for the discussion of any local government matter affecting the inhabitants which he considers to be of public importance:

Provided that no such meeting shall be summoned for the purpose of promoting, opposing or discussing the election of any person as a member of that local authority or as a member of Parliament.

(2) Nothing in this section shall be construed as derogating from the provisions of any other written law respecting the holding of public meetings.

PART VA – LIMITATIONS AS TO POWERS AND LIABILITIES OF MEMBERS AND OFFICERS OF LOCAL AUTHORITIES

86A. Limitation of powers of members

(1) No member of a local authority shall give orders with regard to any matter under the jurisdiction of that local authority or give instructions to any officer or employee of that local authority.

(2) No member of a local authority shall, unless so authorized in writing by that local authority or a committee thereof—

- (a) inspect land or premises which that local authority has the right or duty to inspect or enter upon, or give orders respecting, works which are being carried out by or on behalf of that local authority; or
- (b) engage in correspondence for or on behalf of that local authority, particularly with regard to conveying decisions or instructions of that local authority.

(3) A member of a local authority who contravenes any provision of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

[Act No. 11 of 1984, s. 14.]

87. Exemption of members, etc., from personal liability

No matter or thing done or omitted to be done and no contract entered into by a local authority, and no matter or thing done or omitted to be done by any member or officer of a local authority, shall, if the matter or thing were done or omitted to be done or the contract were entered into in good faith for the purpose of this Act, or of any other written law conferring powers or imposing duties on the local authority, its members or officers, subject any such person personally to any action, liability, claim or demand whatsoever; and any expense incurred by a local authority or any such person in consequence of such action shall be paid by the local authority out of its revenues:

Provided that nothing in this section shall exempt any such member, officer or other person aforesaid from liability to be surcharged by the inspector under section 236.

88. Validity of acts of local authorities, members and officers

All otherwise lawful acts of a local authority or of any person acting as chairman, vice-chairman or member of a local authority or as clerk or any other officer of a local authority shall, notwithstanding that it be discovered that there

was some defect in the election, nomination or appointment of that person or that he was disqualified or not qualified, be as valid and effectual as if such person had been duly elected, nominated or appointed and had been qualified.

89. Disability of members from voting on account of interest in contracts, etc.

(1) If a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract, proposed contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter:

Provided that—

- (i) this section shall not apply to an interest in a contract, proposed contract, or other matter which a member of the local authority may have as a ratepayer or inhabitant of the area under the jurisdiction of the local authority, or as an ordinary consumer of water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public; and
- (ii) a member shall be deemed to have disclosed, at a meeting of the local authority, any pecuniary interest in a contract, proposed contract or other matter if—
 - (a) he had disclosed that interest at a meeting of any committee or subcommittee of the local authority, or at a meeting of any joint committee appointed by the local authority jointly with another local authority or authorities, at which that contract, proposed contract or other matter was the subject of consideration; and
 - (b) such disclosure is recorded in the minutes of the proceedings of that meeting of the committee, subcommittee or joint committee; and
 - (c) those minutes are before the local authority at that meeting of the local authority,

but whether he discloses or is deemed to have disclosed such interest, he shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract, proposed contract or other matter in which he has that interest.

(2) For the purposes of this section, a person (subject as hereafter in this section provided shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if—

- (a) he or any nominee of his is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he is a partner, or is in the employment, of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration:

Provided that—

- (i) this paragraph shall not apply to membership of, or employment under, any public body;
- (ii) a member of a company or other body shall not, by reason only of his membership, be treated as being so interested if he has no beneficial interest in any shares or stock of that company or other body.

(3) In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purpose of this section to be also an interest of that other spouse.

(4) The clerk shall record, or cause to be recorded in the minutes of the proceedings of every meeting of the local authority particulars of every disclosure made under this section.

(5) If any person fails to comply with subsection (1) he shall be guilty of an offence and shall for each offence be liable to a fine not exceeding two thousand shillings, unless he proves that he did not know that a contract, proposed contract, or other matter in which he had a pecuniary interest was the subject of consideration at the meeting.

(6) A prosecution for an offence against this section shall not be instituted except by or on behalf of the Attorney-General.

(7) The Minister may, subject to such conditions as he may think fit to impose, remove any disability imposed by this section in any case in which the number of members of a local authority so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business by that local authority, or in any other case in which it appears to the Minister that it is in the interests of the inhabitants of the area under the jurisdiction of the local authority that the disability should be removed.

90. Restriction on advocacy against, and acting as auditor for, local authorities and committees

(1) No member of a local authority shall act as an advocate against any of the following local authorities—

- (a) against the local authority of which he is a member;
- (b) if he is a member of the council of a county, against the council of any county division within that county;
- (c) if he is a member of the council of a county division, against the council of that county or any county division situated in the same county.
- (d) *deleted by Act No. 11 of 1984, s. 15.*
- (e) *deleted by Act No. 11 of 1984, s. 15.*
- (f) *deleted by Act No. 11 of 1984, s. 15.*

(2) No member of a local authority shall by himself or his partner or his agent act as an advocate of any other person or in any professional capacity represent any other person—

- (a) before any Valuation Court appointed by any local authority against which he is prohibited by subsection (1) from acting as an advocate; or
- (b) before any committee of any such local authority appointed to consider or deal with any application which the local authority is empowered to consider or deal with.

(3) No member of a local authority or his partner or his employer or employee, and no company of which a member of a local authority is a director, shall act for reward as an auditor for any local authority against which that member if he were an advocate, would be prohibited by subsection (1) from acting as an advocate.

[Act No. 11 of 1984, s. 15.]

PART VI – COMMITTEES, JOINT COMMITTEES AND SUBCOMMITTEES

Committees

90A. Interpretation of Part

In this Part the terms “chairman” and “vice-chairman” shall, in respect of a municipal council, be deemed to refer respectively to the mayor and deputy mayor.

[Act No. 11 of 1984, s. 16.]

91. General power of local authorities to appoint committees

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

(2) Every councillor shall be elected by the council to serve on at least one committee and in appointing its committees a local authority shall, where political parties have taken part in an election, or where special interests have been nominated to the local authority under this Act, make its appointments in such a manner that each committee represents, so far as possible and reasonably practicable, the representation of the political parties or such special interests in the council.

(3) The chairman and the vice-chairman of a local authority shall be *ex officio* members of every committee appointed by that local authority under this section.

(4) The number of members of a committee appointed under this section, their term of office, and the area, if any, within which the committee is to exercise its authority, shall be fixed by the local authority appointing it.

(5) A committee appointed under this section may include persons who are not members of the local authority:

Provided that at least two-thirds of the members of every committee shall be members of the local authority.

(6) Where the local authority has not appointed a chairman and a vice-chairman, each committee appointed under this section shall at its first meeting, before proceeding to any other business, elect its own chairman and may elect a vice-chairman and the election shall, in the event of equality of votes for two or more candidates, be determined by lot between those candidates.

(7) Every member of a committee appointed under this section who at the time of his appointment was a member of the local authority by which he was appointed shall, upon ceasing to be a member of that authority, also cease to be a member of the committee:

Provided that for the purposes of this section a member of a local authority shall not be deemed to have ceased by reason of retirement to be a member of the local authority, if he has been re-elected, re-nominated or re-appointed a member thereof not later than the day of his retirement.

(8) Nothing in this section shall authorise the appointment of a committee for any purpose for which the local authority is authorised or required to appoint a committee by any other provision of this Act, or by any other written law for the time being in force.

(9) A committee shall not incur any expenditure in excess of the amount allowed by the local authority or its finance committee.

92. Finance committees

(1) A municipal council and a county council or town council shall appoint, and the Minister may require any other local authority to appoint, from time to time, a finance committee consisting of the chairman and the vice-chairman of the local authority, who shall be *ex officio* members of the finance committee, and such number of other members of the local authority as it thinks fit for regulating and controlling the finances of that local authority, and shall fix the term of office of the members of the committee:

Provided that an urban council, and any other local authority with the approval of the Minister, may assign to the committee appointed under this section, the regulation and management of such general purpose or purposes as the local authority may determine in addition to regulating and controlling the finances of that local authority and such committee shall thereupon be the finance and general purposes committee of that local authority and in this Act or any other written law any reference to the finance committee of a local authority shall in any such case be construed as a reference to the finance and general purposes committee appointed under this subsection.

(2) Where the local authority has not appointed a chairman and a vice-chairman of the finance committee the finance committee shall elect its own chairman and may elect a vice-chairman and the election shall, in the event of equality of votes for two or more candidates, be determined by lot between those candidates.

(3) Every member of a finance committee appointed under this section shall, upon ceasing to be a member of the local authority by which he was appointed, also cease to be a member of the committee:

Provided that for the purposes of this subsection a member of a local

authority shall not be deemed to have ceased by reason of retirement to be a member of the local authority, if he has been re-elected, re-nominated or re-appointed a member thereof not later than the day of his retirement.

(4) No payment shall be made out of a local authority's funds unless either—

- (a) it has been provided for in the approved annual or revised or supplementary estimates of expenditure and authorised by that local authority, or any committee or subcommittee duly acting under this Act and any standing orders; or
- (b) it is permitted by the terms of any order made under this section.

(5) The duties of the finance committee shall include—

- (a) advising the local authority on financial matters;
- (b) advising the local authority on all rating matters;
- (c) supervising the recovery of moneys due to the local authority and generally the whole financial arrangements of the local authority; and
- (d) exercising such other functions as are by this Act or by any other written law imposed on the finance committee.

(6) Every local authority having a finance committee or a finance and general purpose committee shall with the approval of the Minister make provision, by way of standing orders, with respect to the matters standing referred to the finance committee or finance and general purposes committee and with respect to the functions of the local authority delegated to such committee.

[L.N. 279/1963, rr. 2, 3, L.N. 634/1963, First Sch., L.N. 749/1963, Sch., L.N. 34/1965, o. 2, Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

Joint Committees

93. Joint committees

(1) A local authority may concur with any one or more other local authorities in appointing from amongst their respective members a joint committee of those local authorities for any purpose in which they are jointly interested, and may delegate to the joint committee, with or without restrictions or conditions, as they think fit, any functions of the local authorities relating to the purpose for which the joint committee is formed, except the power of levying a rate or borrowing money or making by-laws.

(2) Subject to this section, the number of members of a joint committee appointed under this section, the terms of office of the members thereof, and the area, if any, within which the joint committee is to exercise its authority, shall be fixed by the appointing local authorities.

(3) Where the local authorities concerned have not jointly appointed a chairman and a vice-chairman, a joint committee shall elect its own chairman and may elect a vice-chairman and the election shall, in the event of equality of votes for two or more candidates, be determined by lot between those candidates.

(4) Every member of a joint committee appointed under this section shall, upon ceasing to be a member of the local authority which appointed him, also cease to be a member of the committee:

Provided that for the purpose of this subsection a member of a local authority shall not be deemed to have ceased by reason of retirement to be a member of the local authority, if he has been re-elected, re-nominated or re-appointed a member thereof not later than the day of his retirement.

[L.N. 634/1963, First Sch.]

94. Expenses and accounts of joint committees

(1) Any expenses incurred by a joint committee appointed under this Part shall be defrayed by the local authorities by which the committee is appointed in such proportions as they may agree upon, or, in default of agreement, as may be determined by the Minister.

(2) Where any expenses are incurred by a joint committee, the accounts shall be made up yearly to the 31st December, and shall be audited as provided in Part XVII.

Subcommittees

95. Subcommittees

A committee appointed under this Part may appoint a subcommittee from amongst the members of that committee for any such special purpose as the committee may deem expedient, but, in the absence of express authority in that behalf from the local authority which appointed that committee, it shall not be lawful for the committee to delegate any of its executive functions to any such subcommittee.

General Provisions Respecting Committees, Joint Committees and Subcommittees

96. Disability from voting on account of interest in contracts, etc.

Section 89 shall apply in respect of members of a committee or a subcommittee of a local authority or of any joint committee appointed by agreement between local authorities, whether the committee, subcommittee or joint committee is appointed under this Act or any other written law, as that section applies in respect of members of local authorities, subject to the following modifications—

- (a) reference to meetings of the committee, or joint committee, as the case may be, shall be substituted for the references to meetings of the local authority; and
- (b) references to the person responsible for recording the minutes of the meetings of the committee, subcommittee or joint committee, as the case may be, shall be substituted for the reference to the clerk in section 89(4).

97. Chairman to preside and have casting vote

(1) At every meeting of a committee, subcommittee or joint committee the chairman, or in his absence the vice-chairman (if any), shall preside; and in the absence of both the chairman and the vice-chairman (if any) the members

present shall elect a chairman from amongst themselves to preside at the meeting, and the election shall, in the event of equality of votes for two or more candidates, be determined by lot between those candidates.

(2) The person presiding at a meeting of a committee, subcommittee or joint committee shall, subject to the provisions of this Act or any other written law have a second or casting vote.

98. Validity of acts of committee, etc.

All otherwise lawful acts of a committee, subcommittee or joint committee, or of any person acting as chairman, vice-chairman or member of a committee, subcommittee or joint committee, appointed under this Act, or as the clerk or any other officer of such committee, subcommittee or joint committee shall, notwithstanding that it be discovered that there was some defect in the appointment of any such person to, or his appointment or election as chairman, vice-chairman, clerk or officer of, such committee, subcommittee or joint committee, or, where such chairman, vice-chairman or member is also a member of the local authority which appointed the committee, or a committee which appointed the subcommittee, or which concurred in the appointment of the joint committee, as the case may be, notwithstanding that it be discovered that there was some defect in the election, appointment or nomination of such person to the local authority or that he was disqualified, be as valid and effectual as if such defect as aforesaid did not exist and such person not disqualified.

99. Exemption of members of committee, etc., from personal liability

No matter or thing done or omitted to be done, and no contract entered into, by a committee, subcommittee or joint committee appointed under this Act, and no matter or thing done or omitted to be done by any member or officer of, or other person acting under the directions of, any such a committee, subcommittee or joint committee, shall, if the matter or thing was done or omitted to be done, or the contract was entered into, in good faith for the purpose of this Act or any other written law conferring powers or imposing duties on local authorities which under this Act may be exercised or discharged by a committee, subcommittee or joint committee appointed under this Act, subject any such person personally to any action, liability, claim or demand whatsoever, and any expense incurred by such committee, subcommittee or joint committee or any such person, in consequence of such action, shall be paid, in the case of a committee or subcommittee, by the local authority which appointed the committee or the committee which appointed the subcommittee, out of its revenue and in the case of a joint committee, as provided in section 94 for defraying the expenses of a joint committee:

Provided that nothing in this section shall exempt any such member, officer or other person aforesaid from liability to be surcharged by the inspector under section 236.

[L.N. 634/1963, First Sch.]

100. Notice of meetings of committees, etc.

(1) Such previous notice in writing as may be fixed by standing orders under section 85 of the time and place, and the business proposed to be transacted at, every meeting of a committee, a subcommittee or a joint committee shall be

served on every member thereof and, in the case of a committee of an urban council or a joint committee appointed by an urban council together with any other local authority or authorities, on such persons as the Minister may from time to time specify:

Provided that the accidental omission to serve any notice required to be served under this section shall not affect the validity of the meeting.

(2) Except as may be provided to the contrary in standing orders applicable to the committee, subcommittee or joint committee, no business shall be transacted at a meeting of a committee, subcommittee or joint committee other than that specified in the notice relating thereto.

101. Minutes of committees, etc.

(1) Minutes of the proceedings of every meeting of a committee, a subcommittee or a joint committee shall be regularly entered in books kept for that purpose, and the minutes shall be confirmed at the same or the next meeting of the committee, the subcommittee or the joint committee:

Provided that—

- (i) the minutes of a committee, if not confirmed at the same meeting, need not be confirmed at the next meeting of the committee if, before that meeting, they are confirmed at a meeting of the local authority which appointed the committee, by a majority of the members of the committee who were present at the committee meeting to which the minutes relate;
- (ii) the minutes of a subcommittee, if not confirmed at the same meeting, need not be confirmed at the next meeting of the subcommittee if, before that meeting they are confirmed at the meeting of the committee which appointed the subcommittee, or at a meeting of the local authority which appointed such committee by a majority of the members of the subcommittee who were present at the subcommittee meeting to which the minutes relate.

(2) The minutes of the proceedings of a meeting of a committee, a subcommittee or a joint committee, when signed by a person describing himself as or appearing to have been the chairman of the meeting at which the minutes are confirmed, whether that meeting is a meeting of the committee, the subcommittee or the joint committee to which the minutes relate or a meeting of the local authority or committee at which the minutes of the committee or subcommittee, as the case may be, are confirmed shall in the absence of proof of error, be deemed to be a correct record of the proceedings of the meeting of which they purport to be the minutes.

(3) The names of the members present at a meeting of a committee, a subcommittee or a joint committee shall be recorded in the minutes thereof.

(4) Whenever the minutes of the proceedings of a committee, a subcommittee or a joint committee have been recorded and confirmed, such meeting shall, until the contrary is proved, be deemed to have been duly convened and held, and the committee, subcommittee or joint committee shall be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

102. Inspection of minutes and adjournment of meetings

Sections 82 and 83 shall, *mutatis mutandis*, apply respectively to the minutes of, and to adjournment of meetings of, a committee, subcommittee and joint committee:

Provided that section 82 shall only apply to the minutes of a committee, subcommittee or joint committee which exercises delegated powers and to the minutes of any other committee, subcommittee or joint committee when such minutes have been adopted by the local authority.

103. Staff committees and joint staff committees

(1) Where a local authority has appointed a joint staff committee comprising representatives of both the local authority and its employees, subsection (5) of section 89 shall not apply to membership of such committee.

(2) Where a local authority has appointed a staff committee or a joint staff committee then no representative of a local authority on such a committee shall be a person who is a member of a trade union whose membership comprises members of the staff of the local authority.

PART VII – JOINT BOARDS**104. Constitution, etc., of joint board**

(1) Where—

- (a) a local authority enters into a contract, arrangement or agreement with any other local authority or local authorities for, or with respect to, the doing and the control or management jointly by the local authorities entering into the contract, arrangement or agreement aforesaid of any of the things provided for in this Act, or of any matter or thing which those local authorities are all empowered to do, control or manage, and such local authorities request the Minister to exercise his powers under this section; or
- (b) a local authority is desirous of acting jointly with the Government in exercise of any of the powers conferred upon it by or under this Act or any other written law,

then, in either case, the Minister may, by order, constitute a joint board and direct that, so long as such order remains in force, the board shall have and may exercise subject to such limitations and conditions (if any) as may be specified in the order and, in the former case, subject to the terms and conditions of such contract, arrangement or agreement, the powers of each of the local authorities entering into such contract, arrangement or agreement as aforesaid, in respect of the doing and the control and management of the thing or matter for or with respect to which such contract, arrangement or agreement was entered into, or, as the case may be, the powers of the local authority referred to in paragraph (b).

(2) A joint board constituted under this section shall, under the name assigned to it in the order constituting it, be a body corporate with perpetual succession and a common seal (with power to alter such seal from time to time), and shall by such name be capable in law of suing and being sued and of acquiring, holding and alienating land.

(3) An order constituting a joint board under this section may—

- (a) subject to subsection (4), provide for regulating the appointment and term of office of members of the board, for regulating the meetings and proceedings of, and the execution of documents by or on behalf of, the board, and for regulating the finances, investments, accounts and executive and administrative functions of the board; and
- (b) apply to the board, subject to any necessary modifications, any of the provisions of this Act; and
- (c) contain such other provisions (including provision for the transfer of property and liabilities, and for the adjustment of accounts and apportionment of liabilities) as appear to the Minister to be expedient for enabling the board to exercise its functions.

(4) Every joint board constituted under this section shall consist of—

- (a) in the case specified in subsection (1)(a), an equal number of representatives nominated by each of the local authorities entering into the contract, arrangement or agreement, and where the Minister so directs, of a chairman, appointed by the Minister, and such other members (if any), not exceeding in number the total number of members nominated by the contracting parties, as the Minister may appoint; and
- (b) in the case specified in subsection (1)(b), an equal number of representatives appointed by the local authority and the Minister respectively and of a chairman appointed by the Minister,

and the chairman of a joint board shall be entitled to both a deliberative and a casting vote, and where the Minister has not appointed a chairman, or in the absence or inability to act of the chairman, the board shall elect one of its members to be or to act as chairman and any member of the board so acting shall have both a deliberative and a casting vote.

(5) Every joint board constituted under section 26 of the African District Councils Act, 1950 (now repealed), by an order in force immediately before the coming into operation of this Act shall be deemed to have been constituted under this section, and the powers and duties of, and the property, assets, rights, debts, liabilities and obligations of, and the benefit and burden of all contracts made by or on behalf of, any such board shall not be affected by such repeal, and the county council having jurisdiction under this Act over the area of the African District Council which, being desirous of acting jointly with the Government under section 26 of the aforesaid Act, was responsible for the constitution of the joint board shall, in place of that African District Council, be deemed to have been the local authority so desirous as aforesaid, and, notwithstanding such repeal, every such order as aforesaid shall, to the same extent, remain in force as if made under this section, subject to the following modifications—

- (a) reference to the African District Council Act, 1950 (now repealed), and to any provisions thereof shall be substituted by reference to this Act and to the corresponding provisions of this Act respectively; and
- (b) references to African District Councils in the titles thereof shall be substituted by reference to local government; and

- (c) references to any particular African District Council shall be substituted by reference to the county council having jurisdiction under this Act over the same area as that African District Council had before the coming into operation of this Act.

(6) The Minister may, with the agreement of the local authorities concerned, at any time by order revoke an order constituting a joint board under this section, or deemed to be constituted under this section, and may in any such order provide for the dissolution of the board and for winding-up the affairs of the board and for distributing, transferring or otherwise disposing of the property and liabilities thereof, and for all matters connected therewith or incidental thereto.

[L.N. 634/1963, Third Sch., L.N. 2/1964, s. 2.]

105. Change of status of local authorities not to affect joint boards

(1) The powers and duties of, and the property, assets, rights, debts, liabilities and obligations of, and the benefit and burden of all contracts made by or on behalf of, a joint board shall not be affected by the establishment under this Act of a new local authority in place of any interested local authority and the new authority shall be deemed to be an interested local authority in lieu of the local authority which it replaces, and the order constituting any such joint board shall, to the same extent, continue in force subject to references to such new local authority being substituted for references to the local authority which it replaces.

(2) In respect of a joint board constituted pursuant to a request under section 104(1)(a), each of the local authorities specified in the order shall be an interested local authority for the purpose of this section; and in respect of a joint board constituted pursuant to section 104(1)(b), the local authority which was desirous of acting jointly with the Government for the purpose specified in that paragraph shall be an interested local authority for the purpose of this section.

[L.N. 634/1963, Third Sch.]

106. Meetings and proceedings at joint boards

Subject to any provisions to the contrary contained in an order constituting a joint board, Part V and Part VI shall apply, *mutatis mutandis*, to a joint board.

PART VIIA – LOCAL GOVERNMENT STAFF COMMISSION

106A. Deleted by No. 11 of 1984, s. 17

[L.N. 634/1963, Second Sch., L.N. 749/1963, Sch., L.N. 105/1965, o. 7.]

106B. Deleted by No. 11 of 1984, s. 17.

[L.N. 634/1963, Second Sch., L.N. 749/1963, Sch., L.N. 105/1965, o. 7.]

106C. Deleted by L.N. 749/1963, Sch.

106D. Deleted by L.N. 749/1963, Sch.

106E. Deleted by L.N. 749/1963, Sch.

106F. Deleted by L.N. 749/1963, Sch.

106G. Deleted by L.N. 749/1963, Sch.

106H. Deleted by L.N. 749/1963, Sch.

PART VIII – OFFICERS*Municipal Council Officers***107. Appointment of municipal officers**

(1) Unless the Minister otherwise directs, there shall be appointed by the Public Service Commission to every municipal council a town clerk, town treasurer and town engineer, and unless the Minister for the time being responsible for health otherwise directs, a medical officer of health and a public health officer, and there shall be paid to those officers salaries, emoluments and allowances as determined by the council with the approval of the Minister.

(2) An appointment under subsection (1) shall be on a full time basis unless the Minister concerned directs that it be on a part time or consulting basis.

(3) The offices of town clerk and town treasurer shall not be held by the same person or by persons who stand in relation to each other as partners or as employer and employee.

[Act No. 11 of 1984, s. 18.]

108. Appointment of deputies to municipal officers

(1) Where a town clerk, town treasurer, town engineer, medical officer of health or public health officer has been appointed under section 107, there may, on the direction of the relevant Minister, also be appointed by the Public Service Commission a deputy of that officer for the purpose of acting in the place of the officer whenever the office is vacant or the holder thereof is for any reason unable to act, and a person appointed as a deputy under this section shall, when so acting and subject to the terms of his appointment, have all the functions of the holder of that office.

(2) A municipal council shall pay to a person appointed as a deputy under this section salary, emoluments and allowances as it may determine with the approval of the Minister.

(3) An appointment under this section shall be subject to the same qualifications as for appointment to the office for which he is deputy.

[L.N. 634/1963, Third Sch., Act No. 11 of 1984, s. 18.]

*County and Town Council Officers***109. Appointment of county and town officers**

(1) Unless the Minister otherwise directs, there shall be appointed by the Public Service Commission to every county and town council a clerk, treasurer and engineer or works superintendent, and there shall be paid to those officers salaries, emoluments and allowances as determined by the council with the approval of the Minister.

(2) An appointment under subsection (1) shall be on a full time basis unless the Minister directs that it be on a part time or consulting basis.

(3) The offices of clerk and treasurer shall not be held by the same person or by persons who stand in relation to each other as partners or as employer and employee.

[Act No. 11 of 1984, s. 18.]

110. Appointment of deputies to county and town officers

(1) Where a clerk, treasurer, engineer or works superintendent has been appointed under section 109 there may, on the direction of the Minister, also be appointed by the Public Service Commission a deputy of that officer for the purpose of acting in the place of the officer whenever the office is vacant or the holder thereof is for any reason unable to act, and a person appointed as a deputy under this section shall when so acting and subject to the terms of his appointment, have all the functions of the holder of that office.

(2) A county or town council shall pay to a person appointed as a deputy under this section salary, emoluments and allowances as it may determine with the approval of the Minister.

(3) An appointment under this section shall be subject to the same qualifications and disqualifications as for appointment to the office for which he is deputy.

[Act No. 11 of 1984, s. 18.]

*Urban Council Officers***111. Officers for urban council**

(1) The clerk and other officers of a county council shall, except where officers are appointed under subsection (2) to the corresponding post, act as clerk and officers respectively of the urban council of a county division within the county.

(2) An urban council may, with the approval of the Minister and the consent of the council of the county in which its division is situated, and subject to such conditions as to the manner of carrying out the duties of the office as that county council may specify, and shall if so directed by the Minister, employ its own clerk or other officers which shall be appointed by the Public Service Commission and shall pay to those officers salaries, emoluments and allowances as may be determined by the urban council with the approval of the Minister.

[Act No. 11 of 1984, s. 18.]

*Provisions Relating to Officers of all Councils***112. Appointment of other officers**

In addition to the officers appointed under any of the foregoing sections of this Part there may be appointed by the Public Service Commission such other officers as may be necessary, and the council to which the officers are appointed shall pay them salaries, emoluments and allowances as it may determine; and in the case of a county council there may likewise be appointed such additional officers as may be necessary for carrying out the functions of the councils of county divisions within the county.

[Act No. 11 of 1984, s. 18.]

113. Appointment of seconded public officers

With the approval of the Minister a public officer may be seconded to the service of a council and appointed to any office in its service.

[L.N. 634/1963, Third Sch., L.N. 41/1970, Sch., Act No. 11 of 1984, s. 18.]

114. Interpretation where Public Service Commission delegates

A reference in sections 107 to 112 inclusive to the Public Service Commission includes, where the power to appoint has been delegated by the Commission to a local authority, a reference to that local authority.

[Act No. 11 of 1984, s. 18.]

115. Deleted by Act No. 11 of 1984, s. 18.

[L.N. 41/1970, Sch., Act No. 31 of 1971, Sch.]

116. Deleted by Act No. 11 of 1984, s. 18.

[L.N. 634/1963, First Sch., Act No. 31 of 1971, Sch.]

117. Deleted by Act No. 11 of 1984, s. 18.

[L.N. 634/1963, First Sch., L.N. 41/1970, Sch., Act No. 11 of 1984, Sch.]

118. Deleted by Act No. 11 of 1984, s. 18.

[L.N. 634/1963, First Sch., Act No. 11 of 1984, Sch.]

Local Council Officers**119. Repealed by Act No. 11 of 1984, s. 19.**

[Act No. 9 of 1968, Sch.]

120. Repealed by Act No. 11 of 1984, s. 19.***Qualifications and Disqualifications of Officers*****121. Members of local authorities not to be appointed as officers**

A person shall, so long as he is, and for six months after he ceases to be, a member of a local authority, be disqualified from being appointed to a paid office in the service of that local authority but for the purposes of this section the office of mayor or chairman shall not be deemed to be a paid office.

[Act No. 11 of 1984, s. 20.]

122. Qualifications of town clerk and clerk

No person shall be appointed as town clerk of a municipal council or clerk of a county council or town council unless he is qualified in accordance with section 12 or section 13 of the Advocates Act (Cap. 16), or has not less than ten years' experience of local government administration:

Provided that in any particular case the Public Service Commission may, after such consultation as it may deem necessary, approve the appointment of a person as town clerk or clerk, notwithstanding that he is not qualified as aforesaid.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

123. Qualifications of town treasurer and treasurer of county councils or town councils

No person shall be appointed as town treasurer of a municipal council or as treasurer of a county council or town council unless he is a member of the Institute of Municipal Treasurers and Accountants or of any of the professional bodies approved under the Accountants Act (Cap. 531) or has at least ten years' experience as a senior member of a local authority treasurer's department:

Provided that—

- (i) in any particular case the Public Service Commission may, after such consultation as it may deem necessary, approve the appointment of any person as town treasurer or treasurer, notwithstanding that he is not a member as aforesaid;
- (ii) this section shall not apply to, or in relation to, a town treasurer or treasurer of a municipal council, county council or town council which employs or has seconded to it a financial adviser who is a member as aforesaid.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act
No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

124. Qualifications of town engineers and engineers of county councils or town councils

A person shall not be appointed as town engineer of a municipal council or as engineer of a county council or town council unless he is a member or an associate member of the Institution of Civil Engineers or of the Institution of Municipal Engineers:

Provided that in any particular case the Public Service Commission may, after such consultation as it may deem necessary, approve the appointment of a person as town engineer of a municipal council or as engineer of a county council or town council, as the case may be, who is not qualified as aforesaid.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

125. Qualifications of medical officers of health and public health officers

No person shall be appointed as medical officer of health or public health officer of a municipal council unless he possesses such qualifications as may be prescribed in relation to such office under the Public Health Act (Cap. 242).

[L.N. 41/1970, Sch., L.N. 72/1977.]

Tenure of Office

126. Deleted by L.N. 634/ 1963, First Sch.

127. Deleted by Act No. 11 of 1984, s. 21.

[LN. 41/1970, Sch., Act No. 31 of 1971, Sch.]

128. Deleted by L.N. 634/1963, First Sch.

Status and Duties of Certain Officers

129. Status, powers and duties of town clerk and clerk

(1) The town clerk of a municipal council and the clerk of every other local authority, shall be the chief executive and administrative officer of the local authority of which he is the town clerk or the clerk, as the case may be, and shall have the general responsibility of coordinating the whole of the work of the local authority.

(2) In the discharge of the functions of his office he shall have all the powers and duties conferred and imposed upon the town clerk or the clerk, as the case may be, by this Act or any other written law and, in particular, but without prejudice to the generality of the foregoing, he shall have the powers and duties

assigned to him by, and be responsible for the matters specified in, Part I of the Third Schedule, and such other duties as may be assigned to him by the local authority of which he is the town clerk or the clerk, as the case may be.

(3) The Minister may from time to time, by order, amend Part I of the Third Schedule.

(4) The town clerk or clerk, or other officer thereto authorised in writing by the town clerk or clerk, may subject to the general or specific directions of the local authority, exercise the powers of the local authority, and all acts done by such officer in exercise of those powers shall be deemed to have been done by the local authority.

