

PRESIDENT'S OFFICE

No. 489. 22 March 1996

NO. 6 OF 1996: HOUSING AMENDMENT ACT, 1996.

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

General Explanatory Note:

Words *in bold italics* indicate omissions from existing enactments.

Words *in italics* indicate insertions in existing enactments.

ACT

To amend the Housing Act, 1966, so as to make further provision for the financing of housing; to amend the Housing Arrangements Act, 1993, so as to delete certain definitions and to insert certain definitions; to make further provision for the monitoring of certain housing matters by the National Housing Board; to provide for the accreditation of local authorities to carry out national housing programmes; to make further provision for the management and administration of the assets of the National Housing Board; to provide for the control over the activities of a Provincial Housing Board by a member of the executive council; to provide for the submission to the provincial legislature of certain reports on the activities of a Provincial Housing Board; to establish a South African Housing Fund; to consolidate certain funds in that Fund; to regulate the administration of that Fund; to substitute the long title; to repeal certain laws; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 12 March 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Insertion of section 10D in Act 4 of 1966

1. The following section is hereby inserted in the Housing Act, 1966, after section 10C:

"Financing of matters relating to housing

10D. (1) Notwithstanding anything to the contrary contained in this Act, the National Housing Board referred to in the Housing Arrangements Act, 1993 (Act No. 155 of 1993), may, in accordance with the directives of the Minister and on such conditions as the said Board may determine, approve the financing of any matter or thing which in the opinion of the said Board relates to housing.

(2) Without derogating from the generality of the power of the Minister under subsection (1), the directives contemplated in that subsection may provide that any moneys issued out of the fund for the purposes of subsection (1), shall not bear