130. Status, powers and duties of chief financial officer

(1) The town treasurer of a municipal council and the treasurer of every other local authority, or, in the case of a local authority to which a financial adviser has been appointed or which has had a financial adviser seconded to it, then the financial adviser, shall be the chief financial officer of the local authority of which he is town treasurer, treasurer or financial adviser, as the case may be, and shall be primarily charged with the general responsibility for all matters of finance and accounts of the local authority.

(2) In the discharge of the functions of his office, the chief financial officer shall have all the powers and duties conferred and imposed upon the town treasurer or the treasurer, as the case may be, by this Act or, any other written law and, in particular, but without prejudice to the generality of the foregoing, he shall have the powers and duties assigned to him by, and be responsible for the matters specified in Part II of the Third Schedule and such other duties as may be assigned to him by the local authority of which he is the chief financial officer.

(3) The Minister may from time to time, by order, amend Part II of the Third Schedule.

[Act No. 11 of 1984, Sch.]

131. Status, power and duties of medical officer of health

(1) The medical officer of health of a municipal council shall be the chief medical adviser for the municipal council and shall be responsible to the municipal council for all matters relating to health for which the municipal council is responsible.

(2) In the discharge of the functions of his office, a medical officer of health shall have all the powers and duties conferred and imposed upon the medical officer of health of the municipal council of which he is such officer by this Act or any other written law and, in particular, but without prejudice to the generality of the foregoing, he shall perform such duties as may be prescribed under the Public Health Act (Cap. 242) and such other duties as may be assigned to him by the municipal council of which he is the medical officer of health.

[L.N. 41/1970, Sch.]

132. Status, power and duties of town engineer and engineer

(1) The town engineer of a municipal council and the engineer or, where there is no engineer, the works superintendent, of every other local authority, shall have the general responsibility for the engineering works of the local

authority of which he is such officer (except where the local authority shall have made separate contractual arrangements therefor), and for the maintenance and repair of all roads, drains, streets and bridges for which the local authority is responsible and for such other matters as may be assigned to him by the local authority.

(2) In the discharge of the functions of his office, the town engineer, the engineer or, where there is no engineer, the works superintendent of a local authority shall have all the powers and duties conferred and imposed upon the town engineer or the engineer of a local authority, as the case may be, by this Act or any other written law and such other duties as may be assigned to him by the local authority of which he is an officer.

133. Repealed by Act No. 11 of 1984, s. 21.

[L.N. 634/1963, First Sch., L.N. 41/1970, Sch.]

134. Repealed by Act No. 11 of 1984, s. 21.

[L.N. 41/1970, Sch., Act No. 31 of 1971, Sch.]

135. Security to be given by officers

(1) A local authority shall, in the case of an officer employed by it, whether under this or any other written law, who by reason of his office or employment is likely to be entrusted with the custody or control of money and may, in the case of any other officer employed by it, 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 local authority thinks sufficient.

(2) A local authority may, in the case of a person not employed by it but who is likely to be entrusted with the custody and control of money or property belonging to the local authority, take such security as it thinks sufficient for the person duly accounting for all money or property.

(3) An urban council may comply with the provisions of this section under arrangements made with the county council in whose area the urban council is situated.

(4) *Deleted by Act No. 11 of 1984, s. 22.*

(5) A local authority, shall, in the case of persons not employed by it, and may in any other case, defray the cost of any security given or taken under this section, and every such security shall, on demand, be produced to the inspector at the audit of the accounts of the local authority.

[Act No. 11 of 1984, s. 22.]

136. Accountability of officers

(1) Every officer employed by a local authority, whether under this Act or any other written law, including a public officer seconded to a local authority, shall at such times during the continuance of his office, or within three months of his ceasing to hold office, and in such manner as the local authority directs, make out and deliver to the local authority, 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 connexion with his office, showing the amount due from or to each.

(2) Every such officer shall pay all money due from him to the treasurer of the local authority or otherwise as the local authority 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 three days' notice in writing signed by the clerk of the local authority and given to him or left at his last known place of residence or postal address, refuses or wilfully neglects to make out or deliver to the local authority, or as the local authority directs, any account or list which he is required by this section to make out and deliver, or any voucher, other document or record relating thereto or to give satisfaction respecting it to the local authority or as the local authority directs,

a subordinate court of the first class having jurisdiction within the area of the local authority may, on complaint by the local authority, by order require such officer to make such payment or delivery or to give such satisfaction.

(4) If any person fails to comply with an order made under subsection (3) he shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both such fine and imprisonment.

(5) Nothing in this section contained shall derogate from a local authority's right to recover by any normal process of law any sum due to it from any officer, save that proceedings under this section and proceedings being any normal process of law, for recovery of the same sum, shall not be maintained at the same time.

137. Disclosure by officers of interest in contracts

(1) If it comes to the knowledge of an officer employed, whether under this Act or any other written law, by a local authority, that a bargain, contract or arrangement in which he has any pecuniary interest, whether direct or indirect (not being a bargain, contract or arrangement to which he is himself a party) has been, or is proposed to be, made or entered into by the local authority or any committee thereof, he shall as soon as practicable, give notice in writing to the local authority of the fact that he is interested therein.

(2) An officer of a local authority shall not, under colour of his office or employment, exact or accept any fee or reward whatsoever other than his proper remuneration.

(3) If any person fails to comply with subsection (1) or contravenes subsection (2), he shall be guilty of an offence and shall, for every such offence, be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.

(4) Any profits, fees and reward which may have accrued to such officer, or which may accrue to him, by reason of such bargain, contract or arrangement

shall be deemed to have accrued or to accrue to him for and on behalf of the local authority and may be recovered by the local authority before any court of competent jurisdiction.

(5) For the purposes of this section an officer shall be treated as having indirectly a pecuniary interest in a bargain, contract or arrangement if he would have been so treated by virtue of subsection (2) or subsection (3) of section 89 had he been a member of the local authority.

(6) Reference in this section to a local authority shall include reference to a joint committee appointed under section 93 or to a joint board constituted under section 104.

(7) Any officer who is convicted of an offence under this section shall be dismissed forthwith from his office and section 127 shall not apply to such dismissal.

138. Restriction on engaging in private practice, etc

(1) Subject to subsection (2), an officer in the full time service of any local authority shall not, except with the permission of the local authority, engage in private practice, render any professional assistance or advice to any person otherwise than in connexion with or in the course of his employment by the local authority, whether on payment or otherwise, or accept any paid employment, and any payment received by such officer for or on account of or arising out of any such private practice, professional assistance or advice or employment as aforesaid (whether with the permission of the local authority or without such permission) shall be credited to and shall be deemed to be part of the general revenue of the local authority except where the local authority, in respect of the whole or any part thereof, authorizes retention by the officer concerned.

(2) A medical officer of health or a public health officer shall not except with the consent of his employing authority and the approval of the Minister for the time being responsible for Health, engage in any private practice, or in any private work arising out of or in any way connected with the discharge of his duties.

[L.N. 72/1977.]

139. Transfers of pension and other rights

(1) Where an officer of a local authority, being a member of a pension, provident or benevolent fund established by such local authority under section 151, transfer to the service of another authority administering a pension, provident or benevolent fund established by it under that section and of which, under the rules appertaining thereto, he is eligible to become a member, then the two local authorities concerned shall, at his request, arrange for the transfer from the first-mentioned fund to the second-mentioned fund of all sums in the first-mentioned fund standing to the credit of such officer, including contributions made by the local authority on behalf of such officer and the contributions (if any) of any other local authority transferred to the fund under this section.

(2) Upon the transfer under this section of moneys standing to the credit of an officer to the fund of a local authority, such officer shall be deemed to have become a member of such fund with effect from the earliest date upon which,

had he then been in the like service of the aforesaid local authority, he would have been eligible to become a member of such fund or with effect from his notional membership date, whichever is the earlier.

(3) For the purpose of this section an officer's notional membership date shall be—

- (a) in the case of an officer the moneys standing to whose credit in the fund on the local authority first-mentioned in subsection (1) do not include any moneys transferred under this section to that fund from the fund of any other local authority, the date on which the officer became a member of the fund of such first-mentioned local authority;
- (b) in the case of an officer the moneys standing to whose credit in the fund of the local authority first-mentioned in subsection (1) includes moneys paid into the fund or funds of any other local authority or local authorities and transferred under this section directly or successively to the fund of such first-mentioned local authority, the date on which the officer became a member of the fund of such earlier local authority or of the earliest of such earlier local authorities, as the case may be.

(4) Where an officer makes a request under subsection (1) and the officer or the local authority to whose service he transfers considers that subsection (2) would cause financial disadvantage to the officer or to the local authority, as the case may be, then either party may apply to the Minister for directions as to any adjustments which may be necessary to effect the transfer in an equitable manner and such transfer shall then only take place if the officer and the local authority express their agreement with the directions of the Minister.

140. Transfers in relation to Local Authorities Provident Fund

(1) Where an officer of a local authority being a member of a pension, provident or benevolent fund established by such local authority under section 151, transfers to the service of another local authority which is not administering a pension, provident or benevolent fund of which such officer is eligible to become a member, but to which the Local Authorities Provident Fund Act (Cap. 272), applies in respect of the post to which such officer transfers then, the sums in the pension, provident or benevolent fund of the first-mentioned local authority standing to the credit of such officer (including contributions made by such officer and contributions made by such local authority on behalf of such officer and the contributions (if any) of any other local authority and accrued interest on all such contributions) shall, at the request of such officer, be transferred to stand to the credit of such officer in the Local Authorities Provident Fund established under the said Act.

(2) Where an officer of a local authority who is a contributor to the Local Authorities Provident Fund established under the Local Authorities Provident Fund Act (Cap. 272), transfers to the service of another local authority to which, or to the post held by him in the service of which, that Act does not apply, then, at his option—

- (a) his service with the first-mentioned local authority shall as from the date of his transfer be deemed to have been terminated within the meaning of section 14(c) of the aforesaid Act and the remaining provisions of that Act shall apply accordingly; or

- (b) if the local authority to which he transfers administers a pension, provident or benevolent fund of which he is eligible to become a member, his account in the Local Authorities Provident Fund shall be closed with effect from the date of his transfer and all moneys otherwise payable to him or to any other person by virtue of paragraph (a) shall be transferred to the fund of such local authority and subsections (2), (3) and (4) of section 139 shall, *mutatis mutandis*, apply in respect thereof.

141. Right to attend meetings and require advice to be recorded in certain cases

(1) The clerk, treasurer, medical officer of health and engineer, or the works superintendent where no engineer has been appointed, of every local authority shall have the right to attend all meetings of that local authority and of committees and subcommittees thereof.

(2) Where an officer referred to in subsection (1) advises the local authority or a committee thereof in the course of his duty on a matter on which his advice is necessary and the local authority or committee resolves to act against or reject his advice, he may require that his advice be recorded in the minutes of that local authority or committee.

(3) Where advice is recorded in minutes in accordance with subsection (2) the local authority shall not act in accordance with a resolution which acts against or rejects the advice of the officer unless and until the Minister approves the resolution in writing.

[L.N. 634/1963, First Sch., Act No. 11 of 1984, s. 23.]

141A. Uniforms

The Minister may give to any local authority such directions as he thinks necessary to ensure that uniforms of a suitable kind and design and with suitable insignia are worn by appropriate classes of officers of that authority.

[Act No. 11 of 1967, s. 7.]

142. Transfer of officers

Notwithstanding any provision to the contrary existing immediately before the commencement of the Local Government (Amendment) Act, 1984, an officer may be required to transfer from the service of one local authority to another.

[Act No. 11 of 1984, s. 24.]

PART IX – CERTAIN POWERS, DUTIES AND PROVISIONS RELATING TO ALL LOCAL AUTHORITIES

143. Power to enter into contracts

(1) A local authority may enter into contracts necessary for the discharge of any of its functions.

(2) A local authority may enter into contracts with any other local authority for, or with respect to, the doing and the control or management by either or both of

the contracting parties of any of the things provided for in this Act, or of any other matter or thing which both the contracting parties are by law empowered to do, control or manage.

(3) A local authority may enter into contracts with the Government for the purpose of any work, service or function for which the Government is responsible within or adjacent to the area of the local authority.

(4) *Deleted by Act No. 3 of 2005, Fourth Sch.*

(5) *Deleted by Act No. 3 of 2005, Fourth Sch.*

(6) *Deleted by Act No. 3 of 2005, Fourth Sch.*

(7) *Deleted by Act No. 3 of 2005, Fourth Sch.*

(8) All contracts lawfully made under this section shall be valid and binding on the local authority, its successors, and all other parties thereto.

[Act No. 9 of 1968, Sch., Act No. 111 of 1984, Sch., Act No. 3 of 2005, Fourth Sch.]

144. Acquisition of and dealings in land

(1) A local authority may, for the purpose of any of its functions under this or any other written law, by agreement acquire, whether by way of purchase, lease, exchange or gift, any land, whether situate within or without the area of the local authority, notwithstanding that the land is not immediately required for that purpose; and where land is so acquired notwithstanding that it is not immediately required for the purpose for which it was acquired, it may, until so required, be held and used for the purpose of any other functions of the local authority.

(2) A local authority may, subject to the approval of the Minister, apply to the Government or any other authority having power to acquire land for any land required for the purpose of any of its functions to be acquired compulsorily for and on behalf and at the expense of the local authority; and any such purpose shall be deemed to be a public purpose within the meaning of the Land Acquisition Act (Cap. 295) or any enactment replacing the same.

(3) Any land belonging to a local authority and not required for the purpose for which it was acquired may, with the approval of the Minister and subject to such conditions as he may think fit to impose, be appropriated for any other purpose for which the local authority is authorised to acquire land:

Provided that the appropriation of land by a local authority shall be subject to any covenant or restriction affecting the use of the land in its hands.

(4) On an appropriation of land under subsection (3) of this section such adjustments shall be made in the accounts of the local authority as the Minister may direct.

(5) A local authority may let, or grant to any person a licence to occupy, any land which it may possess—

(a) with the consent of the Minister for any term;

(b) without the consent of the Minister, unless such consent is required by section 177 or by any other written law, for a term not exceeding seven years,

and may, in respect thereof, charge rents, stand premium or fees.

(6) Subject, in the case of land acquired in pursuance of subsection (2), to the provisions of the Land Acquisition Act (Cap. 295), or to any written law replacing that Act, a local authority may, with the consent of the Minister—

- (a) sell any land which it may possess and which is not required for the purpose for which it was acquired or being used;
- (b) exchange any land which it may possess for other land, either with or without paying or receiving any money for equality of exchange.

(7) Capital money received from the sale or exchange of land by a local authority shall be applied in such manner as the Minister may approve towards the discharge of any debt of the local authority or otherwise for any purpose for which capital money may properly be applied; and where capital money is applied under this subsection for a purpose other than that for which the land the subject of the transaction was held, such adjustment shall be made in the accounts of the local authority as the Minister may direct.

(8) Nothing in this section shall authorise the disposal of land by a local authority, whether by sale, lease or exchange, in breach of any trust, covenant or agreement binding upon the local authority; and where under any written law conferring on a local authority a power to acquire land, the power is expressly limited to acquire land by agreement, nothing in this section shall confer on the local authority power to acquire land compulsorily for the purposes of that written law.

(9) For the purposes of this section references to the functions of a local authority shall be construed as including any such functions as are exercised through a joint committee appointed by such local authority in concurrence with any other local authority or authorities, and any such functions as are exercised through a joint board in relation to which such local authority is or is deemed to be an interested local authority within the meaning of section 105.

(10) Nothing in this section shall be construed as requiring the Government or other authority acquiring land for a local authority to grant to the local authority the actual or entire interest acquired.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2.]

145. Miscellaneous powers of local authorities

A local authority may—

Public offices

- (a) establish and maintain such offices and buildings as may be required for the purposes of the local authority and for public meetings and assemblies;

Houses for officers

- (b) establish and maintain houses as residences for officers of the local authority;

Medical expenses for officers

- (c) pay the medical and funeral expenses of any person employed by the local authority who suffers injury or dies as the result of an accident occurring in the course of his employment or as a result of illness contracted in consequence of such employment;

Superannuation and other funds for officers

- (d) resolve to be bound by the Local Authorities Provident Fund Act (Cap. 272), or enter into an agreement with the trustees of a local authority which has established a pension, provident or benevolent fund under section 151, for the admission of all or any of its officers to membership of such fund and to pay into such fund such contributions as may be payable in accordance with the rules governing the administration of such fund;

Staff training

- (e) incur such expenditure as it may deem necessary or desirable for or in connexion with the training of the staff of the local authority, whether by the making of grants of money for or towards such training, the provision of scholarships for or the payment of bursaries to its employees to assist in such training, or otherwise as the local authority sees fit;

Dealing in property

- (f) subject to section 144, sell, let or otherwise dispose of any movable or immovable property of the local authority;

Subdivision of land for factories

- (g) subject to section 144, and to any other written law relating thereto—
 - (i) subdivide any land belonging to it for the purpose of factory, industrial, business or workshop sites; and
 - (ii) sell, let or otherwise dispose of any plots or subdivisions of such land and any buildings thereon; and
 - (iii) sell, let or otherwise dispose of such land to any person for the purpose of carrying on thereon any work or trade of an offensive nature which such local authority is empowered to control;

Woodlands

- (h) establish and maintain woodlands;

Health services

- (i) in the case of a municipal council, establish and maintain either by itself or jointly with any other authority or any association, hospitals, maternity services, health centres and dispensaries within or without its area of jurisdiction;

Disinfecting services

- (j) in the case of a municipal council, establish and maintain disinfecting and disinfestations services;

Locusts and other noxious insects

- (k) take or require the taking of such steps and measures as may be necessary or desirable for securing the prevention and destruction of locusts and other noxious insects and for preventing and abating agricultural pests, and supply poison and appliances for the aforesaid purposes;

Explosives and magazines

- (l) subject to any law relating to the storage of explosives establish and maintain magazines for the storage of explosives and dangerous articles, whether within or without its area of jurisdiction;

Fencing of plots

- (m) require, enforce and regulate the fencing of plots, and prohibit or control the use of barbed wire for fencing;

Statistical information

- (n) obtain statistical information relating to inhabitants of its area and to any matters concerning the functions of the local authority;

Recreation grounds

- (o)
 - (i) establish and maintain recreation grounds and facilities for recreation on land belonging to, and on parks, squares and open spaces vested in it; and

Boating

- (ii) establish and maintain boats and boating establishments; and

Other amenities

- (iii) establish, maintain and control in connexion with any such recreation ground or boating establishment as aforesaid, aquariums, pavilions, piers, dressing-rooms, lavatories and such other buildings and conveniences of any nature and for any purpose as the local authority may consider to be necessary or convenient; and

Games and recreation

- (iv) set apart any portion of any such recreation ground as may be determined by the local authority and described in a notice set up in some conspicuous place on such recreation ground for the purpose of any particular game or recreation, and exclude the public from the portion so set apart; and

Apparatus for games

- (v) provide any apparatus for games or recreation in respect of any such recreation ground or boating establishment, and permit any person, club or body to provide any such apparatus on such terms as the local authority may decide; and

Refreshment rooms

- (vi) establish, maintain and control refreshment rooms, cafes and restaurants in any such recreation ground or in connexion with any such boating establishment; and

Letting of recreation grounds

- (vii) let any such recreation ground with or without any building or apparatus established or provided in connexion therewith to any person or club or other body of persons, and, by resolution

of the local authority, authorise such person, club or body to make charges in connexion therewith; and

Boating establishments

- (viii) control boating establishments by whomsoever established, license boats, whether kept for hire or otherwise, and regulate the use of and fix the number of persons to be carried in such boats;

Markets

- (p)
 - (i) establish, maintain, let and manage public markets and market buildings:
Provided that no county or urban council shall establish any market within a distance of three miles of the boundary of its area without the consent of the Minister; and
 - (ii) control markets in its area by whomsoever established and, where a market has been established by the local authority, prohibit the establishment of any other market within its area without the permission of the local authority; and
 - (iii) control public sales held on any public or open space or in any public building; and
 - (iv) control places used for the purpose of selling publicly, or exposing for sale, any cattle, horses, sheep, goats, pigs, poultry or other livestock; and
 - (v) where provision is made for any such sale in any market established by the local authority or at any place provided by the local authority for the purpose, prohibit such sales elsewhere than in or at such market or place and license persons to conduct such sales in or at such market or place and require the deposit of security by an applicant for such licence;

Guarantees of loans

- (q) guarantee loans made by other persons, and make loans, either on its own behalf or jointly with any authority or person, to such persons, and upon such terms and conditions and for such purposes, as the Minister may approve either generally, or in any particular case or in any specified class of cases;

Public weighing machines

- (r) establish and maintain public weighing machines;

Art galleries, museums, etc.

- (s) establish, maintain, assist, promote and control—
 - (i) art galleries, museums, botanical gardens and zoological gardens; and
 - (ii) within or without its area, public libraries;

Bands

- (t) establish, maintain and assist bands for musical performances in public places and at local authority functions, and generally provide musical entertainment in such places and at such functions;

Radio and television

- (u) subject to any written law relating thereto, establish and maintain wireless or radio relay stations and services and television rediffusion stations and services;

Information centres

- (v) establish, maintain and assist information centres and inquiry bureaux;

Wildlife

- (w) subject to any written law relating thereto, take such measures as may be necessary or desirable for the preservation or protection of wildlife, and provide amenities for the observation of wildlife, within or without its area;

Camping grounds

- (x) establish and maintain camping, grazing and outspan grounds, whether within or without its area;

Public monuments

- (y) subject to the provisions of the National Museums and Heritage Act, 2006 (No. 6 of 2006), establish and maintain public monuments;

Social services

- (z) establish, maintain and regulate alms-houses, hostels and welfare and social service centres;

Destitute persons

- (aa) make provision for the return of destitute persons to their homes within Kenya, and generally give assistance to destitute and necessitous persons;

Child welfare

- (ab) establish, maintain and assist institutions, day nurseries and clinics for the care and welfare of infants, children and juveniles, and make provision for suitable instruction being imparted to expectant mothers of such infants;

Theatres

- (ac) subject to the Films and Stage Plays Act (Cap. 222), establish and maintain theatres, concert halls, cinemas, public halls and other places of public amusement and public resort;

Publicity

- (ad) advertise and give publicity to the attractions and advantages of the area of the local authority; and

Promotion of legislation

- (ae) promote legislation in the interests of, and oppose legislation which is not in the interests of, the local authority.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2,
L.N. 41/1970, Sch., Act No. 11 of 1984, Sch.,
Act No. 6 of 2006, s. 72.]

146. Grants of money

A local authority may, subject to the consent of the Minister, make grants of money—

- (a) *Deleted by L.N. 41/1970, Sch.;*

Scientific, research and charitable organisations

- (b) towards the establishment and maintenance of institutions and organisations, not being of private nature, for scientific, agricultural and horticultural purposes, for the purposes of research or for charitable, educational, welfare or social purposes;

Air and telephone services

- (c) towards the establishment and maintenance of air and telephone services within or without its area for the purpose of improving the amenity of such area;

Game parks and wild life

- (d) towards the establishment and maintenance, whether within or without its area, of game parks (including accommodation for visitors therein and amenities for wild life observation) and to organisations established, whether within or without its area, for the preservation or protection of wild life;

Other organisations

- (e) to any committee, association or organisation established for the carrying out of any function which such local authority is itself empowered to carry out, towards the carrying out of that function.

[L.N. 41/1970, Sch.]

147. Miscellaneous powers of control

Every local authority shall have power—

Removal of trees, etc.

- (a) to require the owner of any premises to do any of the following acts—
- (i) to remove, lower or trim to the satisfaction of the local authority any tree, shrub or hedge overhanging or interfering in any way with the traffic on any road or street, or with any wires or works of the local authority;
 - (ii) to remove any dilapidated fence or structure abutting upon any public place;

Obstructions

- (b) to prohibit obstructions in or on public places and to provide for the removal and sale of any such obstructions and for the disposal of any moneys derived from any such sale;

Movement of livestock

- (c) to prohibit and control the sale and movement of livestock with the object of preventing the theft of stock or the possession of stolen livestock;

Preservation of trees

- (d) to control the cutting of timber and the destruction of trees and shrubs, to prohibit the wasteful destruction of trees and shrubs, and to require the planting of trees.

148. Imposition of fees and charges

(1) A local authority may—

- (a) charge fees for any licence or permit issued under this Act or any other written law or in respect of any person or matter, premises or trade, whom or which the local authority is empowered to control or license;
- (b) impose fees or charges for any service or facility provided or goods or documents supplied by the local authority or any of its officers in pursuance of or in connexion with the discharge of any duty or power of the local authority or otherwise.

(2) All fees or charges imposed by a local authority shall be regulated by by-law, or if not regulated by by-law, may be imposed by resolution of the local authority with the consent of the Minister and such consent may be given either in respect of specified fees or charges or may be given so as to allow a specified local authority to impose fees or charges by resolution in respect of a specified power or a particular matter.

(3) Save where the contrary is expressly or by necessary implication in any written law provided, a local authority may authorise the remission in whole or in part of any fees due to it or charges imposed by it under this Act or any other written law.

149. Powers to guarantee tax liability and pay deposits in respect thereof, and to recover payments made respecting tax

(1) A local authority may, in its discretion, in respect of any officer employed by it who intends to leave Kenya—

- (a) give such guarantees as may be required by the Commissioner of Income Tax for securing the payment of tax chargeable under the Income Tax Act (Cap. 470) that is, or may become, payable by such officer upon the salary paid or payable to him by such local authority;
- (b) in the case of any such officer who intends to leave Kenya on the official business of such local authority, give such guarantees as aforesaid in respect of such person's tax howsoever arising or pay such deposit to the Commissioner of Income Tax as he may require.

(2) Any moneys paid by a local authority to the Commissioner of Income Tax under a guarantee given under subsection (1)(a), and any deposit, or any part thereof, paid under subsection (1)(b) which is forfeited consequent upon the default of the person in respect of whose liability such guarantee or deposit was given or paid, shall be recoverable by the local authority from such person or his estate and, for the purpose of recovery of such moneys, the local authority shall be entitled to withhold payment of any salary, pension, provident or benevolent fund benefit, or any other emolument of any sort whatsoever due to the officer or his estate.

150. Power to pay allowances to councillors

(1) A local authority may with the approval of the Minister, pay to a councillor, at such rates as the Minister may specify, or where the Minister has rates as it may determine not exceeding those maximum rates—

- (a) such terminal benefits as may be determined by the Minister;
- (b) allowances in respect of—
 - (i) expenditure on subsistence or traveling necessarily incurred by him for the purposes of enabling him to perform his duties as councillor;
 - (ii) loss of earnings, which he would otherwise have made, necessarily suffered by him for purpose specified in paragraph (i); and
 - (iii) additional expenses, other than expense on account of subsistence or travelling, to which he would not otherwise have been subject, necessarily incurred by him for the purpose aforesaid.

(2) A municipal council may, with the approval of the Minister, in lieu of the foregoing allowances, pay to a councillor a flat rate allowance, of such amount as the Minister may approve, in respect of all expenditure, loss and additional expense aforesaid.

(3) A local authority may, with the approval of the Minister, pay any allowance it is empowered to pay to councillors under subsections (1) and (2), to any person co-opted as a member of any committee thereof as if such person were a councillor.

[Act No. 9 of 1968, Sch., Act No. 11 of 1993.]

150A. Miscellaneous expenditure

A local authority may incur expenditure for the carrying out of any purpose authorised by this Act or any other written law or for the carrying out of any other purpose which the Minister may in his discretion determine to be a purpose incidental to the exercise by the local authority of any of its powers or duties under this Act or any other written law.

[L.N. 643/1963, First Sch., L.N. 34/1965, o. 2.]

**PART X – CERTAIN POWERS, DUTIES AND FUNCTIONS
RELATING TO MUNICIPALITIES, COUNTIES AND TOWNSHIPS**

151. Powers with respect to pension, provident and benevolent funds

(1) Every municipal council and county council or town council shall have power to establish, control, manage, maintain and contribute to any pension, provident or benevolent fund intended for the benefit of its officers or a councillor who has held office as a councillor continuously for twenty years or more and to grant pensions and gratuities from any such fund established by it to such officers on their retirement from its service and to dependants on the death of any such officers; or a councillor who has held office as a councillor continuously for twenty years or more:

Provided that—

- (i) this subsection, save and except only to the power to contribute to any pension, provident or benevolent fund intended for the benefit of its officers, shall cease to apply to any such local authority as aforesaid with regard to any of its officers who are admitted by agreement under subsection (6) to the membership of a pension, provident or benevolent fund established, controlled, managed and maintained by any other local authority, this subsection ceasing to apply as aforesaid as from the date of such admission;
- (ii) the City Council of Nairobi shall also have power to establish, control, manage and maintain a pension, provident or benevolent fund within the structure of a fund, established as hereinbefore provided, intended for the benefit of the officers of any employing authority as defined in subsection (11), and to grant pensions and gratuities from any such fund to such officers of such employing authority as shall have been admitted to such fund on their retirement from the service of such employing authority and to dependants on the death of any such officers.

(2) Every municipal council and every county council or town council shall, with the approval of the Minister, make rules relating generally to the establishment, control, management and maintenance of, and contribution to, and benefits from any pension, provident or benevolent fund established by it under subsection (1) and, without prejudice to the generality of the foregoing power, may, with the like approval, make rules—

- (a) permitting or requiring all or any of its officers to become members of such fund;
- (b) fixing the amount of the contributions, if any, to be made by members of such fund and the amount of the contributions to be made by itself;
- (c) providing for periodical valuation of such fund and for enforcing any increase in the contributions thereto or any diminutions in the benefits arising therefrom as the valuation may show to be necessary to maintain the solvency of such fund;
- (d) prescribing the age at which any officer may or shall become a member of such fund and the age and conditions upon which any such officer may or shall cease to be a member of the fund;
- (e) determining the amount of the pension or any other benefit to be paid to a member of such fund or to his dependants or to his personal representatives and providing for the circumstances in, and the conditions on, which such pension or other benefit may be paid;
- (f) providing for the management and investment of the moneys of such fund and the election of a committee of management or the appointment of a trustee, whether in Kenya or in the United Kingdom, for that purpose;
- (g) providing for vesting the property, money and assets of such fund in a trustee, whether in Kenya or in the United Kingdom, for the purpose of the administration thereof;

- (h) permitting a trustee, if a bank, to transact any business in connexion with such fund on the same terms as would be made with a customer in the ordinary course of business, without such trustee being liable to account for any profit or share of brokerage;
- (i) providing for the retirement, removal or designation of a member of the committee of management or trustee and for filling any vacancy caused thereby;
- (j) providing that no pension or right to a pension payable out of such fund shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or of being attached or subjected to any form of execution under a judgment or order of a court of law, and in pursuance of any such rule the municipal council or county council or town council, as the case may be, which made the rule may withhold, suspend or entirely discontinue the payment of any such pension in the event of the beneficiary attempting to assign, transfer or otherwise cede or to pledge or hypothecate such pension or right as aforesaid;
- (k) providing that any pension or other retiring benefit payable out of such fund may be withheld by the municipal council or county council or town council, as the case may be, for the purpose of discharging any debt due to the fund or to such council;
- (l) providing that if any person in receipt of any pension or other retiring benefit payable out of such fund—
 - (i) is convicted by any court in Kenya or elsewhere and is sentenced to imprisonment without the option of a fine for a period exceeding one month; or
 - (ii) is adjudicated a bankrupt or is declared insolvent by judgment of the court; or
 - (iii) becomes incapable of managing his own affairs by reason of physical or mental infirmity,

such pension or retiring benefit may during only such incapacity, cease to be payable to the member and instead be paid to such of his dependants as the municipal council or county council or town council, as the case may determine.

(3) Any rules made under subsection (2) may operate retrospectively within the limits prescribed by the rules as regards contributions by the officers of the local authority and the local authority making the rules and as regards calculation of the pension or other payment.

(4) Section 34 of the Interpretation and General Provisions Act (Cap. 2) shall not apply to rules made under subsection (2).

(5) A municipal council or county council or town council having established a fund under subsection (1) and after receiving a report from a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries in Scotland appointed by such council, may, subject to the approval of the Minister, agree with an employing authority to admit employees of such employing authority to membership of the fund with retrospective effect and may amend any rules made under subsection (2) to enable such rules to be applied to such employing authority and to any employee of such employing authority admitted to membership of the fund.

(6) Any local authority may arrange with any other local authority administering a fund established under subsection (1) for the admission, on such terms and conditions as may be agreed, of any of its officers to participate in the benefits of such fund.

(7) No officer of a local authority who is, under subsection (5) admitted to membership of a fund established by another local authority, shall, from the date of his admission as aforesaid, remain or become a member of another pension provident or benevolent fund administered by a local authority.

(8) Subject to rules made under subsection (9), or, where there are no such rules, subject to the consent of the Minister, a local authority may grant from its revenues, pensions or gratuities to its officers on their retirement from its service and to dependants on the death of any such officer, in cases where no pension, provident or benevolent fund has been established under subsection (1) and no arrangement has been made under subsection (6) by a local authority, or in cases where no benefits accrue from any fund so established or arrangement so made.

(9) A local authority may, with the approval of the Minister, make rules for the payment of gratuities under subsection (8) to any specified class or classes of officers in cases where no pension, provident or benevolent fund has been established and no arrangement has been made as aforesaid or in cases where no benefits accrue from any such fund or arrangement in respect of such class or classes of officers.

(10) Subject to the consent of the Minister, in cases where a pension, provident or benevolent fund has been established under subsection (1) or any arrangement has been made under subsection (6) by a local authority, such local authority may grant from its revenues additional or increased pensions or gratuities to its officers on their retirement from its service and to dependants on the death of any such officers.

(11) In this section the expression “**employing authority**” means any local authority or association of local authorities of Kenya, and any local authority in Tanzania or Uganda which is empowered to enter into an agreement of the nature described in subsection (5).

[Act No. 31 of 1971, Sch., Act No. 11 of 1993.]

152. Schools and bursaries

(1) A municipal council may, with the consent of the Minister, establish and maintain schools and educational institutions, including boarding blocks and school hostels.

(2) A municipal council or county council or town council with the consent of the Minister and an urban council with the approval of the council of the county in which its division is situate and with the consent of Minister, may make grants to any school or educational institution, within or without its area, for the provisions of scholarships for persons, and the children of persons, ordinarily resident in its area.

(3) A local authority may, subject to such conditions as the Minister may prescribe, provide bursaries to assist persons and children of persons, ordinarily resident in its area, in their education and maintenance at any school or educational institution within or without its area.

[L.N. 41/1970, Sch., Act No. 11 of 1984, Sch.]

153. Powers authorising omnibus and vehicles services

(1) A municipal council, county council or town council may, within its own area and, with the consent of any local authority specified in this subsection, within the area of such local authority, and with the consent of the Minister, within any other area—

- (a) establish and maintain a service of omnibuses or other vehicles howsoever propelled or drawn, for the carriage of passengers and their luggage;
- (b) enter into an agreement, in such terms as may be approved by the Minister, with any person for the establishment and maintenance by him of any such service as aforesaid and for guaranteeing the capital cost thereof and interest on such cost.

(2) Whenever any such service is established or maintained by a local authority under this section or by any person under an agreement with a local authority under subsection (1)(b), such local authority may by order prohibit, for such period as in each case the Minister may approve, the carrying on by any person (other than a person with whom the local authority has entered into an agreement as aforesaid) of any such service within its area and may from time to time by order extend the period of prohibition for such period as in each case the Minister may approve:

Provided that the right of any person to carry for hire or reward passengers departing to or arriving from any place outside the area of jurisdiction of such local authority shall not be affected.

(3) Before making an order of prohibition or an order extending any period of prohibition under subsection (2), the local authority shall cause notice of its intention to introduce and pass a resolution for that purpose to be published in the *Gazette* and in at least one newspaper (if any) circulating in its area and such notice shall be given once in each week for four succeeding weeks.

(4) Any objections received by the local authority to the making of such an order of prohibition or order extending any period of prohibition shall be laid before the local authority at a meeting appointed to consider the resolution referred to in subsection (2) and copies of such objection shall be forwarded by the local authority to the Minister.

(5) A local authority may revoke any order of prohibition made under this section:

Provided that where an order is made consequent upon an agreement entered into under subsection (1)(b), the local authority shall not have power to revoke such order until the termination of such agreement or of any subsequent agreement made in place of such agreement.

(6) Notwithstanding the other provisions of this Act and the provisions of any other written law, where any order of prohibition has been made and approved under this section by a local authority, no licence issued under any law in respect of any public vehicle or motor vehicle carrying passengers for hire or reward, if such public motor vehicle or motor vehicle be licensed to carry more than six passengers, shall without the consent of such local authority, entitle any person to ply for hire with such public vehicle or motor vehicle within the area of such local authority:

Provided that the right of any person to ply for hire with any public vehicle or motor vehicle for the unexpired period of any license issued prior to the making of any such order of prohibition under this section shall not be affected.

(7) Save as is provided in subsection (2) and subsection (6), any person (other than a person with whom the local authority has entered into an agreement under subsection (1)(b)) who carries on any service of omnibuses or other vehicles, howsoever propelled or drawn, for the carriage of passengers, or who plies for hire or reward with such public vehicle or motor vehicle for the carriage of passengers, in contravention of any order of prohibition made under this section shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding two months, and, in addition, to a fine not exceeding two hundred shillings in respect of each and every day upon which he contravenes such order as aforesaid.

(8) The Minister shall, before he gives any approval required under this section, consult the Minister responsible for the licensing of public service vehicles.

[Act No. 31 of 1971, Sch.]

154. Miscellaneous powers of municipal, county and township authorities

Every municipal council, county council or town council shall have power—

Cattle cleansing

- (a) to establish and maintain cattle cleansing facilities;

Hides and skins

- (b) subject to the Hide and Skin Trade Act (Cap. 359), to control the drying, cleaning and storage of hides and skins, and to establish, maintain and control premises for the drying, cleaning and storing of hides and skins;

Unauthorised cultivation

- (c) to prohibit the cultivation by unauthorised persons of any unenclosed and unoccupied land in private ownership and of any Government land and land reserved for any public road;

Bush fires

- (d) to take or require the taking of such measures as may be necessary or desirable for the prevention and control of bush and forest fires;

Brick-making and quarrying

- (e) subject to any law for the time being in force relating thereto—
 - (i) to prohibit and control brick-making yards and the quarrying of stone, lime, clay or other material on any premises;
 - (ii) to require the owners and operators of brick-making yards and quarries to provide housing, sanitation and water or any of them at brick making yards and quarries for persons working there;

- (iii) to grant permits to make bricks or to dig and burn lime, or to dig and remove clay, gravel, peat or turf or to quarry or to crush stone, upon any land of the local authority.

[Act No. 31 of 1971, Sch.]

155. Powers of county, municipal and town councils

Every county, municipal or town council shall have power—

Produce inspection

- (a) to establish and maintain centres, and to establish, maintain and control services, for the inspection, grading and storing of produce;

Agricultural and livestock undertakings

- (b) subject to any other written law relating thereto, to engage in livestock and agricultural undertakings (including the provision of services for improving the agricultural and livestock industries in the county, municipality or township) and to take such measures as may be necessary or desirable for preventing the outbreak and spread of any disease as defined in the Animal Diseases Act (Cap. 364);

Famine relief crops

- (c) to require the planting of any specified crops by persons for the support of themselves and their families in areas which in the opinion of the county, municipal or town council are suffering from or likely to suffer from a shortage of foodstuffs;

Itinerant contractors

- (d) to control itinerant contractors and other persons who sell or offer for sale, or contract or offer to contract for the exercise of, their skill, or the skill of any other person, in any handicraft by going from house to house or by attending at any person's house;

Game parks

- (e) to establish and maintain game parks, including accommodation for visitors thereto;

Forests

- (f) to establish and maintain forests;

Rehabilitation centres for beggars

- (g) subject to the Vagrancy Act (Cap. 58) to establish, maintain and control rehabilitation centres for the care, maintenance and rehabilitation of beggars.

[L.N. 634/1963, First Sch., Act No. 61 of 1968, s. 22, Act No. 31 of 1971, Sch.]

156. Deleted by L.N. 41/1970, Sch.

[L.N. 634/1963, First Sch.]

157. Payments of money in connexion with employment of magistrates, etc.

Every municipal council, county or town council shall, subject to the consent of the Minister, have power—

- (a) to pay the Government such sums of money as are from time to time incurred or expended by the Government on or in connexion with the employment of a magistrate; and

- (b) to erect and maintain a courthouse and employ such court staff as is required for a magistrate, where such municipal, county or town council has paid or agreed to pay to the Government such sums of money as are incurred or expended by the Government on or in connexion with the employment of the magistrate.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 31 of 1971, Sch.]

158. Freemen

(1) A municipal council may, by resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, and with the approval of the Minister, admit to be honorary freemen of the municipality persons of distinction and any persons who have rendered eminent service to the municipality.

(2) The town clerk of every municipal council shall keep a list, called the honorary freemen's roll, of all persons admitted to be honorary freemen of the municipality.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 9 of 1968, Sch.]

159. Shops in rural areas

(1) Subject to any other written law relating thereto, every county council shall have power to prohibit and control shops in rural areas:

Provided that no county council shall exercise such power in any area to which the Land Planning Act (Cap. 303) has been applied.

(2) For the purposes of this section—

“**shop**” means a building or part of a building in which retail trade is carried on;

“**rural area**” means an area which is so defined in any by-law made by a county council under this Act.

PART XI – CERTAIN POWERS, DUTIES AND PROVISIONS RELATING TO MUNICIPALITIES TOWNSHIPS AND COUNTY DIVISIONS

160. Miscellaneous functions of local authorities other than county councils and local councils

Every municipal council and, except in regard to matters contained in paragraphs (a) and (h), every town council and every urban council shall have power—

Sanitary services

- (a) to establish and maintain sanitary services for the removal and destruction of, or otherwise dealing with, all kinds of refuse and effluent and, where any such service is established, to compel the use of such service by persons to whom the service is available;

Public lavatories

- (b) to establish and maintain public lavatories, closets and urinals within its area, and where such lavatories, closets and urinals are established, the local authority shall maintain them in good order and repair;

Ambulances

- (c) to acquire and maintain one or more ambulances;

Cold storage works

- (d) to establish and maintain cold storage works and depots for the inspection of meat, subject to the Kenya Meat Commission Act (Cap. 363) and the Public Health Act (Cap. 242) and any rules made thereunder;

Slaughterhouses

- (e) subject to the Kenya Meat Commission Act (Cap. 363) and the Pig Industry Act (Cap. 361) and any rules made thereunder, to establish and maintain slaughterhouses for the slaughter of animals and poultry, whether within or without its area; and to control slaughterhouses within its area;

By-products

- (f) to establish and maintain plants for the manufacture of by-products and to purchase animals for the purpose of conversion into by-products and to sell by-products resulting from the carrying on of any works which such local authority is authorised to carry on;

Milk

- (g) subject to the Dairy Industry Act (Cap. 336), to establish and maintain depots for the inspection, treatment, distribution, purchase and sale of milk or milk products, and may, subject as aforesaid, distribute, buy and sell milk or milk products;

Rats and vermin

- (h) to take measures for the destruction and suppression of rats and vermin within its area, and to set traps or take other measures necessary for the purpose on any land whether within or, with the consent of the local authority concerned, without its area;

Naming of streets

- (i) subject to the prior approval of the Minister, to name and number and, where necessary or desirable in its opinion, to rename or renumber any street in the municipality or in any urban area under its jurisdiction (such name to be affixed in a conspicuous place in the street) and to cause all buildings in any such street to be numbered in such manner as it may determine;

Aerodromes

- (j) subject to any written law relating, thereto, to establish and maintain aerodromes;

Fire brigades

- (k) to establish and maintain one or more fire brigades and to take all necessary steps for the prevention and extinguishing of fires and to compensate the owners of property demolished or damaged for the purpose of preventing or extinguishing fires;

Registration of births, etc.

- (l) subject to the consent of the Minister, to undertake either as agents of the Government or otherwise, the registration of births, deaths and marriages occurring in its area;

Open spaces

- (m) to lay out and adorn any square or open space belonging to it by any architectural Scheme or ornamentation, including the erection of Statues, fountains and other structures;

Buildings for public purposes

- (n) with the consent of the Minister, to erect and maintain on any public place, buildings for public purposes, and, with the like consent, to set apart any such place or any portion thereof for any purpose which the local authority may from time to time think fit;

Planting of trees, etc.

- (o) to plant, trim or remove trees, flowers and shrubs in or on any public place; to regulate the planting and preserving of trees, flowers and shrubs; to prohibit or regulate the planting of trees and shrubs in public places; to require or provide for the maintenance, cutting or removing of any such trees or shrubs; and to prevent the removal or injury thereof;

Lighting of streets, etc.

- (p)
 - (i) to arrange for the lighting of, or itself to light, streets and other public places and to arrange for the erection and maintenance of, or itself to erect and maintain, lamps for that purpose;
 - (ii) to enter into any contract with an authorised distributor as defined in the Electric Power Act (Cap. 314), for the collection by the local authority of all charges and other sums due to such distributor by the inhabitants, of the whole or part of its area in respect of the supply of electricity by such distributor, together with a reasonable charge to cover the expenses of collecting such charges and such other sums;

Pounds

- (q) to establish pounds, and from time to time to make provision for all or any of the following purposes—
 - (i) for the management of pounds;
 - (ii) prescribing the circumstances in which any article or vehicle which is found abandoned or apparently abandoned, or any animal or bird, may be impounded;
 - (iii) fixing the charges payable by the owner of any impounded article, vehicle, animal or bird;
 - (iv) prescribing the circumstances in which and the conditions under which any impounded article, vehicle, animal or bird may be sold; and

- (v) as to the transfer of the property in any impounded article, vehicle, animal or bird on such sale.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2,
Act No. 11 of 1967, s. 8, L.N. 41/1970, Sch.,
Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

161. Miscellaneous functions and powers of control

Every municipal council or town council and every urban council shall have power—

Cemeteries and crematoria

- (a) to establish cemeteries at sites appointed under, and maintain cemeteries authorised under, the Public Health Act (Cap. 242), to conduct funerals; to establish and maintain mortuaries and crematoria within or without its area; to prohibit the disposal of human bodies within its area otherwise than by interment or cremation in or at any such cemetery or crematorium established or approved by it; and to control undertakers and regulate the conveyance and disposal of dead bodies;

Washing of clothes

- (b)
 - (i) to establish and maintain places for the washing of clothes;
 - (ii) to control or prohibit the washing of clothes on public premises and to supervise and license persons engaged in washing and laundry work;

Lodging-houses

- (c) to establish, maintain and let lodging-houses and boarding houses; and to control lodging-houses and boarding-houses and lodging-house and boarding-house keepers;

Restaurants, etc.

- (d) subject to any written law relating thereto—
 - (i) to establish, maintain and let tea-rooms, cafe's, restaurants, houses, snack bars, shops, stalls and stands;
 - (ii) to control tea-rooms, cafes, restaurants, hotels, eating houses, snack bars, bake houses, butchers' shops, grocers' shops and all factories and places where articles of food or drink are manufactured or prepared for sale or use, or are stored or sold whether for consumption on or off the premises;

Footways

- (e) to construct footways along the side of any road or street, and to pave or surface any such footway with concrete blocks or stones or in any other way, and to recover from the owners of land abutting upon such footways the whole or any part of the expenses incurred in such construction, surfacing or paving where such construction, surfacing or paving was requested by such owners; and to control the construction, surfacing and paving of footways, where such works are carried out by any such owner.

[L.N. 634/1963, First Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

162. Miscellaneous powers of control

Every municipal council and, except in regard to the matters contained in paragraphs (a) and (j), every town council or urban council shall have power—

Unwholesome matter

- (a) to compel occupiers or, in the case of vacant premises, owners, to keep their premises free from offensive or unwholesome matter;

Animals, birds, etc.

- (b) to prohibit or control the keeping of animals, birds and bees so that their keeping shall not be a public nuisance or injurious to health;

Insects and pests

- (c) to take or require the taking of such steps and measures as may be necessary or desirable for securing the prevention and destruction of insects, fungi and any other, pests which attack timber in buildings and felled timber and for preventing and eradicating the infestation of any such timber at the cost of the owner;

Musical instruments

- (d) to prohibit or control the playing of musical instruments or the singing or performing for profit, in or on any public place;

Ferry boats

- (e) without prejudice to the exercise of any powers and duties conferred or imposed by the Ferries Act (Cap. 410) and subject to section 186 of this Act, to control ferry boats, to regulate the conduct of persons using ferry boats and the embarkation and disembarkation of persons, animals, goods and vehicles and to control the use of the landing places, approaches and ramps maintained in connection with any service of ferry boats;

Public amusements

- (f) to control or prohibit fetes, traveling exhibitions, public amusements and entertainments, circuses and to prohibit or control the public exhibition of monstrosities, freaks of nature, or any abnormal person or animal:

Provided that this paragraph shall not confer a power to permit the provision of amusements with prizes otherwise than at entertainments held by commercial undertakings with the principal object of promoting trade or business and limited, in respect of any one such undertaking, to one or more periods not exceeding in the aggregate fourteen days in any one period of twelve months;

Subdivision of land

- (g) subject to any written law relating thereto, to control or prohibit the subdivision or cutting up of land or the subdivision of existing building lots into smaller areas; to provide that no transfer of any such subdivision of land shall be registered in any land titles registry unless and until a certificate under the hand of the clerk of the local authority, or such other person as the local authority may appoint for the purpose, has been produced to the registration officer, who shall register the same against the title to such land at the cost of the applicant for such subdivision, to the effect that the local authority has approved of such subdivision, and to prevent the withdrawal, cancellation or alteration, except with the consent of the local authority, of any sub divisional plan which has been approved by the local authority;

Bicycles

- (h) to control bicycles and tricycles normally kept in its area, and to register and provide for the identification of such bicycles and tricycles:

Provided that this paragraph shall not confer a power to require the licensing of any bicycle or tricycle during the currency of any licence granted by any other local authority in respect thereof under the powers conferred by this paragraph;

Common pasture

- (i) to provide for the due and proper care of the common pasture or other land of such local authority, and, in municipalities, townships and urban areas within county divisions, to control the keeping of livestock in such area or areas;

Swimming baths

- (j) to control swimming baths, and bathing establishments, and to control or prohibit bathing in any open piece of water within its area;

Protection of works

- (k) to take such steps as may be desirable for the protection from damage or interference of all works and property of such local authority situated or being in, under or over any public or other place within or without its area;

Advertisements

- (l) to prohibit or control the display of advertisements and advertising devices in or in view of any street or other public place or in such places or in such manner or by such means as would, in the opinion of the local authority, be likely to affect injuriously the amenities of or to disfigure any neighbourhood; and to prohibit and control the use and passage of advertising vans, sandwich boards, lanterns, flags, screens or other moveable advertising devices, and the distribution of handbills in or along any street or other public place;

Street decorations

- (m) to control street decorations, and to prohibit or control the erection and removal of temporary platforms, seats and other structures for the use of the public at any meeting or entertainment or for the accommodation of spectators at any procession, exhibition, ceremony or spectacular display of any kind;

Places of public amusement

- (n) to control music halls, public halls, concert rooms, public billiard rooms and other places of public amusement, public recreation or public resort which are not required to be licensed under the Films and Stage Plays Act (Cap. 222).

[Act No. 9 of 1966, s. 71, Act No. 21 of 1966, First Sch., L.N. 35/1970, Second Sch., L.N. 41/1970, Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

163. Powers to control trades and occupations

Every municipal council and, except in regard to the matters contained in paragraph (g), every town council and urban council shall subject to any other written law relating thereto, have power—

Hawking

- (a) to prohibit or control peddling, hawking and street trading and to control peddlers, hawkers and street traders;

Barbers

- (b) to control barbers and hairdressers and barbers' and hairdressers' shops;

Second-hand goods dealers

- (c) to control the trade, business or occupation, and the business premises, of dealers in second-hand goods, including bottles, sacks, bones and tins;

Rag and flock manufacture

- (d) to prohibit or control the work or trade of manufacturing flock from rags and persons engaged therein; and to prohibit the sale and use, for the purpose of manufacture, of articles of unclean flock manufactured from rags;

Noxious industries

- (e) to control or prohibit all businesses, factories and workshops which, by reason of smoke, fumes, chemicals, gases, dust, smell, noise, vibration or other cause, may be or become a source of danger, discomfort or annoyance to the neighbourhood, and to prescribe the conditions subject to which such businesses, factories and workshops shall be carried on;

Offensive traders

- (f) to prohibit or control the carrying on of the work or trade of a knacker or of blood-boiling or cleaning, tallow melting, fat melting or fat extraction, fellmongering, skin storing, skin curing, blood drying, gut scraping, fish mongering, fish frying, leather dressing, tanning, glue making, size making, charcoal burning, brick burning, lime burning, stone crushing, manure making, manure storing, bone storing, or any other work or trade of an offensive nature which such local authority may, with the sanction of the Minister, declare to be an offensive trade for the purposes of this paragraph;

Other trades and occupations

- (ff) to prohibit, control and regulate such other trades, occupations and premises as the Minister may, from time to time, by notice in the *Gazette*, prescribe;

Disinfestations

- (g) to prohibit or control the work or trade of disinfection or fumigation by cyanide or other means and to penalize persons who, after due

163A. Business permits

(1) A local authority may on receipt of an application under this Act grant a business permit to allow the conduct of a business or trade, including a profession or occupation, within its area:

Provided that in the case of a business, trade, profession or occupation regulated by the provisions of any other written law, a person shall prior to the submission of an application for a business permit pursuant to this subsection, satisfy all the requirements of that other written law.

(2) The fees charged by a local authority for the grant of a business permit under subsection (1) shall be—

- (a) in the case of a consolidated permit, an amount equal to the sum of fees due in respect of each of the business activities covered under such permit for which the supplicant would otherwise require a separate permit; and
- (b) in the case of a single business permit, the amount due in respect of the class of trade or business covered under such permit.

(3) Notwithstanding any other provision of this act or any by-laws made thereunder, a penalty of three percent of any fees or charges payable under this section which remain unpaid beyond the period prescribed for such payment shall be payable by the licensee for every month or part thereof during which such fees or charges remain unpaid.

(4) A local authority shall issue such type of business permit, either single or consolidated, as it deems appropriate for the conduct of business within its area, but shall not issue both types of business permit for such area.

(5) Notwithstanding subsection (1), a local authority shall not refuse to grant or renew a business permit unless—

- (a) the applicant has not supplied all the information required for such grant or renewal; or
- (b) the applicant has not paid the required business permit fee or any other fees or charges due to the local authority at the time of the application.

(6) A local authority may cancel a business permit where, upon receipt of a written report from an inspector appointed under this Act or any other written law, it finds that the business or trade to which it relates endangers the health or safety of the persons residing in the neighbourhood.

(7) An applicant for a business permit under subsection (1) shall, in the application, elect whether to be issued with a permit for a period of either one year or two years.

(8) Where a person is issued with a business permit by one local authority to distribute goods or provide services within the area of that local authority, such permit shall be valid for the distribution of goods or provision of services within the area of any other local authority

[Act No. 5 of 1998, s. 43, Act No. 9 of 2000, s. 80, Act No. 11 of 2000, s. 84, Act No. 7 of 2002, s. 50, Act No. 17 of 2006, s. 18.]

164. Applications for licences

(1) A local authority shall have power to summon any applicant for, or any objector to, the grant of a licence, to give evidence or to produce books or documents at any sitting of the local authority or a committee thereof held for the purpose, of hearing the application for such licence, and any such person refusing or omitting without sufficient cause to attend and give evidence or to produce books or documents in his possession or under his control as required by such summons shall be guilty of an offence:

Provided that every person summoned under this section to give evidence or produce books or documents shall be entitled to all the privileges to which a witness summoned to give evidence or produce books or documents before the High Court is entitled.

(2) Any witness giving evidence before a local authority or a committee thereof at the hearing of an application for any such licence may be required to give evidence on oath which the person presiding at such hearing is hereby empowered to administer.

165. Powers to refuse to grant or renew licences and to cancel licences

(1) A local authority may refuse to grant or renew any licence which it is empowered under this Act or any other written law to grant on any such grounds as it may, by by-law, specify and in addition upon any of the following grounds whether specified in such by-laws or not—

- (a) with respect to any licence whether relating to a trade, business or occupation, or to premises or otherwise—
 - (i) that the premises in or at which the applicant intends to carry on his trade, business or occupation do not conform to the requirements of any by-laws in force in the area of such local authority, whether made under this Act or any other written law;
 - (ii) that sufficient provision for the needs of the area of such local authority already exists;
 - (iii) that the granting of such licence or the renewal hereof, as the case may be, would be contrary to the public interest; and
- (b) additionally, with respect to any licence relating to the use of premises as a theatre, music hall, concert room or other place of amusement, or as a restaurant or eating house—
 - (i) that the applicant has failed to produce satisfactory evidence of good character;
 - (ii) that the premises in respect of which the licence is sought or any adjacent premises owned or occupied by the applicant are frequented by persons of bad character;

- (iii) that the granting of such licence or the renewal thereof would be calculated to cause nuisance or annoyance to persons residing in the neighbourhood; and
- (c) additionally, with respect to any licence for the carrying on of any work or trade specified in section 163 or under paragraph (f) thereof declared to be an offensive trade—
 - (i) that the premises used or proposed to be used therefor by the applicant are unsuitable for the purpose;
 - (ii) that the method adopted or proposed to be adopted by the applicant for preventing noxious or offensive vapours, gases or smells arising from such work or trade are not efficient.

(2) A local authority may cancel any licence granted by it on any such grounds as it may, by by-law, specify and, in addition, on any of the following grounds, whether specified in such by-law or not—

- (a) with respect to any licence, that it is contrary to the public interest for such licence to remain in force; and
- (b) additionally, with respect to any licence specified in subsection (1)(b) —
 - (i) that the premises to which the licence relates or any adjacent premises owned or occupied by the holder of the licence are frequented by persons of bad character;
 - (ii) that the continuation of such licence in force would be calculated to cause nuisance or annoyance to persons residing in the neighbourhood; and
- (c) additionally, with respect to any licence for the carrying on of any work or trade specified in section 163 or under paragraph (f) thereof declared to be an offensive trade—
 - (i) that the premises used by the holder of the licence have become unsuitable for the purpose;
 - (ii) that the methods adopted by the applicant for preventing noxious or offensive vapours, gases or smells arising from the work or trade to which such licence relates are not efficient.

(3) Any applicant for the grant or the renewal of a licence or a business permit; whose application has been refused, and any person whose licence or business permit has been cancelled by a local authority under this section, may appeal against such refusal or cancellation to a subordinate court of the first class within whose jurisdiction the premises in or at which the applicant intended to conduct or was conducting his trade, business, or occupation is situate, and in the event of the appellant satisfying the court that the licence or business permit or renewal thereof was refused or, as the case may be, that the licence or business permit was cancelled on insufficient grounds, the court may order such local authority to grant such licence or business permit or a renewal thereof or, as the case may be, the court may declare that the cancellation was invalid.

(4) Where the court orders a local authority to grant such licence or business permit or renewal thereof, then, subject to subsection (5), such licence or business permit or a renewal thereof shall be granted accordingly; and where the court declares that the cancellation of a licence or business permit was invalid,

then subject to subsection (5), the licence or business permit which the local authority purported to cancel shall remain in force as if no such purported cancellation had been made.

(5) The appellant or the local authority concerned in any appeal under subsection (3) may appeal to the High Court against any such order or declaration of the subordinate court and the decision of the High Court thereon shall be final.

[Act No. 5 of 1998, s. 44.]

166. Planning

Every municipal council, county council or town council may, subject to any other written law relating thereto, prohibit and control the development and use of land and buildings in the interest of the proper and orderly development of its area.

[Act No. 31 of 1971, Sch.]

167. Burials

(1) It shall be the duty of every municipal council, town council or urban council, to provide for the burial of all destitute persons who die within its area:

Provided that in respect of persons—

- (i) who die in hospital, and who immediately prior to their admission to hospital, had not lived within such local authority's area for a period of at least three consecutive months; or
- (ii) who die in gaol,

the local authority shall be entitled to recover the reasonable cost of burial from the Government.

(2) If any person brought into the area of any such council by any other person carrying on the business of recruiting labour, shall die in such area within one month after his arrival, such council may recover from such other person or his employer or principal such burial charges as may be fixed by by-laws relating to cemeteries or otherwise.

(3) It shall be the duty of every municipal council, town council and urban and area council, to ensure that in its area there are adequate and suitable arrangements for the burial or cremation of the dead.

[L.N. 634/1963, First Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

Sewerage and Drainage

168. Deleted by Act No. 8 of 2002, s. 111.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

169. Deleted by Act No. 8 of 2002, s. 111.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

170. Deleted by Act No. 8 of 2002, s. 111.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

171. Deleted by Act No. 8 of 2002, s. 111.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

172. Deleted by Act No. 8 of 2002, s. 111.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

173. Deleted by Act No. 8 of 2002, s. 111.

174. Deleted by Act No. 8 of 2002, s. 111.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

175. Deleted by Act No. 8 of 2002, s. 111.

[L.N. 634/1963, First Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

176. Deleted by Act No. 8 of 2002, s. 111.

[L.N. 634/1963, First Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

Housing

177. Housing and advances for housing

(1) A municipal council, town council or an urban council may, subject to any written law relating thereto—

- (a) lay out building plots or otherwise subdivide any land acquired or appropriated by it, whether within or without its area, for the purpose of housing schemes for the inhabitants of its area;
- (b) erect and maintain dwelling-houses with their appurtenant outbuildings on such plots or subdivisions of land;
- (c) convert buildings into dwelling-houses and alter, enlarge, repair and improve the same;
- (d) let any dwelling-house erected or provided by it and charge such reasonable rent for the tenancy or occupation thereof as it may determine;
- (e) sell any such dwelling-house to a person undertaking to reside therein and recover the purchase price thereof by such instalments as it may determine;
- (f) sell, let or otherwise dispose of any plot or subdivision of land referred to in paragraph (a) of this subsection to any person for the purpose and under the condition that that person will erect and maintain thereon a dwelling-house for occupation by him;
- (g) sell, let or otherwise dispose of land acquired or appropriated by such local authority, to any person for the purpose and under the condition that that person will erect and maintain thereon such number of houses as may be determined by such local authority in accordance with plans approved by it.

(2) Nothing in subsection (1) shall authorise the disposal of land by a local authority, whether by sale, lease or otherwise, in breach of any trust, covenant or agreement binding upon the local authority.

(3) Subject to such conditions as may be prescribed by the Minister, a local authority may advance money to any person—

- (a) to enable him to repair, reconstruct, enlarge or improve a dwelling-house occupied or intended to be occupied by him; or

- (b) to enable him to reconstruct, whether on land provided by such local authority or otherwise, a dwelling-house for occupation by him; or
- (c) to enable him to acquire for occupation by him any dwellinghouse.

(4) The Minister may make rules regulating the making of advances under subsection (3) and in particular—

- (a) for prescribing the nature of the security to be taken by the local authority in respect of any advance;
- (b) for requiring a valuation to be made of the property the subject of any such advance;
- (c) for prescribing the maximum proportion of the value of any property which may be advanced under the said subsection on the security thereof;
- (d) for prescribing the rate of interest to be paid on such advances;
- (e) for prescribing the method of repayment of such advances;
- (f) for enabling such advances to be made by instalments paid from time to time as the work of construction repair, reconstruction, enlargement or improvement of the dwelling-house proceeds.

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

Water Supply

178. Water supply

(1) A municipal council, town council, or an urban or area council may undertake the supply of, and establish, acquire and maintain works for the supply of water within its area, and with the consent of any other local authority within the area of that local authority.

(2) Without prejudice to its power to make by-laws under this Act, a municipal council, town council or an urban or area council, may make by-laws under this Act in respect of and matter upon which, and to the extent to which, a water undertaker may make regulations under the Water Act (Cap. 372).

(3) If any person shall require a supply of water from a local authority to premises occupied or about to be occupied by him and shall have previously quitted other premises at which water has been supplied by the local authority without paying all charges for water and all sums due to the local authority in respect of the supply thereof, the local authority may refuse such a person a supply of water, or if such supply has already been provided may forthwith cut off such supply, and for that purpose may cut or disconnect any pipe or other work through which the water may be supplied, and may until such charges or other sums together with the cost (if any) incurred by the local authority in cutting off such supply of water, is fully paid, but no longer, discontinue the supply thereof to such person.

(4) Any officer appointed thereto by the Minister may at all reasonable times enter any premises to which water is or has been supplied by the local authority, in order to inspect the pipes, meter, fittings, works and apparatus for the supply of water, or for the purpose of ascertaining the quantity of water consumed or supplied, or whenever the supply of water is no longer required, or whenever the

local authority is authorised, to cut off the supply of water from such premises, or for the purpose of removing any pipes, meters, fittings, works or apparatus belonging to the local authority.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 31 of 1971, Sch.]

179. Diversion and canalisation of streams, etc.

A municipal council, town council, or an urban or area council may, subject to the Water Act (Cap. 372), and any rules made thereunder, divert, straighten, define, and canalise the course of any stream or watercourse after giving notice and making compensation to any owner or occupier of land, and to any person entitled to any rights or easements attached to land, abutting on such stream or watercourse.

(2) In arriving at the amount of any compensation payable under this section regard shall be had to the enhanced or improved value, immediate or prospective, which shall or may accrue to any such land by reason of the carrying out of the aforesaid purposes or any of them.

(3) The amount of any such compensation as aforesaid shall, in default of agreement, be determined by arbitration.

[Act No. 31 of 1971, Sch.]

180. Additional powers relating to water

Every local authority, whether or not such local authority is a water undertaker under the Water Act (Cap. 372), shall have power to compel the provision of a proper and sufficient water supply for every dwelling-house, school, store, shop, factory or workshop, if the local authority considers that the provision of such supply is necessary, practicable and reasonable.

Electricity Supply

181. Works of the supply of electricity, light, heat and power

(1) Subject to the Electric Power Act (Cap. 314) and to any other written law relating thereto, a local authority may undertake the supply of, and may establish, acquire and maintain works for the supply of electricity, light, heat or power within its area, or with the consent of any other local authority, within the area of that local authority; and without prejudice to the generality of the foregoing, a local authority may sell (including sale against payment by instalments) electric lines, fittings, and appliances to private consumers.

(2) With prejudice to any power conferred by or under the Electric Power Act (Cap. 314) upon a licensee, subsections (3) and (4) of section 178 of this Act shall supply *mutatis mutandis* to and in relation to the supply of electricity by a local authority.

[L.N. 634/1963, First Sch.]

PART XII – CERTAIN POWERS, DUTIES AND PROVISIONS RELATING TO ROAD AND FERRIES

182. Control and vesting of public streets in municipalities and townships

(1) Every municipal council or town council shall have the general control and care of all public streets which are situated within its area, and the same are hereby vested in such local authority in trust to keep and maintain the same for the use and benefit of the public.

(2) A municipal council or town council may make, construct, alter, and repair and for any such purpose temporarily close or divert, any such street, and may make new streets.

(3) A municipal council or town council may, subject to any law relating to road traffic, by order, prohibit the driving of vehicles on any specified road otherwise than in a specified direction:

Provided that no such order shall be made unless notice of the intention to make the same shall be published in the *Gazette* at least fourteen days before the date on which it is intended to make such order, and, before making such order, there shall be taken into consideration—

- (i) any objections which may have been made to the making thereof; and
- (ii) the existence of alternative routes suitable for the traffic which would or might be affected by the order.

[Act No. 31 of 1971, Sch.]

183. Deleted by L.N. 35/1970, Second Sch.

184. Powers of local authorities to take materials for roads and works

(1) Subject to the Mining Act (Cap. 306), a local authority, by its agents and officers, for the purpose of the construction and maintenance of roads or the carrying out of any works which it is empowered under this Act or under any agreement, direction, delegation or transfer entered into, given or made under this Act to carry out, may enter upon any land within its area and remove therefrom any clay (other than kaolin), country rock, gravel, murrum, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner or occupier thereof and the local authority, such material removed from other land, and may provide in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and may erect machinery and other gear for the purpose of quarrying any such material.

(2) Before entering upon any land for the purpose of exercising any of the powers conferred by subsection (1), the local authority shall give not less than one month's notice by personal service or by registered post to the last known address of the owner or occupier of such land, of the intention to enter upon such land, the powers which it proposes to exercise, and the area of such land to which it will confine its activities.

(3) If the owner or occupier of such land is aggrieved by the proposed exercise by the local authority of the powers conferred by this section or by the proposed exercise of the powers in the area specified in the notice, he may, within one month from the service upon him of the notice under subsection (2), make representations to the Minister thereon and shall within the same period inform the local authority concerned of the nature of such representations.

(4) Where representations are made to the Minister under subsection (3), the Minister may, after consulting the local authority concerned, give such direction to the local authority thereon as he thinks fit.

(5) Compensation shall be payable by a local authority to the owner or

occupier of any land for any damage done to buildings, roads or crops, or otherwise, in the exercise by it of any of the powers conferred upon it by this section, and for any interference with the rights of occupancy of such land, and the amount of such compensation shall, in default of agreement, be determined by arbitration.

(6) If, as a result of the exercise of any of the powers conferred by this section, a danger to persons (other than employees of the local authority or of their agents) or to domestic animals is created, the local authority shall, at the request of the owner or occupier of the land, carry out fencing at its own expense to such an extent as adequately to guard against such danger.

(7) The sites for any labour or other camps to be provided by the local authority and the alignment of any roads of access shall be determined by the local authority only after consultation with the owner and occupier of the land on which the same are to be situate.

(8) Any pit or quarry made in exercise of any of the powers conferred by this section shall, at the request of the owner or occupier of the land, be filled up or, in the discretion of the local authority, fenced, at the expense of the local authority, when the local authority abandons such pit or quarry.

(9) This section shall be subject to the Forests Act (Cap. 385) and any rules made thereunder, and to the extent of any inconsistency between this section and that Act and any rules thereunder, the latter shall prevail.

(10) For the purpose of this section, the expression “**owner or occupier**” means in respect of Government land, the Commissioner of Lands, in respect of Trust land (other than land the title to which is registered under the Land Consolidation Act (Cap. 283)) means the county council or other local authority having jurisdiction over the area in question under section 115 of the Constitution, and in respect of forest areas, means the Chief Conservator of Forests.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2.]

185. Power respecting the permanent closure, etc., of streets and roads

(1) Subject to this section, a municipal council may permanently close or divert or alter the line of any street or road vested in it under this Act.

(2) Before any such closing or diversion or alteration is carried out, the municipal council shall—

- (a) prepare a plan showing the nature thereof; and
- (b) not less than one month before the proposed commencement of the work, give notice in the *Gazette* and in one or more newspapers (if any) circulating in its area, as well as by a sufficient number of placards posted on or near the street or road which it is proposed to close, divert or alter, of the proposed work and of a place where the said plan may be inspected at all reasonable hours; and
- (c) serve a copy of the said notice on the owners or reputed owners, lessees or reputed lessees, and occupiers of all property abutting upon the said street or road or appropriate part thereof and, where it is proposed to divert or alter the line of such street or road, of all property which will abut upon the street or road if diverted or altered as aforesaid, whose address can after reasonable inquiry be ascertained; and

- (d) if the proposed closure, diversion or alteration will affect land not vested in the municipal council, serve a copy of the said notice on the Commissioner of Lands; and
- (e) in the case of a proposal to close a road, serve a copy of such notice upon the Minister for the time being responsible for town planning.

(3) If the Commissioner of Lands or any person interested as owner, lessee or occupier in any property abutting on the street or road which it is proposed to close, divert or alter under this section, or any other person aggrieved by such proposed closure, diversion or alteration, shall at any time within the period of one month from publication of the notice in the *Gazette* and in one or more newspapers (if any) as aforesaid, or, where such notice is published on different dates, within the month from the last date of publication, serve written notice on the municipal council of any objection to such closure, diversion or alteration, then, unless such objection is withdrawn, such closure, diversion or alteration shall not be carried out without the sanction of the Minister who may, on the application of the municipal council and after such inquiry (if any) as he may deem necessary, make an order disallowing or allowing the proposed work or allowing it with such modifications as he may deem necessary.

(4) On completion of any work to which this section applies the municipal council shall give notice thereof to the Minister and shall forward a plan thereof, prepared by a registered land surveyor or by some other person approved in writing by the Commissioner of Lands, to the Commissioner of Lands, showing all details of such closure, diversion or alteration, and the Commissioner of Lands shall cause such amendments as may be necessary to be made in his plan (if any) of the area.

[L.N. 35/1970, Second Sch.]

186. Powers relating to ferries and toll bridges

(1) A local authority may, with the approval of the Minister—

- (a) without prejudice to the exercise of any powers or duties conferred or imposed by the Ferries Act (Cap. 410), establish and maintain toll bridges and services of ferry boats, together with landing places, approaches, ramps and other essential appurtenances, for the passage or carriage of passengers, animals, goods and vehicles using any road vested in such local authority under this Act; and
- (b) enter into an agreement with any person for the establishment and maintenance by such person of any toll bridge or service of ferry boats which such local authority is under paragraph (a) itself authorised to establish and maintain, and for providing to such person such financial assistance in connection therewith as the Minister may approve.

(2) Whenever any toll bridge or service of ferry boats is established and maintained by a local authority under this section, or by any person under an agreement entered into between such person and a local authority under subsection (1)(b), such local authority may, with the approval the Minister, by order, prohibit any person (other than a person with whom the local authority has entered into an agreement as aforesaid) except with the written consent of and subject to such conditions as may be imposed by, the local authority, from

operating a toll bridge or carrying on a ferry boat service within the area of such local authority or any part thereof, and within such hours, as may be specified in such order:

Provided that the right of any person to ply for hire within the area of such local authority with any ferry boat for the unexpired period of any licence granted under any law in force in Kenya and issued to him prior to the date of the coming into force of such order of prohibition, and the right of any person to carry for hire or reward any passengers departing to or arriving from any place outside the limits of any prohibited area, shall not be affected.

(3) Before making an order of prohibition under subsection (2), the local authority shall cause notice of its intention to introduce and pass a resolution for the purpose to be published in the *Gazette* and in at least one newspaper circulating in the area, and such notice shall be given once in each week for four succeeding weeks.

(4) Any objections received by the local authority to the making of such an order of prohibition shall be laid before the local authority at a meeting appointed to consider the resolution referred to in subsection (3), and copies of such objection and of the resolution, together with a notification of the adoption of such resolution shall be forwarded by the local authority to the Minister.

(5) If and when the Minister, after considering the objections (if any) and the resolution of the local authority, approves the making of the order, such order shall be made under the hand of the clerk or such other person authorised in its behalf by the local authority and shall be published in the *Gazette* and in at least one newspaper (if any) circulating in the area of the local authority, and shall come into operation on such day as may be specified in such order.

(6) A local authority may by order revoke an order of prohibition made by it under this section and may, in like manner, vary any such order by extending or reducing the period of the operation thereof or by extending or reducing the area or areas to which it applies.

(7) The making of an order of revocation or variation under this section shall be subject to the procedure prescribed in subsections (3), (4) and (5) as if such order were an order being made under subsection (2).

(8) Save as is provided in subsection (2), any person other than a person with whom the local authority has entered into an agreement under subsection (1)(b) who, without the written consent of the local authority signified in writing under the hand of the clerk or of such other person as may be authorised in its behalf by the local authority, or in contravention of any condition under subsection (2), operates or carries on within a prohibited area any toll bridge or service of ferry boats, or who plies for hire or reward any ferry boat within a prohibited area, shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding two months, and, in addition, to a fine not exceeding two hundred shillings in respect of each and every day upon which he operates or carries on such toll bridge or service of ferry boats or plies for hire or reward such ferry boats as aforesaid.

(9) The Minister shall, before he gives any approval required under this section, consult the Minister for the time being responsible for communications.

(10) For the purposes of the application of this section to the Municipality of Mombasa, the term “**ferry boat**” means any floating vessel, propelled by any means whatsoever plying for hire within the municipality for the purpose of carrying passengers, animals, goods or vehicles between any two points one of which is a point on the Island of Mombasa and the other of which is a point on the coast mainland within a radial distance of one mile from the Island of Mombasa:

Provided that the said term shall not include any such floating vessel which is not capable of carrying more than three passengers and three hundred pounds in weight of goods.

[L.N. 35/1970, Second Sch.]

187. Deleted by L.N. 35/1970, Second Sch.

188. Deleted by L.N. 749/1963, Sch.

189. Deleted by L.N. 35/1970, Second Sch.

190. Deleted by Act No. 13 of 1968, s. 3.

[L.N.634/1963, First Sch.]

191. Deleted by L.N. 35/1970, Second Sch.

192. Definition of vesting

For the purposes of this Part, “**vesting**”, in relation to a road, means the transfer of the possession of the surface of the land concerned for use as a road and such material below and space above the surface as may be necessary, together with the possession of the rights of a highway authority, but shall not mean the transfer of the ownership of the land.

192A. Saving in respect of national and international roads

Nothing in this Part shall apply to any road declared by the Minister under any written law to be a national or international trunk road.

[L.N. 634/1963, First Sch.]

**PART XIII – CERTAIN PROVISIONS RELATING TO ADDITIONAL
POWERS AND TRANSFERS AND DELEGATIONS OF POWER**

193. Delegation of functions relating to trunk roads

The authority for the time responsible for any trunk road, may, by agreement with a municipal council, delegate to such council as agent for and at the cost of such authority, the execution of the whole or any part of the functions of that authority with regard to such trunk road.

[L.N. 35/1970, Second Sch.]

194. Transfer of road functions to road authority and arrangements for discharge of such functions

A municipal council may, if so requested by any road authority, and shall, if so directed by the Minister, transfer to such road authority all or any of the functions conferred or imposed upon such municipal council by this Act relating to roads or to any class of roads or to any specified road or roads in the area of such municipal council and the road authority may thereupon make such

arrangements for the carrying out by the Minister responsible for works or otherwise, as to it seems fit, of such functions in respect of the said roads, class of roads or specified road or roads, as the case may be:

Provided that if the municipal council so requests, the Minister shall order an inquiry under section 245 into the transfer or proposed transfer and the surrounding circumstances.

[L.N. 35/1970, Second Sch.]

195. Deleted by L.N. 35/1970, Second Sch.

196. Power of county councils or town councils to delegate functions

(1) Subject to any written law relating thereto, a county council or town council may, with the consent of the Minister, delegate to the council of any county division within county with or without restrictions the discharge within the area of such county division of any of its functions.

(2) The council of a county division may make representations to the council of the county in which such division is situate with a view to the county council delegating to it under this section the exercise of any of its functions in the area of the county division.

(3) Where, after any representations have been made, the county council refuses to delegate to the council making representations any of the functions the subject of such representations, the council making the representations may apply to the Minister to exercise his powers under subsection (4).

(4) On receipt of an application under subsection (3), the Minister may, in his discretion refuse to exercise any of his powers under this subsection or, after giving the county council and the council of the county division an opportunity to make representations to him on the application, he may by notice in the *Gazette*, confer upon the council of the county division making the application, with or without restrictions or conditions, all or any of the functions for which application was made and thereupon the council of the county division shall be deemed to possess that function or functions by delegation from the county council.

(5) Where any function has been delegated or deemed to have been delegated to an urban or area council under this section, that urban council shall alone be entitled to discharge such function within the county division, and in the discharge of such function shall act as agent of the county council.

(6) Where any function is delegated or deemed to have been delegated under this section, the general financial arrangements arising from the discharge of such function by the urban or area council shall be agreed between the county council and the urban council or, in default of agreement, be determined by the Minister.

[L.N. 41/1970, Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

197. Relinquishment of functions by urban councils

(1) The council of any county division for the time being responsible for the discharge of any function conferred upon it by this or any other written law may at any time, with the consent of the council of the county in which the county division is situate, relinquish such function, and as from the date of relinquishment such function may be discharged within the county division by such county council as if it had been conferred upon the county council in respect of such county division by this Act.

(2) The county council may make representations to the council of any county division within the county with a view to the council of the county division relinquishing any of its functions under subsection (1).

(3) Where, after any such representations have been made, the council of the county division refuses to relinquish any of its functions the subject of such representations, the county council may apply to the Minister to exercise his powers under subsection (4).

(4) On receipt of an application under subsection (3), the Minister may, in his discretion, refuse to exercise any of his powers under this subsection or, after giving the county council and the council of the county division an opportunity to make representations to him on the application, he may, by notice in the *Gazette*, confer upon the county council making the application, with or without restrictions or conditions, all or any of the functions for which application was made and thereupon the council of the county division shall be deemed to have relinquished such function or functions.

(5) Where any function is relinquished or deemed to have been relinquished under this section, the general financial arrangements arising from the discharge of such function by the county council in the county division shall be agreed between the county council and the council of the county division relinquishing the function or, in default of agreement be determined by the Minister.

[Act No. 11 of 1984, Sch.]

198. Repealed by Act No. 11 of 1984, s. 25.

199. Powers of county council where there is no county division

In any area of a county where there is no county division, the county council shall have and may exercise all the functions of a council of a county division as prescribed or provided for in this or any other written law.

200. Deleted by L.N. 634/1963, First Sch.

PART XIV – BY-LAWS

201. Power to make by-laws

(1) Subject to section 202, a local authority may from time to time make by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants of its area or any part thereof and for the good rule and government of such area or any part thereof and for the prevention and suppression of nuisances therein and, more particularly, but without prejudice to the generality of the foregoing—

- (a) for controlling any of the things which it is empowered by or under this Act to do, establish, maintain or carry on; and
- (b) for controlling or regulating any of the things which, and any of the persons whom, it is empowered by or under this Act to control or regulate; and
- (c) for prohibiting or preventing by prohibition any of the things which it is empowered by or under this Act to prohibit; and
- (d) for requiring or compelling the doing of any of the things which it is empowered by or under this Act to require or compel.

(2) A local authority may, by by-law, prescribe all or any of the following penalties which may be imposed for breach of any by-law made by it under this Act, that is to say—

- (a) a fine not exceeding two thousand shillings in respect of a first offence and not exceeding three thousand shillings in respect of a second or subsequent offence, or imprisonment for a period not exceeding six months in respect of a first offence and not exceeding nine months in respect of a second or subsequent offence, or both such fines and such periods of imprisonment; and
- (b) in addition to the penalty provided in the preceding paragraph, in the case of continuing breach of any such by-law, a fine not exceeding twenty shillings for every day during which the offence continues:

Provided that any by-law which under this paragraph prescribes a fine for each day during which an offence continues shall also provide that the aggregate of any such fines imposed shall not, in the case of any one continuing breach of the by-law in question, exceed two thousand shillings;

and a local authority may, by by-law, further prescribe that, in addition to any such penalty as aforesaid, any expenses incurred by the local authority in consequence of the breach of any by-law made by it under this Act or in the execution of any work directed by any such by-law to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

(3) Any by-law made by a local authority under this Act may—

- (a) 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 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; and
- (b) confer on the officers of such local authority such powers of inspection, inquiry and execution of works as may be reasonably necessary for the proper carrying out or enforcement thereof.

(4) Where a local authority is empowered to make by-laws controlling the doing of any act, and such by-laws require any person to obtain a licence from a specified authority before the doing of such act, such by-laws may require the deposit of such sum or the execution of a bond with or without sureties, as may be prescribed in such by-laws, in addition to any fee which may be prescribed, such sum to be refunded or such bond to be void, as the case may be, if the person to whom such licence is granted complies with all the conditions of such licence.

(5) By-laws which affect any cultural or natural heritage declared or deemed to have been declared as such by the Minister may only be made after consultation with the National Museums of Kenya.

[L.N. 22/1984, Sch., Act No. 6 of 2006, s. 73.]

At the commencement of this section, all by-laws, licences, fees, permits and other charges imposed by every local authority shall be resubmitted to the Minister for new approval notwithstanding that an approval may have been given by the Minister in respect of such by-laws, licences, fees, permits or other charges prior to the commencement of this section.

[Act No. 17 of 2006, s. 19.]

202. Restrictions on making by-laws

(1) A local authority shall not, in exercise of the general power conferred by subsection (1) of section 201 to make by-laws for the maintenance of the health, safety and well-being of the inhabitants or for good rule and government or for the prevention and suppression of nuisances, make any by-law under that subsection as respects its area of jurisdiction or any part thereof, if such by-law could be made as respects the same area or such part thereof under any written law other than this Act whether by that local authority or any other local authority.

(2) Where any inconsistency or repugnancy exists between any by-law made under this Act by the council of a county as respects any county division or any part thereof and any by-law made under this Act by the council of that county division as respects the county division or such part thereof, then as respects that county division or part thereof and to the extent of such inconsistency or repugnancy, the by-law which first came into operation, or where both such by-laws came into operation on the same day, the by-law made by the council of the county shall prevail.

(3) Nothing in this Act contained shall be deemed to empower a local authority to make by-laws overriding or derogating from the provisions of any other written law for the time being in force in Kenya.

(4) *Deleted by Act No. 11 of 1984, Sch.*

[Act No. 11 of 1984, Sch.]

203. Procedure for making by-laws

(1) At least fourteen days before the making by any local authority of any by-laws under this Act, notice of the intention to make such by-laws and of the general purport thereof shall be given in one or more local newspapers circulating in the area to which the by-laws are intended to apply:

Provided that a town council, a county council, or a council of a county division, with the consent of the Minister and in lieu of compliance with the foregoing provisions of this subsection may, before making any by-laws under this Act, give such length of notice in such manner of the intention to make such by-laws and of the general purport thereof as the Minister may direct, or in the absence of any such direction, as it thinks reasonable, for bringing the notice to the attention of the inhabitants of the area to be affected by such by-laws.

(2) For at least fourteen days before the making of any by-laws under this Act a copy of the proposed by-laws shall be deposited at the offices of the local authority which intends to make the by-laws and shall at all reasonable hours be open to public inspection without payment, and the local authority shall on application by any person furnish to such person a copy of such proposed by-laws for which in its discretion, the local authority may make a charge of such amount, not exceeding fifty cents for every hundred words thereof, as it may determine.

(3) Any objection to the proposed by-laws shall be lodged in writing with the local authority within twelve days after the date on which the notice, or the latest notice where there is more than one, of the intention to make such by-laws was given under subsection (1) or within such longer period as may be specified in such notice:

Provided that where a longer period is specified in the notice such by-laws shall not be made until at least two clear days have elapsed after the expiration of such longer period.

[Act No. 31 of 1971, Sch.]

204. Submission of by-laws for approval

(1) After any by-law has been made by a local authority under this Act it shall be submitted to the Minister for his approval.

(2) Every by-law submitted for approval under subsection (1) of this section shall be accompanied by—

- (a) a certified copy of the minutes of the meeting of the local authority at which the by-law was adopted;
- (b) a certificate by the clerk that section 203 of this Act has been complied with; and
- (c) copies of any objection to the adoption of the by-law which has been lodged in writing with the local authority, or, if no such objection has been lodged, a statement to that effect.

(3) The Minister may approve, with or without alteration or reject any such by-law.

(4) No by-law made under this Act shall have the force of law until it has been approved, whether with or without alteration, by the Minister, and published, or notice thereof published, in the manner provided by section 205(1) or, in the case of any by-law exempted under the proviso to section 205(1), until it has been communicated to the inhabitants pursuant to section 205(3).

205. Publication, communication and coming into operation of by-laws, etc.

(1) Upon the signification of the approval of the Minister of any by-law, the clerk of the local authority which made such by-law shall cause the by-law, or a notice stating that the by-law has been approved, to be published in the *Gazette*:

Provided that the Minister may exempt any town council, county council or council of a county division from compliance with the requirements of the foregoing provisions of this subsection in respect of its by-laws generally or in respect of any class of by-laws or any particular by-laws.

(2) Subject to any other written law (including the other provisions of this Act) every by-law shall have the full force of law within the area to which it applies on the date of publication of the by-law or of the notice, as the case may be, or, in the case of a by-law exempted from publication in the *Gazette*, on the date on which it is communicated to the inhabitants under subsection (3) or, in either case, on such other day as may be expressed in the by-law as being the date on which the same is to come into operation and, if another date is so expressed, the notice, where a notice is published under subsection (1), shall so state, or, in the case of a by-law exempted as aforesaid, such date shall be communicated to the inhabitants of the area affected thereby in like manner as for the substance and effect thereof.

(3) The substance and effect of all by-laws which have been duly approved shall be communicated by the local authority which made them to the inhabitants of its area in such manner as the Minister may direct or, in the absence of any such direction in such manner as the local authority shall determine, and in the case of any such communication which is made otherwise than by publication in the *Gazette*, the clerk of the council which made the by-law shall notify the Minister when such communication has been made and of the date thereof.

[Act No. 31 of 1971, Sch.]

206. Admissibility in evidence of signed copy of by-laws and certificates of clerks

(1) A copy of every by-law which has been approved by the Minister, signed or purporting to be signed by the clerk of the local authority which made it and approved by the Minister, shall be kept by the clerk and shall be admissible in evidence without further proof and shall be evidence of the due making of such by-law and of the contents thereof.

(2) The production of a printed copy of any by-laws purporting to be made by a local authority upon which is endorsed a certificate purporting to be signed by the clerk of the local authority stating—

- (a) that the by-laws were made by that local authority;
- (b) that the copy is a true copy of the by-laws;
- (c) that on a specified date the by-laws were approved by the Minister; and
- (d) the date from which the by-laws have effect,

shall be *prima facie* evidence of the facts stated in the certificate without proof of the handwriting or official position of the person purporting to sign the certificate.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2.]

207. Deposit, inspection and supply of copies of by-laws

A copy of every by-law which has been approved by the Minister shall be deposited at the offices of the local authority which made the by-law and shall at all reasonable hours be open to public inspection without payment, and the local authority shall on application of any person furnish to such person a copy thereof for which, in its discretion, the local authority may make a charge of such amount not exceeding five shillings, as it may determine.

208. Prosecution for contravention of by-laws

All offences against any by-law made under this Act and in force in any part of the area of a local authority shall be deemed to be offences against this Act, and in any prosecution for contravention of any such by-law, it shall be sufficient to allege that the accused is guilty of contravening a by-law, the number and title of which shall be stated, of the local authority concerned and to allege the act constituting such contravention.

209. Order to affix to premises notice of conviction for sale, etc., of unsound food

(1) Where any person is convicted a second or subsequent time within a period of twelve months of having contravened any by-law by selling or exposing

for sale or depositing for the purpose of sale or preparation for sale, or of having in his possession, any animal or article (whether solid) intended for human consumption which is diseased or unwholesome or unfit for human consumption, the court, if it finds that such person knowingly or wilfully committed both or all the offences, may, in addition to inflicting any other punishment, order that a notice of the facts be affixed, in such form and manner and for such period, not exceeding twenty-one days as may be specified in the order, to any premises occupied by such person, and may further order such person to pay the costs of such affixing.

(2) If any person obstructs the fixing of any such notice, or removes, defaces or conceals such notice while affixed during the said period, he shall be guilty of an offence and shall, for each such offence, be liable to a fine not exceeding two hundred shillings.

210. Power to make adoptive by-laws

(1) The Minister may by order—

- (a) make adoptive by-laws in respect of any matter concerning which a local authority has power to make by-laws under this Act or any other written law; and
- (b) specify the extent to which those by-laws may be adopted by any local authority, or class of local authorities.

(2) Subject to this section and any order made under subsection (1), a local authority may adopt any such by-laws as aforesaid which relate to any of its functions.

(3) Before adopting any such by-laws, the local authority shall give notice of its intention so to do, and section 203(1) shall apply in respect of such notice as the same applies in respect of the notice under that section.

(4) The adoption of any such by-laws by a local authority shall be by resolution of the local authority, which resolution shall, in addition, state the date of the coming into operation thereof.

(5) The resolution of a local authority adopting any by-law under this section shall be published in the *Gazette*:

Provided that the Minister may exempt any county council or council of county division from compliance with the foregoing provisions of this subsection generally in respect of all by-laws adopted by it or in respect of any class of by-laws or particular by-laws so adopted.

(6) Section 205(3) shall apply with respect to by-laws adopted by a local authority under this section in like manner as respects by-laws referred to in that section.

(7) By-laws adopted by a local authority under this section shall come into operation on the date of publication in the *Gazette* of the resolution adopting the same or where the local authority concerned is exempted from publishing the resolution, on the date on which the clerk of the local authority notifies the Minister that the adopted by-laws have been communicated to the inhabitants under subsection (6) or, in either case, on such other day as may be expressed in the resolution adopting the by-laws as being the date on which the by-laws are to come into operation.

(8) By-laws adopted by a local authority under this section—

- (a) shall have the same force and effect as if made by the local authority;
- (b) may be revoked by resolution of the local authority, to which resolution subsection (5) shall, *mutatis mutandis*, apply, and the substance and effect of any such resolution shall be communicated to the inhabitants in like manner as is provided in section 205(3) and such revocation shall take effect from the date of publication of the resolution in the *Gazette* or, if the local authority is exempted from so publishing the resolution, from the date on which the clerk of the local authority notifies the Minister that the resolution has been communicated to the inhabitants as aforesaid; and
- (c) may be amended by the adoption of an amendment made to them by the Minister, but unless the local authority concerned adopts any such amendment under this section, such amendment shall not be effective within its area.

211. Councils of county divisions may enforce by-laws of county councils

The council of a county division shall have power to enforce by-laws made by the council of the county in which such county division is situate, which are for the time being in force in such county division or any part thereof.

PART XV – FINANCIAL PROVISIONS

212. Annual and supplementary estimates

(1) Not less than fourteen days before the commencement of every financial year, the finance committee of every local authority shall present to the local authority detailed estimates of its income and expenditure during the forthcoming financial year, and the local authority, that is not a municipality, shall approve the same with or without amendments; in the case of a municipality the council shall either approve the same without amendments, or shall remit the estimates to the finance committee, for resubmission thereto by that committee:

Provided that in the case of the City Council of Nairobi—

- (i) the estimates shall be passed at a meeting of the council especially convened for the purpose, by a majority;
- (ii) the estimates shall not be amended without prior consultation with the finance committee in reference to the proposed amendments.

(2) As soon as may be after its approval of its estimates, but not later than such date (if any) as may be determined by the local authority to which it is hereby required to forward its estimates—

- (a) the council of every county division shall forward its estimates to the council of the county in which such county division is situate;
- (b) *deleted by Act No. 11 of 1984, Sch.*
- (c) *deleted by Act No. 11 of 1984, Sch.*

(3) *Deleted by Act No. 11 of 1984, Sch.*

(4) As soon as may be after approval of its own estimates, but not later than such date (if any) as the Minister may fix as the last date for the submission of estimates of any particular local authority or class of local authorities, every

municipal council and county council shall submit copies of its own estimates to the Minister and, in the case of a county council, at the same time submit copies of all estimates forwarded to it under subsection (2)(a) together with its recommendations thereon.

(5) Every municipal council and county council shall submit to the Provincial Commissioner of the Province copies of any estimates submitted to the Minister under subsection (4) and the Provincial Commissioner may thereupon make any recommendations to the Minister with respect to such estimates.

(6) Where in any financial year it appears to a local authority that—

- (a) expenditure for a special purpose is desirable; and
- (b) no or insufficient provision has been made for it in the annual estimates for that year,

such local authority may prepare or cause to be prepared, and may approve, supplementary estimates, and subsections (2), (3) and (4) shall apply *mutatis mutandis* thereto and in respect thereof.

(7) All annual, revised and supplementary estimates shall be prepared in such form and contain such detailed information as the Minister may require.

(8) A summary of all estimates prepared by the local authority may be published by the local authority in a local newspaper (if any) circulating in its area, or in such other manner as the local authority may direct.

(9) The clerk of every local authority shall, on application made not earlier than twenty-one days before the meeting of the local authority to consider its annual or supplementary estimates for the purpose of approval thereof, deliver to any inhabitant of the area of jurisdiction of such local authority a copy of such estimates on payment of such fee, if any, as may be prescribed by resolution of such local authority.

[L.N. 634/1963, First Sch., L.N. 191/1964, Sch., Act No. 11 of 1984, Sch.]

213. Minister's powers respecting estimates

(1) The Minister shall within sixty days consider the annual or supplementary estimates as submitted and may either approve or disallow them as a whole or disallow one or more of the items contained therein, and may make such modifications or conditions as he thinks fit.

(2) Where the Minister approves any estimates or any item or items in any estimates subject to any condition, then, until such condition is satisfied by the local authority concerned, those estimates or that item or items, as the case may be, shall for the purposes of this section be deemed to be disallowed.

(3) The Minister may from time to time exempt any local authority or class of local authorities from the requirement to obtain his approval of their estimates.

(4) A summary of all estimates approved by the Minister under this section, and of all estimates which did not require such approval, shall be recorded in the minutes of the local authority which prepared them or caused them to be prepared.

(5) For the purposes of this Act the expression “**approved estimates**” means

- (a) in the case of a local authority which is exempt under this section from the requirement to obtain the Minister's approval of its estimates, the estimates of such local authority; and
- (b) in the case of all other local authorities, the estimates (other than any estimates for the time being deemed to be disallowed by virtue of subsection (2) approved by the Minister under this section with such modifications (if any) subject to which such approval was given but excluding from such estimates such parts (if any), and any item or items, disallowed by the Minister, and any item or items for the time being deemed to be disallowed under subsection (2).

[L.N. 191/1964, Sch., Act No. 9 of 2000, s. 81, Act No. 11 of 2000, s. 85.]

214. Expenditure to be in accordance with estimates

(1) Subject to subsection (2), no local authority shall incur any expenditure which is not included in the approved estimates of such local authority:

Provided that the Minister's approval under section 222 of the raising of any loan for any specified capital expenditure shall be deemed to include approval of that capital expenditure.

(2) If the annual estimates of a local authority are not approved or disallowed by the Minister before the commencement of the financial year for which they are prepared, such local authority may, until the approval or disallowance, continue to incur expenditure on—

- (a) personal emoluments, excluding special emoluments;
- (b) other recurrent charges,

at monthly rates not exceeding those provided in the approved estimates of the preceding financial year.

[L.N. 191/1964, Sch., Act No. 13 of 1970, s. 8.]

215. General and special expenses

(1) The expenses incurred by every local authority in the discharge of its functions shall be divided into general expenses and special expenses.

(2) All expenses incurred by a local authority not declared by the Minister to be special expenses shall be general expenses.

(3) The Minister, on the application of a local authority which has incurred, or proposes to incur, for the purposes of any of its functions, expenses in respect of some particular area or areas within its area of jurisdiction over and above expenditure common to the whole of the area of jurisdiction of such local authority, may declare such expenses to be special expenses separately chargeable on such area or areas as the Minister may specify (in this Act referred to as contributory places) and, if the said expenses are declared to be chargeable on more than one contributory place, the Minister may apportion the expenses amongst the contributory places.

(4) The Minister may, before declaring any expenses to be special expenses, require that such conditions as he may, in all the circumstances of the case, see fit to impose shall first be satisfied.

[L.N. 191/1964, Sch.]

216. General rate fund, county fund and township rate fund

(1) There shall be a fund, to be known as the general rate fund, for each and every municipality, and a fund, to be known as the county fund, for each and every county, and a fund, to be known as the township rate fund, for each and every township.

(2) All receipts, including the rents and profits of all land owned by a municipal council, a county council or a town council shall be carried to the general rate fund, or the county fund, or the township rate fund, as the case may be, and all liabilities falling to be discharged by each of the said local authorities shall be discharged out of the general rate fund, or the county fund or the township rate fund, as the case may be.

(3) For the purposes of this section—

- (a) *deleted by Act No. 11 of 1984, Sch.*
- (b) the receipts and liabilities of a county council shall include the receipts and liabilities of—
 - (i) the county council; and
 - (ii) the council of any county division situate within that county.
- (iii) *deleted by Act No. 11 of 1984, Sch.*
- (c) *deleted by Act No. 11 of 1984, Sch.*

(4) Separate accounts shall be kept of all receipts carried to and payments made out of the general rate fund or the county fund or the township rate fund, as the case may be, for the purposes of the functions of each separate local authority, including each council of a county division—

- (a) in respect of general expenses; and
- (b) in respect of each class of special expenses, except that where, as respects any two or more classes of special expenses, the contributory place is the same, one separate account may be kept as respects all expenses of both or all those classes.

[L.N. 634/1963, First Sch., Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

217. Payments to and out of funds

(1) All payments to and out of the general rate fund or the county fund or the township rate fund shall be made by the chief financial officer.

(2) Every municipal council, county council or town council shall make standing orders regulating the making of payments out of the general rate fund or the county fund or township rate fund, as the case may be, in respect of—

- (a) its own general and special expenses; and
- (b) in the case of county councils the general and special expenses of the council of every county division within the county.
- (c) *deleted by Act No. 11 of 1984, Sch.*

[Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

218. General reserve funds

(1) Every local authority shall create an adequate general reserve fund for the purpose of providing a sufficient working balance and for meeting unforeseen contingencies.

(2) Every local authority may from time to time, and shall, if so directed by the Minister, make provision, in levying any rate, for increasing the amount of its general reserve fund.

(3) For the purpose of section 216, any direction given by the Minister under subsection (2) shall be a liability falling to be discharged out of the general rate fund, the county fund or the township rate fund, as the case may be, for which provision is not otherwise made.

(4) The surplus balance, or the deficit on the general revenue account of a local authority at the end of the financial year shall be transferred to, or met from the general reserve fund, as the case may be.

(5) The moneys in the general reserve fund shall, in so far as they are not immediately required as a working balance or for contingencies, be temporarily invested or deposited at interest in such manner as the Minister may from time to time approve for local authorities generally, or for particular classes of local authorities, or for a particular local authority.

[L.N. 634/1963, First Sch., L.N. 191/1964, Sch.]

219. Renewals funds

(1) A local authority may and, if so directed by the Minister, shall, create adequate renewals funds to provide for the entire or partial replacement of some or all of its assets, which, owing to depreciation or other cause, will require at some future date to be replaced.

(2) Every such local authority shall pay annually into the renewals funds (if any) created by it under subsection (1), such contributions as may be necessary, and, except as is permitted by subsection (4), no such moneys or any part thereof shall be used either permanently or temporarily for any purpose other than the purposes for which they have contributed.

(3) All interest or other sums derived from any such renewals fund shall be paid into and become part of such fund.

(4) Pending the application of moneys in any renewals fund to the purposes for which such fund has been established the moneys in the fund shall (unless applied in any manner authorised by any written law) be invested in trustee securities or in such manner as may be approved by the Minister.

[L.N. 191/1964, Sch.]

220. Capital funds

(1) A municipal council, county council or town council may, in accordance with rules made by it with the approval of the Minister, establish a capital fund for the purpose of defraying capital expenditure and reducing outstanding debts.

(2) Rules made under subsection (1) may make provision for any matters incidental to the establishment and administration of such a capital fund.

(3) Every council which has established a capital fund shall keep a separate account of the transactions relating to that fund, and Part XVII shall apply to every such account.

[L.N. 191/1964, Sch., Act No. 31 of 1971, Sch.]

221. Consolidated loans funds

(1) A municipal council, county council or town council may, in accordance with rules made by it with the approval of the Minister, establish a consolidated loans fund for the purpose of centralising all or part of its loan transactions.

(2) Rules made under subsection (1) may make provision for any matter incidental to the establishment and administration of such a consolidated loans fund.

(3) Notwithstanding anything contained in any written law a council may pay into the consolidated loans fund established by it under this section any moneys forming part of any provident, superannuation, reserve, capital, capital reserve, renewals, repairs, depreciation, insurance, contingency or other fund of such council (hereinafter referred to as “the lending fund”) and not for the time being required, and such moneys shall be deemed to be moneys borrowed by such local authority and may be used accordingly subject to the following conditions—

- (a) the moneys so paid into the consolidated loans fund shall be repaid to the lending fund as and when required for meeting the obligations for which the lending fund was established; and
- (b) there shall be paid out of the consolidated loans fund to the lending fund an amount equal to the interest on any moneys so paid into the consolidated loans fund and for the time being not repaid, at such rate per centum per annum as may be determined by such council to be equal as nearly as may be to the average rate of interest payable by such council on its current borrowings.

(4) Every council shall keep a separate account of the transactions of the consolidated loans fund established by it under this section and Part XVII shall apply to every such account.

[L.N. 191/1964, Sch., Act No. 31 of 1971, Sch.]

PART XVI – LOANS OF LOCAL AUTHORITIES

222. Borrowing powers

(1) A local authority may from time to time, by a majority of the members of such local authority present at a meeting at which the majority voting shall not be less than a majority of the whole local authority, raise loans for such purposes relating to its functions, from such sources, in such amounts, and on such conditions, as the Minister may approve.

(2) Such loans shall be charged indifferently on all rates and revenues of such local authority and all securities therefor shall rank equally without any priority:

Provided that nothing in this subsection contained shall affect any priority existing at, or any right to priority conferred by a security created before, the date of commencement of this Act.

[L.N. 86/1964, o. 2.]

223. Issues of stocks or bonds

(1) A municipal council, county council or town council may borrow by means of issues of bonds or stock or both, and may for that purpose create, issue, redeem and deal with stocks and bonds in such manner as may be prescribed by rules made under this section.

(2) The Minister for the time being responsible for Finance may make rules for the matters specified in the preceding subsection, and without prejudice to the generality of the foregoing, and notwithstanding the provisions of any other written law, such rules may provide for the redemption of any loan so raised, the exemption from stamp duty of any document given, executed or issued in connection with any of the matters specified in the preceding subsection, and for the disposal of unclaimed dividends.

(3) Every loan raised by means of the issue of stock or bonds or both shall be redeemed within a period of fifty years or such lesser period as the Minister for the time being responsible for Finance may, by rules under this section, prescribe.

(4) Every municipal, county council or town council which raises a loan by means of the issue of stock or bonds or both shall establish a sinking fund to which it shall make annual contributions at such rates as may be determined from time to time by the Minister for the time being responsible for Finance.

[L.N. 634/1963, Third Sch., Act No. 31 of 1971, Sch.]

224. Appointment of receiver

(1) If at any time any principal money or interest due under any loan raised by a local authority remains unpaid for a period of two months after demand therefor in writing has been lodged with the clerk of the local authority by the person entitled thereto or by his duly authorised representative, the person entitled thereto or his representative may, without prejudice to any other remedy, apply to the High Court for the appointment of a receiver of the rates and revenues of such local authority, or in the case of the City Council of Nairobi, the land and revenues on which the loan is secured.

(2) On the hearing of any such application the Court may make such order and give such directions as under the circumstances shall seem expedient for the raising and payment of the moneys due and, in particular, the Court may order that a rate or rates of such amount or amounts as it may fix be levied upon all property within the area of such local authority in respect of which such local authority is empowered to levy a rate, and such rate so ordered shall have the same incidence as any rate imposed by such local authority and may be enforced in like manner, and the proceeds thereof shall be paid into Court or otherwise as the Court shall direct.

(3) In the case of a loan made to a local authority by the Local Government Loans Authority under the Local Government Loans Act (Cap. 270), the powers exercisable under this section shall be in addition to and not in substitution for or in derogation of the powers conferred by that Act in respect of the non-payment of any such loan or interest thereon or money due on account thereof.

[L.N. 634/1963, Third Sch.]

225. Temporary borrowing

(1) A local authority may, from time to time, with the consent of the Minister, borrow by way of temporary loan or overdraft from the Government, a registered bank or from any other source, any sums which it may temporarily require—

- (a) for the purpose of defraying, pending the raising of a loan under section 222 which the local authority has been authorised to raise, expenses intended to be defrayed by means of the loan; or
- (b) any sums which it may temporarily require for the proper carrying out of the provisions of this Act.

(2) All moneys so advanced, and the interest thereon (if any), shall constitute a liability of the local authority concerned and shall be charged on the rates and revenues of such local authority; and the provisions of section 222 for the security of such advances and for the recovery thereof shall apply in all respects as if such advances were loans raised under that section.

(3) Where money is borrowed pursuant to subsection (1)(a) and subsequently such a loan as is mentioned in that paragraph is raised, then for the purpose for the provisions of this Act regulating the repayment of that loan, the loan shall, to the extent of the sum borrowed under subsection (1)(a), be deemed to have been raised at the time when the borrowing under the paragraph took place.

[L.N. 86/1964, o. 3.]

226. Lenders relieved from certain inquiries

A person lending money to a local authority shall not be bound to inquire whether the borrowing of the money is or was legal or regular or whether the money raised was properly applied, and shall not be prejudiced by any illegality or irregularity in the matters aforesaid or by the misapplication or non-application of any such money.

PART XVII – ACCOUNTS AND AUDT**227. Financial year**

The financial year of every local authority shall be the year commencing on the first day of July and ending on the thirtieth day of June in the following year.

[Act No. 18 of 1986, Sch.]

228. Accounts

(1) Every local authority shall cause proper books and accounts to be kept and true and regular records to be entered therein of all transactions of the local authority.

(2) Such accounts shall be kept so as to secure that sums raised by rates or otherwise or other sums received by the local authority are not applied to purposes to which such sums are not properly applicable or that sums so raised or received for specific purposes are not applied to other purposes, and the capital moneys are not applied to any other than a purpose to which capital moneys are properly applicable.

(3) Every local authority shall cause its accounts (including those relating to funds or property held by the local authority in trust) to be kept in such manner as to show in respect of the financial year to which accounts relate—

- (a) all receipts and payments of the local authority during the year; and
- (b) any capital moneys due but not paid to or by the local authority in that year,

and, where the local authority is a municipal council, county council or town council, it shall cause such accounts to be kept in such manner as to show, in addition, in respect of the said financial year, any revenue and expenditure relating to revenue in respect of that year not received or paid in that year.

(4) The Minister may from time to time make rules for the keeping of accounts by any local authority or class of local authority.

[L.N. 634/1963, s. 4, L.N. 148/1964, Sch., Act No. 31 of 1971, Sch.]

229. Balancing of accounts

The accounts required to be kept by a local authority shall be balanced for any financial year not later than 31st December in the year following the year of account or such later date as in any particular case the Minister may determine.

[L.N. 634/1963, s. 4, L.N. 148/1964, Sch., L.N. 36/1970, Sch., Act No. 18 of 1986, Sch., Act No. 12 of 2003, Third Sch.]

230. Audit report

As soon as may be after the receipt by a local authority of a report on the examination and audit of the accounts of the local authority under the Public Audit Act, 2003 (No. 12 of 2003), such report, together with copies of the accounts to which such report relates—

- (a) shall be laid before, and considered by the local authority at its first convenient ordinary meeting; and
- (b) shall be made available for supply to any inhabitant of the area of the local authority who makes application therefore and who pays in respect thereof such fee, if any, as may be prescribed by the Minister.

[L.N. 634/1963, First Sch., L.N. 22/1984, Sch., L.N. 36/1970, Sch., Act No. 12 of 2003, Third Sch.]

231. Appointment of inspectors

(1) The Minister may from time to time appoint one or more persons as Local Government Inspectors to conduct extraordinary inspections and examinations of the accounts and records of local authorities and an inspector so appointed may institute such inspection or examination (hereinafter referred to as an extraordinary inspection) into any aspect of the accounts and records of any local authority that he deems necessary.

(2) Where an inspector institutes an extraordinary inspection he shall notify the local authority concerned and the Controller and Auditor-General of the institution of such inspection.

(3) At the conclusion of an extraordinary inspection, the inspector shall prepare and sign a report of his findings and furnish one copy to the Controller and Auditor-General and one copy to the Minister who shall report to the local

authority on any matter which in his opinion should be drawn to their attention to enable them to comply with any law or lawful instruction or to enable the administration of the local authority to be carried out in a secure and efficient manner.

[L.N. 634/1963, First Sch., L.N. 36/1970, Sch.]

232. Deleted by L.N. 36/1970, Sch.

[L.N. 148/1964, Sch.]

233. Deleted by L.N. 36/1970, Sch.

234. Powers of Minister

(1) The Minister may issue to any local authority such instructions as he may think fit arising out of a report under the Public Audit Act, 2003 (No. 12 of 2003), and it shall be the duty of such local authority to comply with any such instructions.

(2) Whenever it appears to the Minister that the accounts of a local authority have not been prepared in such a manner as to admit of their proper audit under the Public Audit Act, 2003 (No. 12 of 2003), he may appoint any person to assist the local authority in the due preparation of the accounts for that purpose, and the local authority shall pay to the Minister such fee as the Minister may determine in respect of the services of the persons so appointed.

[L.N. 148/1964, Sch., L.N. 36/1970, Sch., L.N. 22/1984, Sch., Act No. 12 of 2003, Third Sch.]

235. Deleted by L.N. 36/1970, Sch.

236. Powers and duties respecting surcharges

(1) It shall be the duty of an inspector, upon any extraordinary inspection—

- (a) to disallow every item of account which is contrary to the law or to any direction lawfully given to a local authority;
- (b) to surcharge the amount of any expenditure so disallowed upon the person authorising the expenditure;
- (c) to surcharge any sum which has not been duly brought to account upon the person by whom that sum ought to have been brought into account;
- (d) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred; and
- (e) to certify the amount due from any person upon whom he has made any such surcharge:

Provided that no item of expenditure by a local authority shall be so disallowed if such expenditure has been lawfully sanctioned by the Minister prior to the commencement of the audit of accounts for the financial year in which such expenditure arose.

(2) Any loss represented by a charge for interest or any loss of interest shall be deemed to be a loss within the meaning of this section, if it arises from failure through wilful neglect or wilful default to levy or collect such rates as are

necessary to cover the expenditure of the local authority for any financial year (including any expenditure incurred in any previous year and not covered by rates previously levied), or to collect other revenues.

(3) For the purposes of this Part of this Act, a member of a local authority is deemed to be responsible for incurring or authorizing expenditure if, being present when the resolution of the local authority or committee thereof incurring or authorising the expenditure was passed—

- (a) he voted in favour of it; or
- (b) he did not cause his vote against the resolution to be recorded in the minutes.

(4) No person shall be freed from liability to surcharge under this section by reason only of the fact that, in the matter giving rise to such liability, he acted in pursuance of any order or resolution of the local authority, or of any committee thereof, if such order or resolution was contrary to law.

[Act No. 13 of 1970, s. 9, L.N. 36/1970, Sch.]

237. Application for written reasons for inspector's decision

The inspector shall, on the application of any person who is aggrieved by a disallowance or surcharge made by the inspector, state in writing the reasons for his decision.

[L.N. 36/1970, Sch.]

238. Appeals against decision of inspector

(1) Any person who is aggrieved by a disallowance or surcharge made by an inspector, may, within thirty days of that disallowance or surcharge, where the disallowance or surcharge relates to an amount exceeding ten thousand shillings, appeal to the High Court, and may in any other case within the like period appeal either to the High Court or to the Minister.

(2) The Court or the Minister on such an appeal shall have power to confirm, vary or quash the decision of the inspector, and to remit the case to the inspector with such directions as the Court or Minister thinks fit for giving effect to the decision on appeal, and if the decision of the inspector is quashed or is varied so as to reduce the amount of the surcharge to one thousand shillings or less, the appellant shall not be subject in respect of that surcharge to the disqualification imposed by paragraph 3(c) of the Fifth Schedule.

(3) Where an appeal is made to the Minister under this section he may at any stage of the proceedings, and shall, if so directed by the High Court, state in the form of a special case for the opinion of the High Court any question of law arising in course of the appeal, but save as aforesaid the decision of the Minister shall be final.

(4) Where an appeal is made to the Minister the appellant shall be entitled to a personal hearing by a person appointed by the Minister for that purpose.

[L.N. 634/1963, r. 4, L.N. 148/1964, Sch., L.N. 36/1970, Sch.]

239. Applications for relief

(1) In the case of a surcharge, the person surcharged may, whether or not he appeals under section 238, apply to the Court or the Minister to whom he

appeals, or, if he does not appeal, to the Minister, for a declaration that in relation to the subject matter of the surcharge he acted reasonably or in the belief that his action was authorised by law, and the Court or Minister, if satisfied that there is proper ground for doing so, may make a declaration to that effect.

(2) Where such a declaration is made the person surcharged, if by reason of the surcharge he is subject to the disqualification imposed by paragraph 3(c) of the Fifth Schedule, shall not be subject to that disqualification, and the Court or Minister may, if satisfied that the person surcharged ought fairly to be excused, relieve him either wholly or in part from personal liability in respect of the surcharge, and the decision of the Court or Minister under this section shall be final.

[L.N. 634/1964, r. 4, L.N. 148/1964, Sch., L.N. 36/1970, Sch.]

240. Payment and recovery of sums certified to be due

(1) Every sum certified by an inspector to be due from a person shall be paid by that person to the local authority within thirty days after it has been so certified, or, if an appeal or application with respect to that sum has been made, within fourteen days after the appeal or application is finally disposed of, abandoned or fails by reason of the non-prosecution thereof.

(2) The inspector shall take all necessary steps to recover from the person surcharged in any competent court any such sum as aforesaid which is not so paid.

(3) In any proceedings for the recovery of any such sum the inspector's certificate shall be conclusive evidence that the sum is due and payable by the person charged.

(4) On the production of such certificate the Court shall give a decree for the sum sued for, and every such decree shall have the effect of a decree under the Civil Procedure Act (Cap. 21) and any rules made thereunder.

241. Expenses of inspector

(1) Any expenses incurred by an inspector in the defence of any allowance, disallowance or surcharge made by him shall, so far as not recovered from any other party and except as may otherwise be ordered by the High Court or the Minister, as the case may be, be reimbursed to him out of the fund to which the accounts subject to his inspection relates, and the High Court or Minister may make such order as may seem fit in regard to the payment out of that fund of the expenses incurred by the appellant or applicant or any other party to the proceedings.

(2) The costs and expenses incurred by an inspector in any legal proceedings taken by him under section 240(2) shall, so far as not recovered from any other source, be paid out of the fund to which the accounts subject to his inspection relates.

[L.N. 634/1963, r.4, L.N. 148/1964, Sch., L.N. 36/1970, Sch.]

242. Power of inspector to take evidence

(1) For the purposes of his powers and duties under this Part the inspector may hear and receive evidence and examine witnesses upon oath or affirmation (which oath or affirmation the inspector is hereby empowered to administer), and

may, by summons under his hand, require all such persons 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 local authority or of any committee thereof) as he may deem necessary for such examination.

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

- (a) neglects or refuses to comply with 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 fully and satisfactorily, to the best of his knowledge and belief, all questions put to him; or
- (d) knowingly and wilfully gives any evidence which is untrue in any material particular,

shall be guilty of an offence and shall be liable, for every such neglect or refusal, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months.

[Act No. 13 of 1970, s. 10.]

242A. Deleted by L.N. 36 of 1970, Sch.

[Act No. 11 of 1967, s. 9.]

PART XVIII – REPORTS, RETURNS AND INQUIRIES

243. Reports to be rendered by certain local authorities

(1) It shall be the duty of every municipal council, county council and town council to render to the Minister not later than 31st March in each year, or such later date as the Minister may agree, a report of its work and of the local government affairs of its area for the preceding financial year.

(2) Such report shall be rendered in such form as may be directed by the Minister, and shall, be accompanied by such statistics as the Minister may require.

(3) A copy of such report shall be delivered by the clerk of the local authority rendering the report—

- (a) free of charge to every councillor of such local authority; and
- (b) to any inhabitant of the area of such local authority, on application and on payment of the fee (if any) prescribed by resolution of such local authority.

[L.N. 634/1963, r. 4, L.N. 148/1964, Sch., Act No. 31 of 1971, Sch.]

244. Minutes, etc., to be furnished to Minister

(1) It shall be the duty of every municipal council, county council and town council and of any other local authority which is required by the Minister so to do, to furnish to the Minister and to such other persons as the Minister may specify a certified copy of any records or minutes of its proceedings and of the

proceedings of any committee appointed by it, and of a record of any of its accounts, and such reports, statistics and documents as the Minister may from time to time require.

(2) The minutes of the proceedings of each meeting of a local authority or of any committee thereof which are required to be furnished to the Minister as aforesaid shall be forwarded as soon as possible after the same have been confirmed as required by or under this Act.

[L.N. 634/1963, r. 4, L.N. 148/1964, Sch., Act No. 31 of 1971, Sch.]

245. Investigations, researches and inquiries

(1) The Minister may at any time appoint any public officer to conduct such investigations, researches and inquiries as the Minister may deem necessary for any purpose of this Act or for assisting any local authority in the carrying out of its functions under this Act or any other written law and generally for promoting the efficiency of local government; and all necessary facilities shall be given by local authorities to any officer conducting any such investigation, research or inquiry.

(2) For the purpose of any such investigation, research or inquiry, the person appointed to conduct the same may by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any books, plans and documents in his custody or under his control which relate to any matter in question in such investigation, research or inquiry, and may take evidence on oath, and for that purpose administer oaths, or may instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined:

Provided that no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him.

(3) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under subsection (2) or to give evidence, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by the person appointed under subsection (1) or who wilfully alters, suppresses, conceals, destroys, or refuses to produce, any book, plan or other document which he may be required to produce for the purposes of this section, shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

(4) The costs and expenses of any investigation, research or inquiry conducted under this section (including expenses paid to any person referred to in the proviso to subsection (2) or such proportion thereof as the Minister may determine, shall, if the Minister so directs, be paid by such local authority or local authorities being a local authority or local authorities respecting which or any function of which such investigation, research or inquiry was conducted, as the Minister shall determine and, where there is more than one such local authority, in such proportions as the Minister shall specify, and any amount directed under this subsection to be paid by a local authority shall be a civil debt recoverable summarily.

[L.N. 634/1963, First Sch., L.N. 148/1964, Sch.]

245A. Deleted by Act No. 21 of 1966, First Sch.

[L.N. 105/1965, o. 8.]

PART XIX – POWERS ARISING ON DEFAULT OF LOCAL AUTHORITIES

246. Power to direct performance of duties and in default to perform same

(1) The Minister may, after giving reasonable notice of his intention so to do, direct any local authority to perform within such time and in such manner as he shall specify, any of the duties imposed upon it by or under this Act or any other written law, and if the local authority fails to comply the Minister may himself perform the duties in question, and shall be entitled to recover from the local authority, the expenses incurred by him in so doing; and for defraying such expenses the Minister may also levy a rate under the Rating Act as if he were a rating authority or local authority for the purposes of that Act.

(2) The council of a county shall, in respect of the council of every county division in such county, have all and may exercise any of the powers of the Minister under subsection (1) and, in exercise of any such power by a local authority that that subsection shall be construed as if there were substituted for the reference to the Minister therein a reference to the local authority exercising such power.

(3) An urban council may appeal to the Minister against any notice of direction given to, or the exercise of any other power contained in subsection (2) against it by the council of the county, and upon any such appeal the Minister may—

- (a) confirm with or without modifications, or cancel, the notice or direction appealed against;
- (b) direct the council of the county to specify, before any or any further powers contained in subsection (1) are exercised by it, what action or further action it proposes to take in exercise of such powers in the event of default to comply with the direction given or to be given by it to the local authority appealing, and the proposed manner in which such is to be taken;
- (c) either confirm the taking of such action in the manner specified or in such other manner as the Minister may direct, or direct that such action shall not be exercised, or shall be taken or exercised only under the supervision, and subject to the directions, of the Minister or such other person as the Minister may specify; and
- (d) such other directions as in his opinion the justice of the case requires,

and any such confirmation, cancellation and direction shall be final and binding on both local authorities concerned.

[Act No. 11 of 1984, Sch.]

247. Power to require submission of proposals, and exercise by Minister of powers in default

(1) The Minister may require any local authority to submit to him proposals for the exercise by it of any power conferred on it by law.

(2) If the proposals, or the proposals with agreed modifications, are acceptable to the Minister, he may by order require the local authority to exercise the power in question in the manner described in the proposals or in the proposal as modified, as the case may be.

(3) If the local authority fails to make proposals, or if the local authority does not agree to its proposals being modified in the manner required by the Minister, the Minister may by order require the local authority to exercise the power in such manner and in such time as he shall therein prescribe.

(4) If the local authority fails to comply with an order made under subsection (2) or subsection (3), the Minister may himself exercise the power in such manner as he thinks fit and shall be entitled to recover from the local authority the expenses incurred by him in so doing, and for defraying such expenses the Minister may also levy a rate under the Rating Act (Cap. 267), as if he were a rating authority or a local authority for the purpose of that Act.

(5) Section 34 of the Interpretation and General Provisions Act (Cap. 2) shall apply to an order made under this section as though it were a rule or regulation within the meaning of that section.

248. Power to give directions to local authorities

The Minister may give to any local authority such directions as he thinks necessary as a result of investigations, researches or inquiries under section 245.

249. Power to reduce grants

(1) If at any time it appears to the Minister that the revenues of the council of a township, county or municipality are not being properly used in the best interests of the township, county or municipality, as the case may be, as a whole, or that the administration of the affairs of such a council is wasteful or inefficient, or that such a council has failed to act in conformity with the provisions of this Act, the Minister may, after such inquiry (at which inquiry the council shall be entitled to be heard) as he may deem necessary, reduce any contribution or other grant payable by the Government for the next succeeding financial year by such amount as he shall determine.

(2) Any such reduction as aforesaid shall be notified to the council concerned not later than one month after the commencement of the financial year in respect of which such grant is payable.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 31 of 1971, Sch.]

250. Default powers to reduce grants or transfer functions respecting county divisions and local council areas

(1) If it appears to the Minister, upon representations made to him by a county council or otherwise, that the revenues of an urban council in that county are not being properly used in the best interests of the county division, or that the administration of the affairs of the council concerned is wasteful or inefficient, or that the council concerned has failed to act in accordance with the provisions of this Act, the Minister may, after such inquiry as he may deem necessary, at which inquiry the council concerned shall be entitled to be heard—

- (a) reduce any contribution or other grant payable to or for that council;
- (b) transfer to the county council all or any of the functions of the urban council either for a definite period or until he may otherwise direct.

(2) Where any functions are transferred under subsection (1), the expenses incurred by the council to which the functions are transferred shall, except in so far as they may be met by any grant made by such council, be a debt due to such council from the council from which the functions are transferred, and shall be defrayed as general expenses of the council from which the functions were transferred or as special expenses of such council or partly as general expenses and partly as such special expenses as the council to which such functions are transferred may direct.

[L.N. 634 of 1963, First Sch., L.N. 34/1965, o. 2, Act No. 11 of 1984, s. 26.]

251. Recovery by deduction from grants of debts due from local authorities

Where the Minister is satisfied that a decree for the payment of money has been made by a competent court against any local authority in favour of the Government or any person, or that for other good and sufficient reason money is due from and payable by a local authority to the Government or any person, and the local authority refuses or fails to make due payment, the Minister may order that such payment be made from funds of the local authority and if the local authority continues to refuse to make due payment he may deduct from any contribution or other grant payable to or for such local authority the amount of the sum due and payable and pay the same to the Government or such person.

[L.N. 634/1963, First Sch., L.N. 34/1965, o. 2, Act No. 8 of 1997.]

251A. Recovery of debts due under loans provided or guaranteed by Government, etc.

(1) Where a local authority fails to make payment of any money due and payable under a loan for financing an income generating facility, the Minister for Finance in consultation with the Minister, may, where—

- (a) such loan is provided or guaranteed by the Government; or
- (b) where the loan agreement so provides,

appoint a collection agent to receive such payment as may be made by the area residents for the services provided by the facility and to remit the monies so received to the Government in satisfaction of the amount due and payable under the said loan.

(2) The Minister for Finance may, in regulations prescribe—

- (a) the requirements for appointment of collection agents under subsection (1); and
- (b) the terms and conditions of service of such agents.

(3) In this section, the expression “**income-generating facility**” means any facility, including water or sewerage works, the provision of the services for which the local authority receives payment.

[Act No. 8 of 1997, s. 52]

252. Removal of members, appointment of commission and winding-up of local authorities for certain reasons

(1) If at any time it appears to the Minister that—

- (a) a period of three months or more has elapsed between one meeting of a municipal council and the next or a period of six months or more has elapsed between one meeting of any other local authority and the next; or

- (b) any local authority is unlikely to be able to meet its financial commitments; or
- (c) any local authority is in the opinion of the Minister failing to exercise its functions in such manner as would best serve the interests of the inhabitants of its area of jurisdiction,

the Minister may by order—

- (i) remove from office all the members of such local authority who shall thereupon, notwithstanding anything to the contrary in this Act or any other written law, cease to be members thereof; and
- (ii) in place of such members and for the area of such local authority appoint not less than three persons to form a commission for the purpose of carrying on the affairs of the local authority, and shall appoint one such person to be the chairman of the commission; or
- (iii) in place of, or in addition to, the removal of members and the appointment of a commission as provided in paragraphs (i) and (ii), direct, subject to subsection (5), that any local authority shall be wound up on any of the grounds specified above which shall be specified in the order.

(2) A commission appointed under subsection (1) shall have and may exercise all the powers of, and be subject to, and liable to discharge all the duties of, the local authority whose members have been removed from office whether such powers and duties are conferred or imposed by this Act or any other written law, and for such purpose any reference in this Act or any other written law to a local authority shall, where a commission is appointed under this section in place of the members of such local authority, be deemed to refer to such commission.

(3) A commission appointed under subsection (1) shall exercise the powers and perform the duties of a local authority for such period, not exceeding two years from the date of its appointment, as is specified in the order, and the Minister shall, unless the local authority is being wound up, take such steps as may be necessary to ensure that the local authority is reconstituted before the expiration of that period and is able to hold a meeting within a reasonable time after such expiration:

Provided that such period of two years may be extended—

- (i) by the Minister by order, by a further period not exceeding one year;
- (ii) thereafter by the Minister, by order made with authority of a resolution of the National Assembly, for an additional period or additional periods.

(4) Prior to the exercise of any power conferred by subsection (1), the Minister may direct such inquiry to be held as he may think necessary and, for the purposes of such an inquiry, shall appoint a person to hold the inquiry and may confer upon him all or any of the powers vested in a commission under the Commissions of Inquiry Act (Cap. 102); and at any inquiry directed under this subsection, the local authority in question and any member thereof shall be entitled to be heard.

(5) Before an order is made under subsection (1)(iii)—

- (a) notice of the intention to make, and of the purport of, such order shall be published in the *Gazette* and in at least one newspaper (if any) circulating in the area of the local authority in question; and
- (b) after the expiry of a period of not less than fourteen days from the date of publication of such notice in the *Gazette*, a draft of the order shall be laid before the National Assembly; and no such order shall have effect unless notice thereof is published as aforesaid and the National Assembly has, by resolution (of which at least twenty-eight days' notice has been given to the National Assembly), approved the draft.

[L.N. 634/1963, First Sch., L.N. 105/1965, o. 9, Act
No. 11 of 1967, s. 10, Act No. 22 of 1987, Sch.]

253. Procedure on winding-up

(1) Upon any order being made under section 252 with respect to a local authority, such local authority shall until dissolved by declaration under section 255, continue in existence for the purpose only of winding-up, and to that end the members of the local authority shall, or where by order under section 252 a commission is or has been appointed in place of such members, then, such commission shall, without delay, take such steps as may be necessary to wind up the affairs of the local authority, and in particular shall do such acts as may be required by any order made by the Minister under subsection (2).

(2) In order to facilitate any such winding-up, the Minister may, by notice in the *Gazette*, make such orders as he deems necessary or desirable, and particularly, but without prejudice to the generality of the foregoing, to ensure—

- (a) that all or any property, movable or immovable, vested or belonging to such local authority or to which the local authority is entitled and all or any assets and claims to which the local authority is entitled shall be transferred to and vested in such other authority or authorities as exist or may be established for the area for which the local authority being wound up was established;
- (b) that all or any contracts of service, appointments made or powers conferred shall be deemed respectively to have been entered into, made or conferred by or to such other authority or authorities as aforesaid;
- (c) that all or any works, undertakings, rights, liabilities, contracts and engagements of the local authority, and all actions, suits and legal proceedings by or against the local authority shall be transferred to, vested in and be enforced, carried on and prosecuted by or against such other authority or authorities as aforesaid;
- (d) that all or any licences or registrations issued, made or granted by the local authority shall continue in force for the period for which they were issued, made or granted, and shall be deemed to have been issued, made or granted by such other authority or authorities as aforesaid;

- (e) that all or any by-laws or other rules made by the local authority shall be deemed to be the by-laws or rules of such other authority or authorities as aforesaid, and shall continue in full force and effect for such period as the Minister may determine.

[L.N. 634/1963, First Sch., L.N. 105/1965, o. 9, Act No. 11 of 1984, Sch.]

253A. Preparatory Commission

(1) Where any local authority has been wound up in accordance with sections 252 and 253, the Minister may by order—

- (a) establish for the area for which that local authority was established, or for any part thereof, such other local authority or local authorities as he may consider desirable; and
- (b) appoint a preparatory commission to facilitate the constitution of any local authority so established and for the discharge of its functions.

(2) A preparatory commission shall consist of such members as the Minister may from time to time appoint, and shall have power to—

- (a) prepare and arrange for elections to the local authority;
- (b) summon meetings of the local authority;
- (c) provide such assistance as the local authority may require until its own officers have assumed office;
- (d) incur on behalf of the local authority the necessary expenditure in the discharge of the foregoing functions;
- (e) receive, on behalf of the local authority, sums from a winding-up commission to be expended in the discharge of the foregoing functions.

[Act No. 11 of 1967, s. 14.]

254. Winding-up of other local authorities where desirable

(1) If at any time it appears to the Minister, either upon representations made to him by the council of a township, county or municipality or without any such representations, that it is necessary or desirable that any council of a township or county division should be wound up, the Minister may, by order, direct that such council shall be wound up.

(2) Before any order is made under subsection (1), the Minister may, in accordance with section 245, appoint a person to conduct an inquiry, and at any inquiry directed under this subsection the local authority in question and the council of the township, county or municipality of the area and any other local authority concerned shall be entitled to be heard.

[L.N. 634/1963, First Sch., L.N. 105/1965, o. 9,
Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

255. Dissolution under sections 252 and 254

On the Minister being satisfied that the winding-up of a local authority is completed, he shall, by notice in the *Gazette*, declare it to be dissolved with effect from such date as shall be specified in such notice, and such local authority shall with effect from such date be dissolved and shall cease to exist.

[L.N. 105/1965, o. 9.]

PART XX – LEGAL PROCEEDINGS

256. Arbitration

Where any matter is by this Act directed to be determined by arbitration, such matter shall, except as may be otherwise provided, be determined by arbitration in accordance with the Arbitration Act (Cap. 49).

257. General penalties

Every person who is guilty of an offence under this Act shall, for every such offence, be liable to the penalty expressly prescribed by or under this Act, or if no such penalty be prescribed, to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding two months or to both.

258. Appropriation of penalties

(1) Subject to subsection (2), all fines imposed and recovered by a competent court other than by such a magistrate as is referred to in subsection (2), in respect of contraventions of any of the provisions of this Act or of any by-laws made under this Act or any other written law, other than the fines referred to in subsection (2), shall be paid—

- (a) in the case of a contravention of any of the provisions of this Act, as to one-half into the revenues of the municipal council, county council or town council having jurisdiction in the area in which such contravention occurred;
- (b) in the case of a contravention of any such by-law, as to onehalf into the revenues of the local authority which made or is deemed to have made such by-laws,

and in each such case, the other half shall be paid into the general revenues of Kenya.

(2) Where a local authority has paid or agreed to pay to the Government the sums of money referred to in section 157(a) in respect of a magistrate, the Minister for the time being responsible for Justice may direct that the whole or a specified proportion of all fines imposed by that magistrate in respect of particular offences shall be payable to the local authority, and in such cases such fines, or the specified proportion thereof, as the case may be, shall be paid into the revenues of the local authority.

[L.N. 634/1963, Third Sch., L.N. 749/1963, Sch., Act No. 31 of 1971, Sch.]

259. Powers of arrest

Any police officer may arrest, without a warrant, any person whom he suspects upon reasonable grounds of having committed any offence under this Act or any by-laws made under this Act or any other written law, and any officer of a local authority who at the time is in uniform or is wearing a visible badge of office and authorised thereto in writing by the local authority, may arrest, without warrant, any person who in his presence commits any such offence and may detain such person until he can be delivered into the custody of a police officer to be dealt with according to law:

Provided that no person shall be arrested or detained without warrant unless reasonable grounds exist for believing that, except by the arrest of such person, he may not be found or made answerable to justice without unreasonable delay, trouble or expense.

260. Conduct of prosecutions

(1) The clerk or any other person authorised thereto in writing by a local authority, may, subject to the general or special directions of the Attorney-General, prosecute, in subordinate courts, for all offences under this Act or any by-law made by such local authority whether under this Act or otherwise, and shall for that purpose, have all the powers conferred on a public prosecutor by the Criminal Procedure Code (Cap. 75).

(2) For the purposes of section 171 (4) of the Criminal Procedure Code, a local authority shall be deemed to be a public authority.

[Act No. 4 of 1974, Sch.]

261. Books of local authorities as evidence

The books and registers of a local authority and any extracts therefrom certified by the clerk of the local authority or any other officer authorised in that behalf by such local authority shall, in any proceedings for the recovery of any rates or charges for any service, be *prima facie* evidence of the amounts so due.

262. Offences by corporations, societies, etc.

Where any offence under this Act or under any rules made thereunder is committed by any company, or other body corporate, or any society, partnership, association or body of persons, every person charged with, or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, partnership, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

263. Actions by and against local authorities

(1) Where a local authority deems it expedient for the promotion or protection of the interests of the inhabitants of its area, it may prosecute or defend any legal proceedings.

(2) *Deleted by Act No. 5 of 1974, s. 11.*

(3) All costs, charges and expenses to which a local authority may be put or with which a local authority may become chargeable by reason of the prosecution or defence of any such action or under the judgment of any court shall be paid out of the revenues of such local authority.

[Act No. 5 of 1979, s. 11, Act No. 14 of 1991.]

263A. Execution of process against local authority

Notwithstanding anything to the contrary in any law—

- (a) where any judgment or order has been obtained against a local authority, no execution or attachment or process in the nature thereof shall be issued against the local authority or against the immovable property of the local authority or its vehicles or its other operating equipment, machinery, fixtures or fittings, but the clerk of the local authority shall, without delay, cause to be paid out of the

- (b) no immovable property of the local authority or any of its vehicles or its other operating equipment, machinery, fixture or fittings shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the clerk of the local authority.

[Act No. 14 of 1991, Sch.]

264. Recovery of charges for sanitary and refuse removal

(1) All charges due for sewerage, sanitary and refuse removal shall be recoverable jointly and severally from the owner and occupier of the premises in respect of which the services were rendered.

(2) When any such charges as are mentioned in subsection (1) have remained unpaid for a period of six weeks from the date on which written notice has been given by a council to the owner or occupier of his indebtedness, the council may at any time within twelve months from such date take proceedings against such owner or occupier or both for the recovery of such charges together with interest thereon at such rate, not exceeding one per centum per month or part thereof, as the council shall fix.

(3) Where any such charges are recovered from—

- (a) the owner, he shall in the absence of any agreement to the contrary, be entitled to recover from the occupier for the time being any sum paid by him as charges in respect of any period during which such premises were in occupation of such occupier;
- (b) the occupier, he shall be entitled to deduct from any rent or other sum payable by him to the owner of the premises any portion of such charges which he could not lawfully have been required by the owner to pay, and the production of any receipt for such portion shall to the extent of the amount thereof be a good and sufficient discharge for the payment of the rent or other sum.

(4) Where charges which are normally recorded by a local authority from the occupier of the premises in respect of which the services were rendered remain unpaid for a period of six weeks the local authority shall notify in writing the owner that such charges have so remained unpaid.

[L.N. 634/1963, First Sch.]

PART XXI – MISCELLANEOUS

265. Powers of entry

(1) Subject to this section, any officer of a local authority duly authorised in writing shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is, or has been, on, or in connection with, the premises, any contravention of this Act or of any by-laws, whether made under this Act or any other written law, being provisions which it is the duty of the local authority to enforce;

- (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the local authority to take any action, or execute any work, under this Act or any such by-laws;
- (c) for the purpose of taking any action, or executing any work, authorised or required by this Act or any such by-laws, or any order made under this Act, to be taken or executed, by the local authority;
- (d) generally, for the purpose of the performance by the local authority of its functions under this Act or any such by-laws:

Provided that admission to any premises not being a factory, workshop or workplace, shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

(2) If it is shown to the satisfaction of a subordinate court having jurisdiction in the area of the premises in question, on sworn information in writing—

- (a) that admission to any premises has been refused, or that refusal is apprehended or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry into the premises for any purpose as is specified in subsection (1),

the Court may by warrant in writing authorise the local authority by any duly authorised officer to enter the premises, if need be by force:

Provided that such a warrant shall not be issued unless the court is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

(3) An authorised officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such warrant shall leave them as effectively secured against trespassers as he found them.

(4) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.

(5) If any person who in compliance with this section or of a warrant issued thereunder is admitted into a factory, workshop or workplace discloses to any person any information obtained by him in the factory, workshop or workplace with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a period not exceeding three months, or to both.

266. Penalties for obstruction

(1) Any person who—

- (a) wilfully obstructs any officer of a local authority in the execution of his duty as such; or

- (b) being the occupier of premises, prevents the owner of such premises from executing any work which he is by or under this Act or any other written law required to execute, or otherwise prevents the owner of such premises from complying with any of the requirements of a local authority; or
- (c) being the occupier of premises, on demand refuses or willfully misstates the name of the owner of such premises,

shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month or to both.

(2) If on a complaint made by the owner of any premises, it appears to a subordinate court that the occupier of those premises prevents the owner from executing any work which he is by or under this Act or any other written law required to execute, or otherwise prevents the owner of such premises from complying with any of the requirements of a local authority, the court may, without prejudice to the prosecution of the occupier in respect thereof, order the occupier to permit the execution of the work or, as the case may be, permit the owner to comply with any such requirements as aforesaid.

267. Service of documents

Any notice, order or other document required or authorized by this Act or by any by-law made under this Act or any other written law to be served on any person (whether the expression “serve” or “give” or “send” or “deliver” or any other expression is used), then, unless a contrary intention appears therein, such notice, order or other document may be served, and shall be deemed to have been effectively served if served—

- (a) personally upon the person on whom it is required or authorised to be served, or, if such person cannot reasonably be found, personally upon any agent of such person empowered to accept service on his behalf or personally upon any adult member of the family of such person who is residing with him; or
- (b) by post; or
- (c) by affixing a copy of the same on some conspicuous part of any premises or land to which it relates or in connexion with which it is required or authorised to be served; or
- (d) where from any cause whatsoever, it is not possible to effect service of the notice, order or other document in any of the manners specified in paragraphs (a), (b) and (c) by publication of a copy thereof in the *Gazette* and in at least one newspaper circulating in the area of the local authority.

268. Delegation of powers

Where, under this Act, the Minister is empowered to exercise any powers or perform any duties, he may by order, depute any person, including a municipal council, county council or town council, by name or the person for the time being holding the office designated by it to exercise such powers or perform such duties on its behalf, subject to such conditions, exceptions and qualifications as the Minister may prescribe, and thereupon or from the date specified by the Minister, the person so deputed shall have and exercise such powers and perform such duties subject as aforesaid.

[L.N. 634 of 1963, First Sch., L.N. 34/1965, o. 2, Act No. 31 of 1971, Sch.]

269. Succession of rights and liabilities, etc., on a local authority being replaced

(1) If at any time the whole of any local government area under the jurisdiction of a local authority becomes a local government area under the jurisdiction of a local authority of another class in place of such first-mentioned local authority or is included in the area of jurisdiction of another local authority, whether of the same class or not as such first-mentioned local authority, hereinafter called the replacing local authority, the following provisions shall thereupon have effect—

- (a) all subsidiary legislation then in force made by the first-mentioned local authority shall, to the extent that the replacing local authority has itself the power to make such by-laws, be deemed to be by-laws made by the replacing local authority in exercise of such power and shall continue to be of full force and effect within the area to which it applies until altered or revoked by the replacing authority;
- (b) any other such subsidiary legislation shall, to the extent that the replacing local authority has not itself the power to make the same, lapse, and for the purposes of section 23 of the Interpretation and General Provisions Act (Cap. 2), shall be deemed to have been revoked in its application as aforesaid;
- (c) all appointments made, powers conferred, and notifications served or published to or by the first-mentioned local authority shall, to the extent that the same can be made, conferred, served or published to or by the replacing local authority, be deemed respectively to have been made, conferred, served and published to or by the replacing local authority;
- (d) all works and undertakings of the first-mentioned local authority of a kind authorised to be executed by both the first-mentioned local authority and the replacing local authority, all existing rights, liabilities and engagements of the first-mentioned local authority and all actions, suits and legal proceedings by or against the first-mentioned local authority shall vest in, attach to, and be enforced, carried on and prosecuted by or against the replacing local authority, and no such action, suit or proceedings shall abate or be discontinued or prejudicially affected by the replacement of such first-mentioned local authority;
- (e) all rates, fees, charges, debts of whatever description then due or payable to or recoverable by the first-mentioned local authority shall be payable to and recoverable by the replacing local authority;
- (f) all property, movable and immovable, vested in or belonging to the first-mentioned local authority or to which such local authority was entitled, and all assets and claims to which such local authority was entitled, shall vest in and belong to the replacing local authority;
- (g) all creditors of the first-mentioned local authority shall have the same rights and liabilities against the replacing local authority as they had against the first-mentioned local authority; and
- (h) all licences, registrations and permits issued, made or granted by the first-mentioned local authority shall continue in force for the period, if any, specified in such licences, registrations or permits, unless the same are sooner lawfully suspended or cancelled.

(2) For the purpose of this section each of the following shall constitute a separate class of local authorities—

- (a) city councils;
- (b) municipal councils;
- (c) county councils;
- (d) town councils;
- (e) urban councils;
- (f) *deleted by Act No. 11 of 1984, Sch.*

[L.N. 383/1963, r. 4, Act No. 31 of 1971, Sch., Act No. 11 of 1984, Sch.]

270. Succession of rights, liabilities, etc., where part of area is replaced

Where part only of a local government area under the jurisdiction of a local authority becomes a local government area under the jurisdiction of another local authority, then—

- (a) with respect to by-laws in force in such area or any part thereof, paragraph (a) and paragraph (b) of section 269(1) shall apply:

Provided that any by-laws which, under this section are continued by virtue of paragraph (a) of section 269(1) shall, unless sooner altered or revoked, continue for a period of two years from that date when such part came under the jurisdiction of the second-mentioned local authority, and shall then lapse, and for the purposes of section 23 of the Interpretation and General Provisions Act (Cap. 2), shall be deemed to have been revoked;

- (b) with respect to the matters mentioned in paragraphs (c) to (h) of section 269(1), those paragraphs shall apply and have effect so far as is reasonable and practicable only as respects the aforementioned part of the area of the first mentioned local authority, and any apportionment of rights, liabilities, property, assets or any other of the matters or things mentioned in those paragraphs shall be made between the several local authorities concerned on a fair and equitable basis, either as agreed between them or, in default of agreement, as directed by the Minister.

271. Power to make rules

The Minister may from time to time make rules—

- (a) for the better carrying out of the purposes and provisions of this Act, and any such rules may be made with regard to all local authorities generally or with regard to any particular local authority or class of local authorities;
 - (b) applicable in the area of any township authority in respect of any of the matters for which a council of a county division may make by-laws.
-

Local Government

FIRST SCHEDULE

FORM A

[Act No. 9 of 1968, Sch.]

(ss. 18, 32(4))

DECLARATION OF ACCEPTANCE OF OFFICE

I* having been
elected to the office of† hereby solemnly declare
that I take the said office upon myself, and will duly and faithfully fulfil the duties
thereof without fear, favour or partiality according to the best of my judgment and
ability.

Dated this day of, 20

.....
Signature

This declaration was made and subscribed before me.

.....
Clerk

Notes.—

* Insert full name.

† Insert description of office (Mayor/Deputy Mayor/Chairman/Vice-Chairman).

FORM B

[Act No. 9 of 1968, Sch.]

(s. 62)

DECLARATION BY COUNCILLORS

I* having been
elected/nominated/appointed† to the office of councillor hereby solemnly declare
that I have read section 62 of the Local Government Act, and that none of the
disqualifications for office specified in that section apply to me. Further I state
that I am qualified under the Act and accept office as councillor. I further
solemnly declare that I will faithfully perform the duties of the office to the best of
my judgment and ability.

Dated this day of, 20

.....
Signature

FIRST SCHEDULE, FORM B—*continued*

This declaration was made and subscribed before me.

.....
Clerk

Notes.—

* Insert full name.

† Delete as necessary.

SECOND SCHEDULE

[Section 85, L.N. 41/1970, Sch., Act No. 11 of 1984, s. 27.]

STANDING ORDERS

In this Schedule, except where the context otherwise requires, the terms “chairman”, “vice-chairman” and “clerk” shall, in respect of a municipal council, be deemed to refer, respectively, to the mayor, deputy mayor and town clerk.

PART I – OBLIGATORY ORDERS

1. Chairman of meetings

Any power or duty assigned to the chairman in relation to the conduct of meetings may be exercised by the person presiding at the meeting, and in these Standing Orders “the chairman” shall be construed as including any such person presiding at the meeting.

2. Order of business

(1) Except where the Council, on the grounds of urgency, varies the order of business under paragraph (2) of this standing order, the order of business at every meeting of the Council shall be—

- (a) to choose a person to preside if the chairman and vice-chairman be absent;
- (b) any business required by written law to be done before any other business;
- (c) to read and confirm the minutes of the last meeting of the Council (unless such minutes have been confirmed at the meeting of the proceedings of which they are the minutes):

Provided that, if a copy of the minutes has been circulated to each member of the Council not later than the date of issue of the notice of the meeting, under section 76 of the Act, they shall be taken as read;

- (d) to deal with business expressly required by written law to be done;
- (e) to receive such communications as the chairman may desire to lay before the Council;

- (f) questions (if any);
- (g) to dispose of business (if any) remaining from the last meeting;
- (h) to receive and consider reports or minutes of committees;
- (i) to receive and consider reports from officers of the Council;
- (j) to authorize the sealing of documents, so far as the Council's authority is required by statute or these Standing Orders;
- (k) to authorize the signing of orders for payment where there is no finance committee; and
- (l) to consider motions in the order in which notice thereof has been received.

(2) The Council may, at any meeting, vary the order of business so as to give precedence to any business which, in the opinion of the chairman, is of a special urgency, but such a variation shall not displace business falling under items (a) and (b) of paragraph (1) of this standing order.

3. Notices of motion

(1) Except as provided by standing order 8 of these Standing Orders, every notice of motion shall be in writing, signed by the member or members of the Council giving the notice and delivered, in the case of a municipal council, at least four clear days before the next meeting of the Council, and in the case of any other local authority, at least ten days before the next meeting of the Council, at the office of the clerk by whom it shall be dated, numbered in the order in which it is received and entered in a book which shall be open to the inspection of every member of the Council.

(2) The Clerk shall insert in the notice of every meeting of the Council all notices of motion duly given in the order in which they have been received, unless the member giving such a notice has, when giving it, intimated in writing that he proposes to move it at some later meeting or has withdrawn it in writing.

(3) If a motion, notice of which has been duly given be not moved at that meeting it shall, unless postponed by consent of the Council, be treated as abandoned and shall not be moved without fresh notice.

(4) Motions for which notice has been duly given, the subject matter of which comes within the province of any committee or committees, shall, upon being moved and seconded, stand referred without discussion to such committee or committees, or to such other committee or committees as the Council may determine, for consideration and report:

Provided that the chairman may, if he considers it convenient and conducive to the despatch of business, allow such motion to be dealt with at the meeting at which it is brought forward.

(5) Every notice of motion shall be relevant to some function of the Council.

4. Motions without notice

The following motions may be moved without notice—

- (a) appointment of a chairman of a meeting at which the motion is made;

- (b) motions relating to the accuracy of the minutes, closure, adjournment, order of business or next business;
- (c) reference to a committee;
- (d) that the Council do resolve itself into committee;
- (e) appointment of committee or members thereof, so far as arising from an item mentioned in the notice of the meeting;
- (f) adoption of reports and recommendations of committees or officers and any consequent resolutions;
- (g) that leave be given to withdraw a motion;
- (h) amendments to motions;
- (i) authorizing the sealing of documents;
- (j) extending the time limit for speeches;
- (k) that an item of business specified in the notice of the meeting have precedence;
- (l) that a member named under standing order 8 of these Standing Orders be not further heard or do leave the meeting;
- (m) giving consent of the Council where the consent of the Council is required by these Standing Orders;
- (n) any motion referred to in paragraph 16 of standing order 6 of these Standing Orders; and
- (o) a motion suspending standing orders in accordance with standing order 39.

5. Minutes

(1) Minutes of the proceedings of every meeting of the Council shall include the names of members present and shall be drawn up and printed or typewritten.

(2) As soon as the minutes have been read, or if they are, under standing order 2 of these Standing Orders, taken as read, the chairman shall put the question that the minutes of the meeting of the Council held on the day of be confirmed and signed as a true record.

(3) No motion or discussion shall take place upon the minutes, except upon their accuracy and any question of their accuracy shall be raised by motion; if no such question is raised, or if it is raised, then as soon as it has been disposed of, the chairman shall sign the minutes.

6. Rules of debate

(1) A motion or amendment shall not be discussed unless it has been proposed and seconded, and, unless notice has already been given in accordance with standing order 3 of these Standing Orders, it shall, if required by the chairman, be reduced to writing and handed to the chairman before it is further discussed or put to the meeting.

(2) A member when seconding a motion or amendment may, if he then declare his intention to do so, reserve his speech until a later period of the debate.

(3) A member shall stand when speaking, and shall address the chairman; and if two or more members rise, the chairman shall call on one to speak.

(4) A member shall direct his speech to the question under discussion or to an explanation or to a question of order.

(5) No speech shall, without the consent of the Council, exceed five minutes in length, or ten minutes in length in the case of a proposer of a motion or a reply to an amendment, and upon a motion for an extension of this limit no discussion shall be allowed.

(6) An amendment shall be either—

- (a) to leave out words; or
- (b) to leave out words and insert or add others; or
- (c) to insert or add words,

but such omission or insertion of words shall not have the effect of introducing a new proposal into or of negating the motion before the Council.

(7) If an amendment be rejected, other amendments may be moved on the original motion.

(8) If an amendment be carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.

(9) A further amendment shall not be moved until the Council has disposed of every amendment previously moved.

(10) A member shall not speak more than once on any motion, except in the exercise of the right to reply given by standing order 10 of these Standing Orders, or on a point of order, or by way of personal explanation, or to move in so many words “That the question be now put”. An amendment to a motion shall be treated as a fresh motion.

(11) A member may at the conclusion of a speech of another member move without comment, “That the question be now put”, “That the debate be now adjourned”, “That the Council proceed to the next business”, or “That the Council do now adjourn”, on the seconding of which the chairman, if in his opinion the question before the meeting has been sufficiently discussed, shall put that motion to the vote, and if it is carried, the question before the meeting, subject to the right of reply given by standing order 10 of these Standing Orders, shall be put to the vote or the subject of debate shall be deemed to be disposed of for that day or the meeting shall stand adjourned, as the case may be.

(12) A member may rise to a point of order or in personal explanation, but a personal explanation shall be confined to some material part of a former speech by him at the same meeting which may have been misunderstood; and a member rising to a point of order shall be entitled to be heard forthwith.

(13) The ruling of the chairman on a point of order or on the admissibility of a personal explanation shall not be open to discussion.

(14) Whenever the chairman rises during a debate a member then speaking or standing shall resume his seat and the members shall be silent.

(15) A motion or amendment may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Council, which shall be signified without discussion, and it shall not be competent for any member to speak upon it after the proposer has asked permission for its withdrawal, unless such permission has been refused.

(16) When a motion is under debate no other motion shall be moved except the following—

- (a) to amend the motion;
- (b) to postpone consideration of the motion;
- (c) to adjourn the meeting;
- (d) to adjourn the debate;
- (e) to proceed to the next business;
- (f) that the question be now put;
- (g) that a member be not further heard;
- (h) that a member do leave the meeting;
- (i) that the subject of debate be referred back to a committee.

(17) No member shall read his speech but he may read short extracts from written and printed papers in support of his argument and may refresh his memory by reference to notes.

(18) It shall be out of order to anticipate the discussion of a motion of which notice has been given.

(19) It shall be out of order to use offensive or insulting language whether in respect of members of the Council or other persons.

(20) A member shall be responsible for the accuracy of any facts which he alleges to be true and may be required to substantiate any such facts or to withdraw any such allegation.

(21) The chairman after having called attention to the conduct of a member who persists in irrelevance or tedious repetition either of his own arguments or the arguments used by other members in debate, may, after having first warned him, direct him to discontinue his speech.

7. Rules for members not speaking

A member—

- (a) shall enter into the chamber with decorum;
- (b) shall not read any newspaper, book or letters save such as relates to the matter in hand;
- (c) shall not interrupt a speaker; and
- (d) shall not do any other act disrespectful to the chair or the Council.

8. Disorderly conduct

If at a meeting any member of the Council, in the opinion of the chairman notified to the Council, misconducts himself by persistently disregarding the ruling of the chair, or by behaving irregularly, improperly, or offensively, or by wilfully obstructing the business of the Council, or by disregarding any rule for members not speaking specified in standing order 7 of these Standing Orders, it shall be competent for a member to move "That the member named be not further heard", or "That the member named do leave the meeting" and the motion if seconded shall be put and determined without discussion.

9. Suspension of sitting

If after a motion under standing order 8 of these Standing Orders has been carried, the misconduct or obstruction is continued and, in the opinion of the chairman, renders the due and orderly dispatch of business impossible, the chairman in addition to any other powers vested in him, may without question put, adjourn or suspend the sitting of the Council for such period as he in his discretion considers expedient.

10. Right of reply

(1) The proposer of a motion shall have a right to reply at the close of the debate upon such motion, immediately before it is put to the vote.

(2) If an amendment is proposed, the proposer of the original motion shall be entitled to reply at the close of the debate upon the amendment.

(3) A member exercising a right of reply shall not introduce a new matter.

(4) After every reply to which this standing order refers a decision shall be taken without further discussion.

11. Alteration of motion

A member may with the consent of his seconder and of the Council, signified without discussion, alter a motion which he has proposed or of which notice has been given if the alteration is one which could have been moved as an amendment thereto.

12. Rescission of preceding resolution

(1) No motion to rescind any resolution passed within the preceding six months, and no motion or amendment to the same effect as one which has been negatived within the preceding six months, shall be proposed unless the notice thereof given in pursuance of standing order 3 of these Standing Orders bears the names of at least one-third of the members of the Council.

(2) When any such motion has been disposed of by the Council, it shall not be open to any member to propose a similar motion within a further period of six months.

(3) This standing order shall not apply to motions moved in pursuance of the report or recommendation of a committee.

13. Voting

(1) Every question, save as otherwise provided by the Act or any other written law, shall be determined by show of hands and decided by a majority of votes of the members present.

(2) On the requisition of any member supported by five other members who signify their support by rising in their places the voting on any question shall be recorded so as to show how each member present and voting gave his vote.

14. Power to resolve into committee

The Council may resolve itself into a committee of the whole Council.

15. Motions affecting persons employed by the council

If any question arises at a meeting of the Council as to the appointment, promotion, dismissal, salary or conditions of service, or as to the conduct, of any person employed by the Council, it shall be considered by the whole Council in Committee.

16. Motions of expenditure

Any motion which is moved otherwise than in pursuance of a recommendation or report of the finance committee or of another committee after the said recommendation or report has been approved by the finance committee, and which if carried would materially increase the expenditure upon any service which is under the management of or reduce the revenue under the management of any committee, or would involve capital expenditure, shall when proposed and seconded stand adjourned without discussion to the next ordinary meeting of the Council and any committee affected by such motion shall consider whether it desires to report thereon; and the finance committee shall report on the financial aspect of the proposal.

17. Removal of member of the public or the Press

If any member of the public or the press present at a meeting of the Council interrupts the proceedings, the chairman may, after warning, order his removal from the Council Chamber.

18. Canvassing

(1) Canvassing of members of the Council or of any committee of the Council, directly or indirectly, for any appointment under the Council shall disqualify the candidate for such appointment.

(2) The purport of paragraph (1) of this standing order shall be included in every advertisement inviting applications for appointments or in the form of application.

(3) A member of the Council shall not solicit for any person any appointment under the Council, or recommend any person for such appointment or for promotion; but this paragraph of this standing order shall not preclude a member from giving a written, testimonial of a candidate's ability, experience or character, for submission to the Council with an application for appointment.

19. Relatives of members or officers

(1) Candidates for any appointment under the Council shall when making application disclose in writing to the clerk whether to their knowledge they are related to any member of the Council or to the holder of any senior officer under the Council; and a candidate who fails so to do shall be disqualified for such appointment and if appointed shall, subject to section 127 of the Act, be liable to dismissal without notice.

(2) Every member and senior officer of the Council shall disclose to the Council any relationship known to him to exist between himself and a candidate for an appointment of which he is aware.

(3) It shall be the duty of the clerk to report to the Council or to the appropriate committee any such disclosure made to him.

(4) Where relationship to a member of the Council is disclosed, such member shall, unless the Council invites him to remain, withdraw from the meeting of the Council whilst any question as to the appointment of application for appointment of the candidate to whom he is related is being discussed or is under consideration by the Council.

(5) For the purpose of this standing order “**senior office**” and “**senior officer**” mean those designated as such by the Minister, and persons shall be deemed to be related if they are husband and wife or if either of them or the spouse of either of them is the son or daughter or grandson or granddaughter or brother or sister or nephew or niece of the other, or of the spouse of the other.

(6) The purport of this standing order shall be stated either in the advertisement inviting applications for appointment or in any form of application supplied for use by candidates.

[L.N. 634/1963.]

20. Inspection of documents

(1) A member of the Council may for purposes of his duty as such member but not otherwise inspect any document which has been considered by a committee or by the Council, and if copies are available shall on request be supplied for the like purposes with a copy of such documents:

Provided that—

- (i) a member shall not knowingly inspect and shall not call for a copy of any document relating to a matter in which he is professionally interested or in which he has directly or indirectly any pecuniary interest within the meaning of section 89 of the Act; and
- (ii) this standing order shall not preclude the clerk or the advocate to the Council from declining to allow inspection of any document which is or in the event of legal proceedings would be protected by privilege arising from the relationship of advocate and client.

(2) All minutes kept by any committee shall be open for the inspection of any member of the Council during office hours.

21. Deleted by Act No. 11 of 1984, s. 27.

22. Appointment of committees

The Council shall at the annual meeting appoint such statutory and standing committees, and may at any time appoint such other committees, as are necessary to carry out the work of the Council but, subject to any statutory provision in that behalf—

- (a) shall not appoint any member of a committee so as to hold office later than the next annual meeting of the Council;
- (b) may at any time dissolve or alter the membership of a committee.

23. Proceedings in committee

A member of a committee (including the Council in committee) shall not disclose a matter dealt with by or brought before the committee without its permission until the committee has reported to the Council or has otherwise concluded action on that matter.

24. Special meetings of committees

(1) The chairman of a committee or the chairman of the Council may, by notice in writing, summon a special meeting of the committee at any time.

(2) A special meeting shall also be summoned by notice in writing on the requisition in writing of at least one quarter of the members of the committee.

(3) The notice of a special meeting shall set out the business to be considered at the special meeting, and no business other than that set out shall be considered at that meeting.

25. Subcommittees

(1) Every committee appointed by the Council may appoint subcommittees for purposes to be specified by the committee.

(2) Except where powers or duties are delegated to a subcommittee, no act of a subcommittee shall have effect until approved by the committee.

26. Quorums of committees and subcommittees

(1) Business shall not be transacted at a meeting of any committee unless at least one-quarter of the whole number of the committee, or such larger proportion as the committee may determine, is present:

Provided that in no case shall the quorum of a committee be less than three members.

(2) Business shall not be transacted at a meeting of any subcommittee unless at least two members are present.

27. Voting in committee

All questions in committee shall be determined by show of hands by a majority of the members of the committee present and voting.

28. Opinion of officers

An officer who is present at a meeting of a committee of the Council, being a chief officer or an officer instructed by a chief officer to attend such meeting, shall have the right to require his opinion to be recorded in the minutes if the committee arrive at a decision, which in the officer's opinion is contrary to his advice.

29. Members may attend committee meetings

A member of the Council who has proposed a motion which has been referred to any committee shall have notice of the meeting of the committee at which it is proposed to consider the motion and if he attends shall have an opportunity of explaining it.

30. Women on health committees

At least two women shall be appointed to serve on each committee of a municipal council dealing with public health matters.

[L.N. 41/1970, Sch.]

31. All contracts to comply with standing orders 31 to 38

(1) Every contract whether made by the Council or by a committee to which the power of making contracts has been delegated shall comply with section 143 of the Act and standing orders 31 to 38 of these Standing Orders, and no exception from any of the provisions of the said standing orders shall be made otherwise than by direction of the Council or the Finance Committee in accordance with section 143(6) of the Act.

(2) Every exception made by a committee to which the power of making contracts has been delegated or by the Finance Committee shall be reported to the Council and the report shall specify the emergency by which the exception has been justified.

(3) Express note of any exception as aforesaid and of the emergency (if any) by which the exception has been justified shall, unless recorded in the report of a committee which is laid before the Council, be made in the minutes of the Council.

32. Prior estimate of expenses to be obtained before entering into contracts

Before entering into a contract for the execution of any work the Council shall obtain from the appropriate officer or other person an estimate in writing of the probable expense of executing the work in a suitable manner and of the annual expenses of maintaining the same.

33. Contents of invitation for tenders and opening tenders

(1) Where in pursuance of section 143(4)(a) of the Act public invitation to tender is required, every notice of such invitation shall state that no tender will be received except in a plain sealed envelope which may bear the word "Tender"-followed by the subject to which it relates, but shall not bear any name or mark indicating the sender, and such envelopes shall remain in the custody of the clerk until the time appointed for their opening.

(2) Tenders shall be opened at one time and only in the presence of—

- (a) such member or members of the Council as may have been designated for the purpose by the Council or by the committee to which the power of making the contract to which the tenders relate has been delegated;
- (b) the clerk or an official of the Council designated by him; and
- (c) representatives (if any) of the persons tendering, if they have made a prior request to attend, to the clerk.

34. Council to consider certain tenders before acceptance

A tender other than the lowest tender if payment is to be made by the Council, or the highest tender if payment is to be received by the Council, shall not be accepted until the Council has considered a written report from the appropriate officer or other person, and has obtained the consent of the Minister in writing.

35. Certain contracts to be in writing

Every contract which exceeds two thousand shillings in value or amount shall be in writing.

36. Obligatory provisions in contracts

(1) Every written contract shall specify—

- (a) the work, materials, matters, or things, to be furnished, had, or done;
- (b) the price to be paid with a statement of discounts or other deductions; and
- (c) the time or times within which the contract is to be performed.

(2) Every contract which exceeds ten thousand shillings in value or amount and is either for the execution of works or for the supply of goods or materials otherwise than at one time shall provide for some pecuniary penalty to be paid by the contractor in case the terms of the contract are not duly performed, and the Council shall require and take sufficient security for the due performance of every such contract.

37. Obligatory cancellation clause

There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation—

- (a) if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or

- (b) if the like acts shall have been done by any person employed by such contractor or acting on his behalf (whether with or without the knowledge of the contractor); or
- (c) if in relation to any contract with the Council the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Act (Cap. 65).

38. Obligatory clause as to rates, wages, hours, etc.

In every written contract for the execution of work or the supply of goods or materials, the following clause shall be inserted—

“The contractor shall, in respect of all persons employed anywhere by him in the execution of the contract, and further in respect of all persons employed by him otherwise than in the execution of the contract in every factory, workshop or place occupied or used by him for the execution of the contract, observe and fulfil the following conditions—

- (a) the contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out by machinery of negotiation or arbitration to which the parties are organizations of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged, in the trade or industry in the district;
- (b) in the absence of any rates of wages, hours or conditions of labour so established the contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the contractor is engaged are similar;
- (c) where the absence of established rates of wages, hours and conditions of labour or the dissimilarity of the general circumstances in the trade or industry in which the contractor is engaged prevent the contractor observing rates of wages, hours and conditions of labour ascertained under condition (a) or (b) of this clause, the contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advice of the Labour Department of the Ministry of Labour;
- (d) the contractor shall recognise the freedom of his employees to be members of trade unions;
- (e) the contractor shall maintain records in English of the time worked by, and the wages paid to, his employees adequate to show that he is complying with the requirements of this clause;
- (f) the contractor shall at all times during the continuance of the contract display, for the information of his employees in every factory, workshop or place occupied or used by him for the execution of the contract, a copy of this clause, together with a notice setting out the general rates of wages, hours and conditions of labour of his employees;

- (g) the contractor shall be responsible for observance of this clause by subcontractors employed in the execution of the contract and shall, if required, notify the Council of the names and addresses of all such subcontractors;
- (h) in the event of default being made in payment of any money in respect of fair wages of any workman employed on the contract and if a claim is made to the Labour Commissioner and proof thereof satisfactory to the Commissioner is furnished, the Council may, failing payment by the contractor, arrange for the payment of such claim as certified by the Labour Commissioner, to be made out of the moneys at any time payable under the said contract and the amount so paid shall be deemed payments to the contractor;
- (i) the contractor shall furnish the Labour Commissioner if called upon so to do such particulars of the rates of wages, hours and conditions of labour referred to above as the Labour Commissioner may direct."

39. Orders not to be suspended

(1) Except as provided in paragraph (2) of this standing order a Council shall not have power to suspend any of the standing orders 1 to 39 (inclusive) of these Standing Orders.

(2) In special circumstances or in an emergency which shall be determined by the chairman, standing orders 3 and 6 of these Standing Orders may be suspended so far as regards any business at the meeting where their suspension is moved, but except upon notice of motion duly given in pursuance of standing order 3 of these Standing Orders, shall not be suspended unless there are present at least one-half of the whole membership of the Council.

40. Exclusion of members

When any member has disclosed a pecuniary interest in any contract, proposed contract or other matter in accordance with section 89 of the Act, he shall be excluded from the meeting of every committee and subcommittee whilst any such contract, proposed contract or the matter in which he has such an interest as aforesaid is under consideration at such meeting of the committee or subcommittee, as the case may be.

[L.N. 634/1963.]

PART II – OPTIONAL ORDERS**41. Questions**

(1) A member of the Council may ask the chairman of a committee any question upon the proceedings of the committee then before the Council if the question is put before the Council's consideration of those proceedings is concluded.

(2) A member of the Council may—

- (a) if two days' notice in writing has been given to the clerk, ask the chairman or the chairman of any committee any question relating to the business of the Council, other than a matter specifically referred to and awaiting a report from a committee; and

- (b) with the permission of the chairman put to him or to the chairman of any committee questions relating to urgent business, of which such notice has not been given, but a copy of any such question, shall, if possible, be sent to the clerk not later than 9.00 o'clock in the morning of the day of the meeting.

(3) Every question shall be put and answered without discussion, but the person to whom a question has been put may decline to answer it.

(4) Where a written question is addressed to the chairman or to the chairman of a committee and the desired information is contained in any of the Council's publications, it shall be deemed sufficient reply if the publication containing the information is indicated.

(5) Where the reply to any question cannot conveniently be given orally, it shall be deemed a sufficient reply if the answer is circulated to members of the Council with the minutes of the meeting at which the question has been asked.

42. Personal accusations

(1) No member of the Council shall make personal accusations against nor impute improper motives to any other member or members of the Council in any meeting of the Council.

(2) Any such accusations or imputations shall be made in writing and forwarded to the clerk who shall refer the same to the next meeting of the appropriate committee of the Council for investigation.

43. Standing Orders to apply to committees

The Standing Orders of the Council as to rules of debate at Council Meetings shall *mutatis mutandis* apply to committee and subcommittee meetings, except those parts of standing order 6 of these Standing Orders which relate to standing, speaking more than once, and to length of speeches.

44. Voting on appointments

Subject to the Act and any other written law, where there are more than two persons nominated for any position to be filled by the Council, and of the votes given there is not a majority in favour of one person, the name of the person having the least number of votes shall be struck off the list and a fresh vote shall be taken, and so on until a majority of votes is given in favour of one person.

45. Custody of the seal

The common seal of the Council shall be kept in some safe place and shall be secured by two different locks, the keys of which shall be kept respectively by the chairman and the clerk:

Provided that the chairman may entrust his key temporarily to another member of the Council with a written authority to such member to exercise his powers, and similarly the clerk may entrust his key temporarily to the deputy clerk (if such deputy has been appointed by the Council) or to another chief officer of the Council.

46. Sealing of documents

(1) The common seal of the Council shall not be affixed to any document unless the sealing has been authorized by a resolution of the Council or of a committee to which the Council has delegated its powers in this behalf, but a resolution of the Council (or of a committee where that committee has the power) authorizing the acceptance of any tender, the purchase, sale, letting, or taking of any property, the issue of any stock, the presentation of any petition, memorial, or address, the making of any rate or contract, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

(2) The seal shall be attested by one at least of the following present at the sealing, namely, the chairman or vice-chairman, or the clerk or deputy clerk, and an entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person or by persons who attest the seal.

47. Approval of plans

The consideration of all plans which in virtue of any building by-law in force in the Council's area require approval or disapproval by the Council shall stand referred without motions or debate to the (Towns Planning) Committee and it shall be the duty of that committee to consider them accordingly and to meet so often as will ensure exercising the said power within the period prescribed by law.

48. Right to attend meetings

A member of the Council may attend any meeting of a committee thereof, but not of a subcommittee, but, subject to standing order 29 of these Standing Orders, he shall not have the right to join in any discussion unless he has obtained the consent of the chairman of the committee so to do prior to the commencement of the meeting:

Provided that a member shall not be entitled to claim travelling and other expenses incurred in attending a meeting of a committee of which he is not a member except where under standing order 29 of these Standing Orders he has or should have received notice of the meeting of the committee.

THIRD SCHEDULE

[Sections 129, 130, Act No. 11 of 1984, s. 28, L.N. 83/2000.]

STATUTES, POWERS, DUTIES AND
RESPONSIBILITIES OF CERTAIN OFFICERS

PART I – TOWN CLERK AND CLERK

[Section 129.]

1. He shall be responsible for convening all meetings of the local authority and its committees and subcommittees and for the preparation of agenda, minutes and reports of such local authorities and their committees and subcommittees.

(1) He shall advise the local authority and its committees and subcommittees on all matters upon which his advice is necessary, including the standing orders thereof and local government legislation.

(2) *Deleted by Act No. 11 of 1984, s. 28.*

3. He shall, either personally or by his nominee, attend all meetings of the local authority and of its committees and subcommittees.

4. He shall advise the mayor or chairman of the local authority, as the case may be, on all matters appertaining to those offices.

5. Subject to any general directions which the local authority may give, he shall have the charge and custody of, and be responsible for, all charters, deeds, records and other documents belonging to the local authority which shall be kept as the local authority may direct.

6. He shall have the duty of ensuring that the business of the local authority is carried out with order, regularity and expedition in accordance with the by-laws, regulations, resolutions and standing orders of the local authority.

7. He shall have the responsibility for the general correspondence of the local authority.

8. Where any document will be a necessary step in legal proceedings on behalf of the local authority, he shall sign such document unless any written law otherwise requires or authorizes, or the local authority shall have given the necessary authority to some other person for the purpose of such proceedings.

9. He shall have the conduct of such negotiations on behalf of the local authority as the local authority may require.

10. He shall have the responsibility for conveying decisions of the local authority to officers of the local authority relating to their work and conduct.

11. He shall, where legally qualified so to do, give general legal advice to the local authority, and, whether legally qualified or not, to officers of the local authority on questions arising with regard to their official duties and obligations.

12. He shall be responsible for conducting all ballots and all proceedings necessary for determining any question by lot.

PART II – CHIEF FINANCIAL OFFICER

[Section 130.]

1. He shall be the accountant, paymaster and collector and financial adviser of the local authority.

2. He shall advise the local authority and its committees and subcommittees on all matters on which his advice is necessary, including financial orders or regulations and the standing orders and local government legislation so far as financial matters are concerned.

[Act No. 11 of 1984, s. 28.]

3. He shall attend, either personally or by his nominee, all meetings of the finance committee of the local authority and other committees where business with financial implications may be transacted.

4. He shall be responsible for the organisation of the finance department and for the organization of the financial arrangements in all other departments of the local authority.

5. He shall be responsible to the local authority for the maintenance of the local authority's accounting system and for the supervision of all the financial records of the local authority, wherever kept.

6. He shall prepare and submit to the finance committee of the local authority and to the inspector the accounts of the local authority as required by Part XVII of this Act.

7. The chief financial officer of a municipal council or county council shall be responsible for printing or reproducing an annual abstract of accounts of the local authority.

8. He shall be responsible for the preparation of all financial returns required by Government departments.

9. He shall supply promptly, in conjunction with other departments where necessary, to the local authority, its committees and departments any financial data they require for management of the local authority's business.

10. He shall establish an Internal Audit Unit independent from the Treasurer. The Internal Auditor shall be responsible therefor and shall promptly report to the committee concerned and to the Finance Committee any irregularities discovered in such course of the internal audit.

[L.N. 83/2000.]

- 11.** He shall, subject to the provisions of the Act, make arrangements for the verification of all accounts for payment and for making all payments, including salaries, wages and pensions.
- 12.** He shall obtain from the chief officers concerned all the information necessary for the proper examination of claims for payment due from the local authority arising from any contract.
- 13.** In accordance with the instructions of the local authority, he shall make arrangements for the collection and recovery of moneys due to the local authority and the handling, custody, security and banking of cash.
- 14.** He shall be responsible for the ordering, control and issue of, and for supplying all departments with, all official receipt forms, books, tickets, stores requisitions and other documents representing money or money's worth.
- 15.** He shall be responsible for compiling, in conjunction with the departments, the estimates of the local authority and for submitting summaries thereof and reports thereon to the finance committee.
- 16.** He shall report to the appropriate committee any overspending and any unauthorized expenditure, and shall draw attention to any irregularity in respect of any proposed expenditure.
- 17.** He shall manage, subject to the instructions of the finance committee and the local authority, all funds of the local authority.
- 18.** He shall ensure that monies not required for the time being are suitably invested.
- 19.** He shall advise the finance committee on the raising of capital funds.
- 20.** He shall be responsible for all rating matters of the local authority and for the collection of rates due to the local authority.
- 21.** He shall direct and supervise the financial transactions of the local authority with their bankers.
- 22.** He shall carry out financial negotiations on behalf of the local authority and assist in other negotiations when financial aspects are involved.
- 23.** He shall give such financial evidence, where appropriate, as may be required on behalf of the local authority.
- 24.** He shall effect insurances for all departments of the local authority and make claims on insurance companies and recommend settlements.
- 25.** He shall be responsible for the keeping of true accounts of all monies received and receivable and paid and payable by the local authority for any charitable purpose of which the local authority may assume the charge.
- 26.** He shall, if required by the local authority, be responsible for the custody and control of the stores of the local authority, and, if not so required, shall be responsible for prescribing the stores accounting procedure of the local authority.

27. He shall prepare and submit to the finance committee of the local authority a report on all proposals involving capital expenditure and on other expenditure not provided for in the estimates of the current financial year of the local authority and on any proposals involving a variation in the income of the local authority.

28. Where the chief financial officer to any local authority is a financial adviser, either seconded from the public service or directly appointed by the local authority, he shall have power to delegate in writing any of his functions as contained in this Schedule to a treasurer in the employment of the local authority.

FOURTH SCHEDULE AMENDMENT OF WRITTEN LAWS

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| The Town Planning Act (Cap. 134) (1948) | s. 2 | Delete— From the definition of "preparatory authority" the words "provided that in any municipality constituted under the Municipalities Act the preparatory authority shall be the council or board of such municipality" and the marginal reference to the Municipalities Act, and substitute the following "provided that in any municipality or county, the preparatory authority shall be the municipal council or county council respectively, established or deemed to have been established under the Local Government Act (Cap. 265)". |
| | s. 23(1) | (a) Delete "Municipalities Act" and substitute "Local Government Act (Cap. 265)". |
| | | (b) Delete the marginal note "Cap. 136" and substitute "L.N. 256/63". |
| | s. 30 | Add immediately after "Municipalities Act" the words "(repealed) and where that Board is succeeded or replaced by any local authority, the authority responsible for enforcing and executing the said Scheme shall be such local authority". |
| Interpretation and General Provisions Act (Cap. 2) | s. 3(1) | (a) Delete the definition of "local authority" and substitute the following— "local authority" has the meaning assigned to it in the Local Government Act (Cap. 265). |

*Local Government*FOURTH SCHEDULE—*continued*

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| | | (b) Delete the definition of "municipality" and substitute the following— "municipality" has the meaning assigned to it in the Local Government Act (Cap. 265). |
| | | (c) Delete the definition of "township" and substitute the following— "township" has the meaning assigned to it in the Local Government Act (Cap. 265). |
| Advocates Act (Cap. 16) | s. 9(f) | Delete and substitute the following— (f) any person holding office in a municipal council, county council or urban or area council established or deemed to have been established by or under the Local Government Act (Cap. 265). |
| The Election Offences Act (Cap. 66) | s. 2(1) | (a) Delete the definition of "council" and substitute the following— "council" means the city council of Nairobi and a municipal council, county council, urban council or area council established or deemed to have been established under the Local Government Act (Cap. 265). (b) Delete the definitions of "County Council", "District Council" and "Municipal Board and Municipal Council". |
| The African Liquor Act (Cap. 122) | s. 2 | (a) Delete paragraph (a) of the definition of "local authority" and substitute the following— (a) in the case of a municipality the municipal council of such municipality established or deemed to have been established under the Local Government Act (Cap. 265). (b) Delete the definition of "township" and substitute the following— "township" includes a county division under the Local Government Act (Cap. 265), in respect of which an urban council has been established or deemed to have been established under the said Act. |

Local Government

FOURTH SCHEDULE—continued

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| The Education Act (Cap. 211) | Part V | Insert in Part V immediately after section 17 the following section— |
| | | <p>17A. Exemption of municipal and county councils in respect of certain of schools</p> |
| | | <p>This Part shall not apply in respect of the management by a municipal council or a county council of a school vested in it under section 54A of this Act or of a school the management where is transferred to it under section 54B of this Act.</p> |
| | | <p>Insert immediately after Part IX a new Part as follows—</p> |
| | | <p>PART IXA – MUNICIPAL COUNCILS AND COUNTY COUNCILS</p> |
| | | <p>54A. Power to vest Government schools in municipal and county councils</p> |
| | | <p>(1) The Governor in Council may, by order, at the request of a municipal council or a county council, vest in the council any Government school in its area for which, or for a group of schools including which, there is no Board of Governors, and any boarding house accessory thereto.</p> |
| | | <p>(2) Upon the vesting of any Government school in a municipal council or county council by order under this section, the duty of management of the school shall, subject to such order, devolve upon such council, and the school shall cease to be a Government school.</p> |
| | | <p>(3) Any order made under this section may provide for—</p> |
| | | <p>(a) the respective responsibilities, duties and powers of the council and of trustees incorporated under the Land (Perpetual Succession) Act in whom any land is vested in trust for such school;</p> |

*Local Government*FOURTH SCHEDULE—*continued*

- (b) the exercise of the duty of management by the council under subsection (2) of this section to be subject to such conditions, limitations and restrictions (if any) as may be specified in the order;
- (c) such financial arrangements and adjustments as may be specified in the order, being arrangements and adjustments as the Governor in Council deems necessary or desirable consequent upon the vesting of the school in the council.

54B. Powers to transfer functions to municipal and county councils

The Governor in Council may, if a municipal council or a county council so request, transfer to the council such of the functions of the Minister and the Director and the Department under this Act in respect of the area of such council as the Governor in Council may think fit subject to such conditions as he may think fit and subject to compliance with such directions, including directions as to financial arrangements and adjustments consequent upon such transfer, as he may deem necessary or desirable to give proper effect to such transfer.

- s. 70(1) Add to the proviso thereto, immediately after the words "he shall first consult such Board" the words "and if any such school be under the jurisdiction of a municipal or county council, he shall first consult such council."

The Employment of
Children Rules.
(Cap. 227)
(Sub. Leg.).

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Delete the definition of "township" and substitute the following—
"township" includes a county division under the Local Government Act (Cap. 265) in respect of which an urban council has been established or deemed to have been established under the said Act.

Local Government

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| The Public Health Act (Cap. 242) | | FOURTH SCHEDULE— <i>continued</i> |
| s. 2 | (a) | Delete the definition of "local authority" and substitute the following— <p>"local health authority" means a local authority declared or deemed to have been declared under the Local Government Act (Cap. 265), to be a local health authority for the purposes of this Act.</p> |
| | (b) | Delete the words "municipality or" which appear in the definition of "medical officer of health" and add at the end of that definition the words "and any duly appointed medical officer of health of any local authority including a public officer seconded by the Government to hold such office." |
| s. 8 | | Delete the proviso thereto. |
| s. 15 | | Delete and substitute the following— <p>15. Minister to be consulted over local authority by-laws The Minister for the time being responsible for local government, shall, before approving any by-law made by a local authority affecting public health, obtain the agreement of the Minister for the time being responsible for health.</p> |
| Part IX | | Insert immediately after section 126 the following four sections— <p>126A. By-laws as to buildings and sanitation (1) Every municipal council and every urban and area may, and shall, if so required by the Minister for the time being responsible for local government with the agreement of the Minister, make by-laws for all or any of the following matters— (a) as regards buildings— (i) for controlling the construction of buildings, and the materials to be used in the construction of buildings; (ii) for controlling the space about buildings, the lighting and ventilation of buildings; and the dimensions of rooms intended for human habitation;</p> |

Local Government

FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part IX— (Cont.) | (iii) for controlling the height of buildings; the height of chimneys, not being separate buildings, above the roof of the building of which they form part; |
| | | (iv) for prohibiting the erection or use of temporary or movable buildings, whether standing on wheels or otherwise, and for prohibiting or restricting the use of tents or similar buildings for business or dwelling purposes; |
| | | (v) for requiring and regulating adequate provision for the escape of the occupants of any building in the event of an outbreak of fire; |
| | | (vi) for preventing the occupation of a new or altered building until a certificate of the fitness thereof for occupation or habitation shall have been issued by such local authority; |
| | | (vii) to compel employers to provide housing for their employees; |
| | | (viii) to compel owners to repair or demolish unsafe, dangerous or dilapidated buildings; |
| | | (b) as regards works and fittings— |
| | | (i) for regulating sanitary conveniences in connexion with buildings; the drainage of buildings, including the means for conveying refuse water and water from roofs and from yards appurtenant to buildings; the cleansing, drainage and paving of |

*Local Government*FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part IX— (Cont.) | courts, yards and open spaces used in connexion with buildings; cesspools, and other means for the reception or disposal of foul matter in connexion with buildings; |
| | | (ii) for regulating excavations of any kind in connexion with buildings; |
| | | (iii) for regulating wells, tanks and cisterns for the supply of water for human consumption in connexion with buildings; |
| | | (iv) for regulating stoves and other fittings in buildings (not being electric stoves or fittings) in so far as by laws with respect to such matters are required for the purposes of health and the prevention of fire; |
| | | (v) for regulating private sewers; communications between drains and sewers and between sewers; |
| | | (vi) for regulating the erection and use of scaffolding and hoarding during the construction, demolition, repair, alteration or extension of any building; |
| | | (vii) for prohibiting, securing the removal of, and regulating projections and obstructions in front of buildings, and projections over streets, |
| | | but no such by-law shall be inconsistent with or repugnant to any written law in force in the same area made under any other provision of this Act. |

*Local Government*FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part IX— (Cont.) | (2) By-laws made under this section may include provisions— |
| | | <p>(a) as to the giving of notices and the deposit of plans, sections, specifications and written particulars; and</p> <p>(b) as to the inspection of work; the testing of drains and sewers, and the taking by such local authority as aforesaid of samples of materials to be used in the construction of buildings, or in the execution of other works; and for the payment of such reasonable charges and fees as the local authority may determine, for the doing of any of the things aforesaid.</p> |
| | | (3) By-laws under subparagraphs (i), (ii) and (iii) of subsection (1)(a) of this section may be made with respect to— |
| | | <p>(a) structural alterations or extensions of buildings, and buildings so far as affected by alterations or extensions;</p> <p>(b) buildings or parts of buildings in cases where any material change, within the meaning of subsection (4) of this section, takes place in the purposes for which a building or, as the case may be, a part of a building is used,</p> |
| | | and, so far as they relate to the matters mentioned in this subsection, may be made to apply to buildings erected before the date on which the by-laws came into force, but, save as aforesaid, shall not apply to buildings erected before that date. |
| | | (4) For the purposes of subsection (3) of this section, there shall be deemed to be a material change in the purposes for which a building, or a part of a building, is used if— |

*Local Government*FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part IX— (Cont.) | <p>(a) a building, or a part of a building, being a building or part which was not originally constructed for occupation as a dwelling, or which though so constructed has been appropriated to other purposes, becomes used as a dwelling; or</p> <p>(b) a building, or a part of a building, being a building or part which was originally constructed for occupation as a dwelling by one family only, becomes occupied by two or more families; or</p> <p>(c) where by-laws contain special provisions with respect to buildings used for any particular purpose, a building or a part of a building, being a building or part not previously used for that purpose, becomes so used.</p> <p>(5) The procedure for the making, approval and publication of by-laws made under this section shall be that prescribed in the Local Government Act (Cap. 265), and for the purposes of the enforcement thereof and the disposal of fines imposed for contravention thereof such by-laws shall be deemed to be by-laws made by the same local authority under the Act.</p> <p>(6) Rules may be made under any other provision of this Act notwithstanding that they may be inconsistent with or repugnant to any by-law made under this section and in force in the area to which such rules apply, and to the extent, if any, of such inconsistency or repugnancy as aforesaid, the rules shall prevail.</p> <p>126B. Power, with consent, to relax requirements of building by-laws</p> <p>Where a local authority considers that the operation of any building by-law made by it under section 126A of this Act would be unreasonable in relation to</p> |
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Local Government

FOURTH SCHEDULE—*continued*

The Public Health
Act (Cap. 242)—
(Cont.)

Part IX—
(Cont.)

any particular case, it may, with the consent of the Minister for the time being responsible for local government given with the agreement of the Minister, relax the requirements of the by-law or dispense with compliance therewith:

Provided that the local authority shall give notice of any such proposed relaxation of dispensation in such manner and to such persons, if any, as the Minister for the time being responsible for local government may direct, and the said Minister shall not give his consent before the expiration of one month from the giving of the notice and, before giving his consent, shall take into consideration any objection which may have been received by him.

126C. Passing or rejection of plans and retention of plans, etc.

(1) Where plans of any proposed work are, in accordance with any building by-laws made under section 26A of this Act, deposited with a local authority, the local authority shall, subject to any other provision of this Act, or any rule or by-law made thereunder which expressly requires or authorizes it in certain cases to reject plans, pass the plans unless they either are defective, or show that the proposed work would contravene any of those rules or by-laws, and, if the plans are defective or would contravene any of those rules or by-laws, such local authority shall reject the plans.

(2) The local authority shall within the prescribed period from the deposit of the plans give notice to the person by whom or on whose behalf they were deposited whether or not they are passed, and—

- (a) a notice of rejection shall specify the defects on account of which, or the by-law or the provision of this Act or the rule (if any) made thereunder, for non-conformity with which, or under the authority of which, the plans have been rejected; and

Local Government

FOURTH SCHEDULE—*continued*

The Public Health
Act (Cap. 242)—
(Cont.)

Part IX—
(Cont.)

(b) a notice that plans have been passed shall state that the passing of the plans operates as an approval thereof only for the purposes of the requirements of the said building by-laws and of any such provision of this Act or any rule made thereunder as is referred to in subsection (1) of this section.

(3) Any question arising under this section between a local authority and the person by whom or on whose behalf plans are deposited as to whether the plans are defective, or whether the proposed work would contravene any of the said building by-laws may on the application of that person, be determined by a subordinate court of the first class:

Provided that no such application shall be entertained unless it is made before the proposed work has been substantially commenced.

(4) For the purposes of this section, the prescribed period in relation to the passing or rejection of plans is one month, but building by-laws made under section 126A of this Act by a local authority whose meetings are normally held not more frequently than once a month, may provide that in the case of plans deposited less than three clear days before a meeting of the local authority the prescribed period shall be five weeks:

Provided that the local authority may, within the said period of one month or five weeks, as the case may be, by notice in writing extend such period in the case of any particular application for a further period of one month.

(5) Building by-laws made under section 126A of this Act may—

*Local Government*FOURTH SCHEDULE—*continued*

The Public Health
Act (Cap. 242)—
(Cont.)

Part IX—
(Cont.)

- (a) require that plans and other documents to be deposited in pursuance of the by-laws shall be deposited in such number of copies as the local authority may stipulate and, if the by-laws contain such a requirement the local authority may retain one or more copy of any plans or other documents so deposited, whether or not the plans are passed; and
- (b) require the payment of such reasonable fee as the local authority may determine for the examination by it of any plans or other documents deposited with it pursuant to such by-laws; and
- (c) stipulate the period within which a building shall be commenced and completed.

126D. Power to require removal or alteration of work in certain cases

(1) If any work, to which building by-laws made under section 126A of this Act are applicable, contravenes any of those by-laws the local authority which made them, without prejudice to its right to take proceedings in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the by-laws.

(2) In a case where the local authority is, by any provision in this Act other than section 126C thereof or by any rules made thereunder other than building by-laws made under section 126A of this Act, expressly required or authorized to reject plans, then, if any work to which such building by-laws are applicable is executed either without plans having been deposited, or notwithstanding the rejection of the plans, or otherwise than in accordance with any requirements subject to which

Local Government

FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part IX— (Cont.) | <p>the local authority passed the plans, the local authority may by notice to the owner either require him to pull down or remove the work, or, if he so elects, to comply with any other requirements specified in the notice, being requirements which the local authority might have made under the provision or rule in question as a condition of passing plans.</p> <p>(3) A notice under subsection (1) or subsection (2) of this section may be served either personally or by registered post or by attaching the same to such work or by advertisement in not less than two consecutive issues of a newspaper circulating in the area in which such work is situate.</p> <p>(4) Where such local authority is unable to ascertain the name and address of the owner of the work, the owner of the land upon which the work stands shall, upon being required in writing so to do by the local authority within twenty-eight days of the date of the service of such requirement, furnish the local authority with full particulars of the name and address of the owner of such work, and if the owner of the land without reasonable excuse fails to furnish the said particulars within the time prescribed and if he in furnishing the particulars makes any statement which proves to be false he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand shillings, and if he shall thereafter continue to withhold the said particulars he shall be liable to a further fine not exceeding thirty shillings for every day during which such offence shall continue.</p> <p>(5) If a person to whom notice has been given under subsection (1) or subsection (2) of this section fails to comply with the notice before the expiration of twenty-eight days, or such longer period as may be specified in the</p> |
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Local Government

FOURTH SCHEDULE—*continued*

The Public Health
Act (Cap. 242)—
(Cont.)

Part IX—
(Cont.)

notice or as a subordinate court of the first class may on his application allow, the local authority which gave the notice may pull down or remove the work in question, and may if it thinks fit sell the materials thereof or effect such alterations therein as it deems necessary.

(6) The amount of any expenses incurred by a local authority under subsection (5) of this section, after giving credit for any amount realized by the sale of materials if sold, shall be a civil debt recoverable summarily by the local authority from the owner of the work and the owner of the land upon which the work is situate jointly and severally and the right of a local authority to recover any such amount, or any part thereof, from any person under this subsection shall not be barred by reason only of the local authority having obtained judgement for the same, or any part thereof, against any other person, and where any person liable therefor pays to such local authority the full amount of any such expenses, he may recover from any other person liable jointly therefor such contribution, if any, as a subordinate court of the first class may determine to be just and equitable.

(7) Any surplus in the hands of the local authority shall be paid by it to the owners of the work and the land on which the same is situate as those owners agree; and if the owners do not agree as to the division of such surplus the local authority shall be deemed by virtue of this subsection to be a trustee of the surplus for such owners, and section 63 of the Trustee Act (Cap. 167) (which relates to payment into court by trustees) shall have effect accordingly.

(8) The court, in determining for the purposes of this section the shares in which any expenses shall be contributed by, or any surplus shall be divided between, two or more persons, shall have regard to their respective interests in the work and the land on which the same is situate, the right

Local Government

FOURTH SCHEDULE—*continued*

The Public Health
Act (Cap. 242)—
(Cont.)

Part IX—
(Cont.)

(if any) of the owner of the work to remove the same, the respective obligations and liabilities of the parties in respect of the maintenance and repair of the work, and all the other circumstances of the case.

(9) By-laws made under section 126A of this Act may provide for compensation to be payable by the local authority to the owner or occupier of any work pulled down or removed, for such reasons or in such circumstances as may be specified in the by-laws by such local authority under subsection (3) of section 126A of this Act but, save as aforesaid, no compensation shall be payable for any work so removed or pulled down.

(10) No such notice as is mentioned in subsection (1) or subsection (2) of this section shall be given after the expiration of twelve months from the date of the completion of the work in question, and, in any case where plans were deposited, it shall not be open to the local authority to give such a notice on the ground that the work contravenes any building by-laws made under section 126A of this Act, or, as the case may be, does not comply with its requirements under any other provision of this Act or rules made thereunder as aforesaid, if either the plans were passed by the local authority, or notice of their rejection was not given within the prescribed period from the deposit thereof, and if the work has been executed in accordance with the plans and of any requirement made by the local authority as a condition of passing the plans.

(11) Nothing in this section shall affect the right of a local authority, or of the Attorney-General, or of any other person, to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any by-law or any provision in this Act, but if the work is one in respect of which plans were

*Local Government*FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part IX— (Cont.) | deposited and the plans were passed by the local authority or notice of their rejection was not given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the court on granting the injunction shall have power to order the local authority to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court shall cause the local authority if not a party to the proceedings, to be joined as a party thereto. |
| | Part XI | <p>Insert immediately after section 135 the following section—</p> <p>135A. Powers of certain local authorities respecting milk, etc.</p> <p>(1) Every municipal council and every urban and area council may with the approval of the Minister make by-laws applicable to its area for all or any of the following purposes—</p> <ul style="list-style-type: none"> (a) for regulating, supervising and licensing purveyors of milk and ice-cream makers and vendors; (b) for regulating, inspecting, supervising and licensing dairies, milk-shops and cowsheds; (c) for regulating the conveyance and distribution and securing the identification of the source of milk or milk products distributed, offered for sale or sold within its area of jurisdiction; (d) for prescribing the conditions subject to which any milk or milk products, wherever produced or prepared, may be introduced, distributed, stored sold or used within its area of jurisdiction; |

*Local Government*FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part XI— (Cont.) | <p>(e) for enabling such local authority to certify the quality of any milk and prohibiting the unauthorized use of any terms employed by the local authority in denoting such quality; and</p> <p>(f) for prohibiting the introduction, distribution, storage, sale or use within its area of jurisdiction of any milk or milk products from any source within or without such area where it appears to such local authority or a committee thereof, on the certificate of its medical officer of health or such other person as the local authority may authorize in that behalf, that the consumption of such milk or milk products is likely to cause the outbreak or spread of any infectious or contagious disease;</p> <p>but no such by-law or rule shall be inconsistent with or repugnant to any rule or order under section 134 or section 135 of this Act in force in the area of jurisdiction of such local authority.</p> <p>(2) The procedure for the making, approval and publication of by-laws or rules made under this section shall be that prescribed in the Local Government Act (Cap. 265), and for the purpose of the enforcement thereof, and the disposal of fines imposed for contravention thereof, such by-laws or rules, as the case may be, shall be deemed to be by-laws or rules made by the same local authority under this Act.</p> <p>(3) Rules may be made under section 134 of this Act and orders may be made under this section 135 of this Act notwithstanding that they may be inconsistent with or repugnant to any by-law or rule of a local authority and in force in the area to which such rules or orders apply, and to the extent, if any, of</p> |
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*Local Government*FOURTH SCHEDULE—*continued*

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| The Public Health Act (Cap. 242)— (Cont.) | Part XI— (Cont.) | such inconsistency of the rules or orders, as the case may be, shall prevail over such by-law or rules of the local authority. |
| | Part XV | Insert immediately after section 168 the following section— 168A. Power of local authorities respecting mosquitoes, flies, etc. (1) Every local authority may with the approval of the Minister make by-laws for preventing and abating conditions permitting or favouring the breeding of mosquitoes and flies, and, generally, for the prevention of malaria and other insect-borne diseases. (2) Subsection (2) of section 135A shall apply in respect of any by-laws made under this section as it applies to by-laws made under that section. |
| | ss. 13, 14, 19, 22, 23, 24, 25, 26, 37, 61, 106, 117, 119, 120, 121, 122, 123, 124, 132 and 140. | Delete the words "local authority" wherever they appear and substitute "local health authority". |
| The Local Authorities (Recovery of Possession of Property) Act (Cap. 273). | s. 2 | Delete the definition of "local authority". |
| The Electric Power Act (Cap. 314) | s. 2 | Delete the definition of "Local authority". (a) Insert immediately after subsection (2) a new subsection as follows— (2A) Any rule made under subsection (1) of this section may empower local authorities generally, or particular local authorities or classes of local authorities, with the approval of the Minister given after consultation with the Minister for the time being responsible for local government and the Board (Scheduled Areas) to make by-laws, applicable to their respective areas or |

Local Government

FOURTH SCHEDULE—*continued*

any part thereof, for any of the purposes for which rules may be made under that subsection, and any such rule, and any such by-law, may empower the Director of Agriculture to issue such orders as are referred to in subsection (2) of this section.

- (b) Insert in subsection (3) immediately after "Any rule or regulation" the words "or by-law".

- (c) Add immediately after subsection (3) four new subsections as follows—

(4) Where in this Act or in any other written law, reference is made to rules or regulations made under this section or this Part, such reference shall, except where the context otherwise requires, be deemed to include a reference to any by-laws made under rules made under this section.

(5) The procedure for the making, approval and publication of by-laws made under rules made under this section shall be that prescribed under the Local Government Act (Cap. 265), and for the purposes of the enforcement thereof and the disposal of fines imposed for contravention thereof such by-laws shall be deemed to be by-laws made by the same local authority under those sections.

(6) All by-laws made by a county council and in force in any area in the Scheduled Areas immediately before the coming into operation of the Local Government Act (Cap. 265), which could be validly made under any rule made by the Minister under this section shall remain in force as if so made and the county council which, under the said Act, has jurisdiction in that area in place of the county council which made such by-laws shall be deemed to have been empowered by the Minister under this section to make by-laws for the purposes for which such by-laws were made.

FOURTH SCHEDULE—*continued*

- (7) Rules may be made by the Minister under this section notwithstanding that they may be inconsistent with or repugnant to any by-law of a local authority in force in the area to which such rules apply, and to the extent, if any, of such inconsistency or repugnancy as aforesaid such rules shall prevail.
- (a) Insert immediately after subsection (2) a new subsection as follows—
- (2A) Any rule made under subsection (1) of this section may empower local authorities generally, or particular local authorities or classes of local authorities, with the approval of the Minister given after consultation with the Minister for the time being responsible for local government and the Board (Non-scheduled Areas), to make by-laws, applicable to their respective areas or any part thereof, for any of the purposes for which rules may be made under that subsection, and any such rule, and any such by-law, may empower the District Commissioner of any district to which such rule or by-law applies (being a district within the Non-scheduled areas), to issue such orders as are referred to in subsection (2) of this section.
- (b) insert in subsection (3) immediately after "rules and regulations" the words "and by-laws".
- (c) Add immediately after subsection (3) three new subsections as follows—
- (4) Where in this Act or any other written law, reference is made to rules or regulations made under this section or this Part, such reference shall, except where the context otherwise requires, be deemed to include a reference to any by-laws made under rules made under this section.
- (5) Section 48(5) of this Act shall apply in respect of by-laws made under rules made under this section.

*Local Government*FOURTH SCHEDULE—*continued*

(6) All by-laws made by an African District Council and in force in any area in the Non-scheduled Areas immediately before the coming into operation of the Local Government Act (Cap. 265), which could be validly made under any rule made by the Minister under this section shall remain in force as if so made and the county council which, under the said Act, has jurisdiction in that area in place of the African District Council which made such by-laws shall be deemed to have been empowered by the Minister under this section to make by-laws for the purposes for which such by-laws were made.

s. 153 Delete and substitute the following—

153. Rules to override by-laws

Rules may be made under section 148 of this Act by the Minister notwithstanding that they may be inconsistent with or repugnant to any by-law of a local authority in force in the area to which such rules apply, and to the extent, if any, of such inconsistency or repugnancy as aforesaid such rules shall prevail.

s. 184(4) Delete and substitute the following—

(4) The procedure for the making, approval and publication of by-laws made under rules made under this section shall be that prescribed by the Local Government Act (Cap. 265), and, for the purposes of the enforcement thereof, such by-laws shall be deemed to be by-laws made under the Act.

s. 184(6) Delete—

“law under which the local authority is established” and substitute “Local Government Act (Cap. 265)”.

s. 222 Delete the words “a county district council under the Local Government (County Councils) Act, 1952, or by an African District Council under the African District Councils Act, 1950”, and the marginal references to the said Acts, and substitute the following—

*Local Government*FOURTH SCHEDULE—*continued*

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| The Crop Production and Livestock Act. (Cap. 321) | <p data-bbox="630 311 855 358">"a county council or urban or area council under the Local Government Act (Cap. 265)".</p> <p data-bbox="630 358 855 392">Insert immediately after section 4 the following new section—</p> <p data-bbox="630 392 855 421">4A. Power of certain local authorities to make by-laws</p> <p data-bbox="630 421 855 537">(1) Subject to the approval of the Minister for the time being responsible for animal husbandry, a municipal council, and an urban or area council, may make by-laws applicable to their respective areas or any part thereof, for all or any of the following purposes for which no rules made under section 4 of this Act are in force in such area—</p> <ul style="list-style-type: none"> <li data-bbox="654 537 855 582">(a) for prohibiting the keeping or grazing of any livestock on any agricultural land in such area; <li data-bbox="654 582 855 638">(b) for regulating or controlling the numbers and kinds of livestock which may be kept on any such agricultural land; <li data-bbox="654 638 855 672">(c) for requiring male livestock to be castrated; <li data-bbox="654 672 855 705">(d) for licensing male breeding livestock; <li data-bbox="654 705 855 761">(e) for providing for the compulsory reduction of the numbers of livestock in any such area; and <li data-bbox="654 761 855 795">(f) for imposing and collecting grazing fees. <p data-bbox="630 795 855 896">(2) Subject to the approval of the Minister for the time being responsible for animal husbandry, a county council may, where no scheme for the artificial insemination of cattle exists in the county, make by-laws providing for schemes for the artificial insemination of cattle.</p> <p data-bbox="630 896 855 967">(3) The procedure for the making, approval and publication of by-laws made under this section shall be that prescribed in the Local Government Act (Cap. 265), and for the purposes of the</p> |
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*Local Government*FOURTH SCHEDULE—*continued*

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| | | enforcement thereof and the disposal of fines imposed for contravention thereof such by-laws shall be deemed to be by-laws made by the same local authority under those the Act. |
| | s. 5 | Insert next after the words "any rule" the words "or by-law". |
| The Land and Agricultural Bank Act (Cap. 323) | s. 46(4) | Delete and substitute the following— (4) For the purposes of this section, "local authority" includes any district road board established under the Public Roads and Roads of Access Act (Cap. 399) |
| The Suppression of Noxious Weeds Act (Cap. 325) | s. 2 | (a) Add at the end of the definition of "inspector" the words "and any person appointed by or under any by-laws made under section 9A of this Act in respect of the area of jurisdiction of the local authority which made the by-laws". (b) Delete the definition of "local authority". Insert immediately after section 9 the following section— 9A. Powers of local authorities (1) Subject to the provisions of this Act, with the consent of the Director of Agriculture, every local authority may make by-laws for securing the eradication of any noxious weed from any land within its area and for compelling owners or occupiers of any such land to cause any such weed to be eradicated from their land, and for such purposes any such by-laws may appoint or provide for the appointment of inspectors. (2) The procedure for the making, approval and publication of by-laws made under this section shall be that prescribed in the Local Government Act (Cap. 265) and for the purposes of the enforcement thereof and the disposal of fines imposed for contravention thereof, such by-laws shall be deemed to be by-laws made by the same local authority under those the Act. |

Local Government

FOURTH SCHEDULE—continued

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| The Grass Fires Act (Cap. 327) | s. 2 | Delete the definition of "local authority" and substitute the following— "local authority" means— (a) in the case of a municipality, the municipal council thereof; (b) in the case of a county division, the urban or area council thereof; (c) in the case of a township, the District Commissioner; (d) in the case of any other area, the District Commissioner, or such person, body of persons or authority as the Governor may, by notice in the Gazette, appoint to be the local authority for the purposes of this Act. |
| | | s. 11(2)(a) Delete "paragraph (d) or paragraph (e)" and substitute "or paragraph (d)". |
| The Branding of Stock Act (Cap. 357) | s. 20(1) | (a) Delete "African District Council" and substitute "local authority". (b) Delete the words "such Council" in each of the three cases they appear and substitute "such local authority". |
| | | s. 20(2) Delete "an African District Council" and substitute "a local authority". |
| | s. 20(3)(b) | Delete "African District Council" and substitute "local authority". |
| The Water Act (Cap. 372) | s. 124(5) | Delete and substitute the following— (5) No local authority shall supply more than two households, and no local authority shall supply more than one thousand gallons of water a day, unless it is a water undertaker, and no person who is not a local authority shall supply more than twenty households, and no person who is not a local authority shall supply more than five thousand gallons of water a day for domestic purposes or more than twenty thousand gallons of water a day for any purpose, or purposes, unless he is a water undertaker, and any local authority or other person who supplies water in contravention of any provision of this |
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Local Government

FOURTH SCHEDULE—continued

subsection shall be guilty of an offence and liable, in the case of a first offence, to a fine not exceeding five thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding six months, and in the case of a second or subsequent offence, to a fine not exceeding ten thousand shillings or, in default of payment thereof, to imprisonment for a term not exceeding twelve months.

s. 124(5)—
(Cont.)

Provided, however, that the provisions of this subsection shall not apply in respect of the supply of water by any local authority or other person to its or his employees, or in respect of the supply of water on the premises of any hospital, factory, school, hotel, brewery, research station or institution to the occupants thereof, in cases where the source of supply is under the control of such local authority, person, hospital, factory, school, hotel, brewery, research station or institution, or where the water is supplied in bulk to such local authority, person, hospital, factory, school, hotel, brewery, research station or institution by a water undertaker;

s. 143(1) Insert immediately after the words "A water undertaker" the words "who is not a local authority";

s. 143(3) Delete subsection (3) and substitute two new subsections as follows—

(3) Every local authority which is a water undertaker may, with the approval of the Minister, and shall, if so required by the Minister, in accordance with subsection (3A) of this section, make by-laws for any purpose or matter for which regulations may be made under subsections (1) and (2) of this section.

(3A) The procedure for the making, approval and publication of by-laws made under subsection (3) of this section shall be that prescribed by the Local Government Act (Cap. 265), and for the purposes of the enforcement thereof, and the disposal of fines imposed for contravention thereof, such by-laws shall be deemed to be by-laws made by the same local authority under the Act.

Local Government

FOURTH SCHEDULE—*continued*

- s. 143 (4) Insert immediately after the word "regulations" where it first appears therein, the words "or by-laws made or deemed to have been", and where it next appears therein, the words "or by-laws".
- s. 143 Insert immediately after subsection (5) two new subsections as follows—
- (6) Any by-laws made by a local authority which is a water undertaker on the coming into operation of the Local Government Act (Cap. 265), and which were in force on the same date, shall, to the extent that such by-laws may, by virtue of subsection (3) of this section, be made under that subsection by that local authority, remain in force and shall be deemed to have been made under subsection (3) of this section.
- (7) Any reference in this or any other written law to regulations made by a water undertaker under this section shall, except where the context otherwise requires, be construed as including a reference to any by-laws made or deemed to have been made under this section.
- s. 145 Add immediately after subsection (6) the following four new subsections—
- (7) A water undertaker which is a local authority may, with the approval of the Minister, make by-laws for all or any of the purposes for which regulations may be made under subsection (1) of this section.
- (8) Section 143(3A) of this Act shall apply in respect of by-laws made under this section.
- (9) Any by-laws made by a local authority which is a water undertaker on the coming into operation of the Local Government Act (Cap. 265), and which are in force on the same date, shall to the extent that such by-laws may by virtue of subsection (7) of this section be made under that subsection by that local authority remain in force and shall be deemed to have been made under this section.

*Local Government*FOURTH SCHEDULE—*continued*

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| | | (10) References in this section to regulations and references in any other provision of this Act and in any other written law to regulations made under this section shall, except where the context otherwise requires, be construed as including references to by-laws made under this section. |
| The Water (General) Rules (Cap. 372) (Sub. Leg.) | r. 103(1)(c) | Delete "under the Local Government (County Councils) Act, 1952", and the marginal reference to that Act, and substitute the following— "or deemed to have been established under the Local Government Act (Cap. 265)." |
| The Water (Undertakers) Rules (Cap. 372) (Sub. Leg.) | r. 2 | Delete the definition of "owner" and substitute the following— "owner" has the meaning assigned to it in section 2 of the Local Government Act (Cap. 265). |
| The Public Roads and Roads of Access Act (Cap. 399) | s. 2 | Delete the definition of "board" and substitute the following— "board" means— (a) in respect of a county, the county council thereof, including, in respect of any power or duty delegated by a county council under section 3A of this Act to an urban or area council, such urban or area council; and (b) district road board appointed under section 3 of this Act. |
| | s. 3 | Add a new subsection as follows— (7) This section shall not apply to or with respect to any county under the Local Government Act (Cap. 265). |
| | s. 3A | Insert a new section as follows— 3A. Certain local authorities to be district road boards Every county under the Local Government Act (Cap. 265), shall be deemed to be a district under this Act, and the county council thereof shall be the district road board therein, |

FOURTH SCHEDULE—*continued*

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| The Public Roads and Roads of Access Act (Cap. 399)— (Cont.) | s. 13 | Add immediately after subsection (8) a new subsection as follows— (9) An owner or occupier of land who makes an application under subsection (8) of this section, shall serve a copy of his application by personal service or by post on the person to whom the road of access has been granted and to the owners or occupiers of the land through which the road of access passes. |
| | s. 14 | (a) Number as subsection (1) thereof. (b) Add a new subsection as follows— (2) The board shall have power to make an order for giving effect to any matter or thing over which the board has jurisdiction under this Act, or for the cancellation or alteration of any order previously made: Provided that the provisions of this Act respecting the procedure to be followed and the notices to be given as respects an application to construct a road of access shall apply <i>mutatis mutandis</i> to the cancellation or alteration of any order previously made, and to any other order made under this Act. |
| | s. 15 | Delete "public interest" and substitute "interests of the persons entitled to use the road". |
| | s. 16(3) | Delete and substitute the following— (3) Every such appeal shall be filed within thirty days of the date when the decision of the board was communicated in writing to the applicant or his representative and every other party affected by such decision. |
| | s. 16A | Insert immediately after section 16, a new section as follows— |

Local Government

FOURTH SCHEDULE—continued

16A. Power of county councils to make by-laws

A county council may make by-laws regulating the conduct of its business as a district road board and for controlling roads of access within its area.

The Road Authority Act (Cap. 401) s. 11

- (a) Renumber as subsection (1) thereof.
(b) Add three new subsections as follows—

(2) There shall be paid annually out of the Fund—

- (a) to every local authority which constructs, reconstructs or maintains any trunk road or secondary road within the meaning of the Local Government Act (Cap. 265), to such standard as the Authority may approve, a sum equivalent to the cost of such construction, reconstruction or maintenance:

Provided that, in the event of any such road being constructed, reconstructed or maintained to a higher standard than that approved by the Authority, any additional expenses thereby occasioned shall be met from the revenue of the local authority concerned;

- (b) to every local authority which constructs, reconstructs or maintains any unclassified road, within the meaning of the aforesaid Act to the satisfaction of the Authority, a sum equivalent to such percentage of the cost of such construction, reconstruction, or maintenance as the Authority may determine:

Local Government

FOURTH SCHEDULE—continued

Provided that, in the event of any such road being constructed, reconstructed or maintained to a higher standard than is, in the opinion of the Authority, necessary in all circumstances of the case, the additional expenses thereby occasioned shall not, in calculating the sum payable under this paragraph, be included in the cost of such construction, reconstruction or maintenance.

(3) In exercising its powers under subsection (2) of this section the Authority shall have regard to the needs of traffic having its origin or destination outside the local government area in which such road is situate.

(4) Every local authority shall cause a special account to be kept of expenditure incurred on the construction, reconstruction and maintenance of all roads in respect of which a grant has been made under subsection (2) of this section, and where any question arises as to the correctness or admissibility of any charge against such special account, the decision of the Governor in Council shall be final.

The Traffic Act
(Cap. 403)

s. 118A

Insert immediately after section 118 a new section as follows—

118A. Local authorities may make by-laws regulating taxicabs, etc.

(1) A municipal council, and a county council may make by-laws for controlling taxicabs within its area, for fixing the number of the taxicabs permitted in its area, for requiring the installation and providing for the inspection of meters on such taxicabs, for licensing the drivers of such taxicabs, for fixing the fees for any such

*Local Government*FOURTH SCHEDULE—*continued*

licences and for prohibiting the parking of taxicabs, except for the purpose of picking up or depositing passengers or loads, elsewhere than in stands provided for taxicabs.

(2) Every municipal council, urban council and area council may make by-laws for controlling animal or human drawn vehicles which are not licensed under any of the other provisions of this Act.

(3) The procedure for the making, approval and publication of by-laws made under subsection (3) and subsection (4) of this section shall be that prescribed in the Local Government Act (Cap. 265), and for the purposes of the enforcement thereof and the disposal of fines imposed for contravention thereof, such by-laws shall be deemed to be by-laws made by the same local authority under the Act.

(4) In this section, "controlling" includes regulating, inspecting, supervising and licensing.

The Traffic Rules
(Cap. 403)
(Sub. Leg.)

r. 9(2)(a)

Delete paragraphs (ii), (iii), (iv) and (v) and substitute the following—

(ii) municipal councils;

(iii) urban or area councils;

(iv) county councils;

The Transport
Licensing Act.
(Cap. 404)

s. 7

Add the following proviso thereto—

Provided that the Licensing Authority shall before granting any road service licence in respect of any vehicle or vehicles for the carriage of passengers from, through or into, the area of jurisdiction of any county council or municipal council consult and have regard to the wishes of such council respecting the place or places in the area of such council and, or from which the vehicle may stop or start and the route to be taken by such vehicle.

s. 8

Insert immediately after subsection (4) a new subsection as follows—

*Local Government*FOURTH SCHEDULE—*continued*

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| | | (5) In the exercise of its powers under this section, the Licensing Authority shall have regard to the wishes of every council consulted under the proviso to section 7 of this Act. |
| The Traders Licensing Act (Cap. 497) | s. 2 | (a) Delete paragraphs (a), (b) and (c) of the definition of "local authority" and substitute the following— (a) a municipal council established or deemed to have been established under the Local Government Act (Cap. 265); or (b) an urban council established or deemed to have been established under the Local Government Act (Cap. 265); or (c) an area council established or deemed to have been established under the Local Government Act (Cap. 265). (b) Delete the words "District Council area, African District Council area" in paragraph (e) of the definition of "local authority" and substitute "county division". |
| | s. 5(3)(b) | Delete. |
| | s. 19 | Delete. |
| | s. 20 | Delete. |
| The Land Control Regulations, 1961 (L.N. 142/1961) | r. 19 | Add at the end thereof the following new paragraph— (3) Nothing in this regulation contained shall apply to a local authority or to the subdivision of any land by a local authority. |
| | s. 2 | Delete paragraphs (b) and (c) and substitute the following— (b) all county divisions established or deemed to have been established by or under the Local Government Act (Cap. 265). |
| The Streets Adoption Act, 1963. (No. 5 of 1963) | s. 3(1) | In the definition of "local authority" delete the words "county district council" and substitute "urban or area council". |

*Local Government*FOURTH SCHEDULE—*continued*

The Children and
Young Persons
Act, 1963
(No. 8 of 1963)

- s. 58(1) Delete and substitute the following—
(1) The Minister may from time to time, with the agreement or at the request of a municipal or county council, or group of such councils, by order appoint such council or group of councils, to be an appointed local authority for the purposes of this Act, and a council or group of councils so appointed shall, subject to the provisions of section 59 of this Act, perform the duties imposed and have the powers conferred upon appointed local authorities under this Act.
- s. 59(1)(a) Delete the words "or board".
- s. 59(1)(c) Delete.
- s. 60(1) Delete "county district" and substitute "county division".
- s. 60(2) Delete "county district" and substitute "county division".

FIFTH SCHEDULE

[Sections 53, 53A, 53B, L.N. 634/1963, Fourth Sch., L.N. 749/1963, Sch., L.N. 105/1965, o. 11, L.N. 107/1966, o. 2, L.N. 11/1967, s. 11, Act No. 13 of 1970, s. 11, Act No. 4 of 1974, Sch., Act No. 11 of 1984, s. 29, Act No. 10 of 1997, Sch.]

LOCAL AUTHORITIES ELECTION

1. Qualification for registration as voters

Subject to the provisions of paragraphs 2 and 3 of this Schedule a person shall be qualified to be registered as a voter in elections to local authorities if, and shall not be so qualified unless, at the date of his application to be registered, he—

- (a) is a Kenya citizen and has attained the age of 18 years; and
- (b) possesses any of the following qualifications, that is to say—
 - (i) is, in the current valuation roll, assessment roll, area roll or rate roll of a local authority having jurisdiction over the place in which he applies to be registered, named as the rateable owner or rateable occupier of rateable property included in that roll and has paid all rates in respect of that property due from him in the year ending with the 31st December next before the date on which he so applies; or
 - (ii) has, in respect of each year in the period of three years ending with the 31st December next before the date on which he applies to be registered, paid to a local authority having

- (iii) has, for a period of, or periods amounting in aggregate to, not less than five years in the seven years immediately preceding the date of his application to be registered, ordinarily resided in an area that at that date is within a local authority area that includes the place in which he so applies; or
- (iv) is the spouse of any person falling within subparagraph (b)(i), subparagraph (b)(ii) or subparagraph (b)(iii) of this paragraph.

[L.N. 107/1966, o. 2, Act No. 4 of 1974, Sch., Act No. 10 of 1997, Sch.]

2. Disqualification for registration as a voter

No person shall be qualified to be registered as a voter in elections to local authorities—

- (a) if, under any law in force in Kenya, he is adjudged or otherwise declared to be of unsound mind; or
- (b) if he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under a law in force in Kenya; or
- (c) if he is under sentence of death imposed on him by any court in Kenya or is serving a sentence of imprisonment (by whatever name called) of or exceeding three months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or
- (d) if he is disqualified therefrom by any rules made by the Electoral Commission in respect of the place in which he applies to be registered on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition.

[Act No. 11 of 1967, s. 11.]

3. Disqualification for councillor

(1) A person shall not be qualified to be elected, nominated, appointed or otherwise selected as a councillor of a local authority if, at the date of his nomination for election or at the date of his nomination, appointment or other selection, as the case may be—

- (a) he holds or is acting in any office on the staff of that authority or of any other local authority whose area of jurisdiction includes or is included in the area of jurisdiction of that authority; or
- (b) he holds any paid office or other place of profit (other than that of mayor or chairman) wholly or partly in the gift or disposal of any local authority or of any committee thereof; or
- (c) he has within five years before the day of his election or since his election been surcharged under section 236 of the Act in respect of an amount exceeding one thousand shillings by an inspector; or

- (d) he has within twelve months next before the day of his election been convicted of any criminal offence, whether in Kenya or elsewhere, and has been sentenced to imprisonment for a period of not less than three years and has not received a free pardon:

Provided that the Electoral Commission may by order in any particular case remove such disqualification; or

- (e) he cannot read, write and speak the official language, or at least one of the official languages, if there is more than one official language, of the local authority:

Provided that the Electoral Commission may direct that such disqualification need not apply to the members of local authorities generally or of any particular class or group of local authorities or of any particular local authority; or

- (f) he is disqualified from being elected or from being a councillor or member of that authority under or by virtue of any of the provisions of the Election Offences Act (Cap. 66); or

- (g) he has within three years from the date of his election or nomination or since his election or nomination been convicted of an offence under section 86A or 89 of the Act.

- (h) *deleted by L.N. 107/1966, o. 3.*

[L.N. 107/1966, o. 3, Act No. 11 of 1967, s. 11, Act No. 10 of 1977, Sch., Act No. 11 of 1984, s. 29.]

4. Deleted by Act No. 13 of 1970, s. 11.

5. Determination of qualification

Any question whether a person is qualified for registration as a voter in elections to local authorities shall be determined in such manner as may be prescribed by rules made by the Electoral Commission.

[Act No. 13 of 1970, s. 11, Act No. 10 of 1997, Sch.]

6. Multiple qualification

A person who is qualified to be registered in more than one place as a voter in elections to local authorities may apply to be registered in any or all of the places in which he is so qualified whether those places fall within the same local authority area or within different local authority areas, but a person who is qualified to be registered in two or more places as a voter in elections to local authorities shall, on the final compilation of the register of voters in elections to any one authority, be registered only once in each electoral area for that authority.

[Act No. 13 of 1970, s. 11.]

7. Interpretation

For the purposes of paragraph 2(c) of this Schedule—

- (a) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them amounts to or exceeds three months, but if any one of them amounts to or exceeds three months they shall be regarded as one sentence; and

- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.
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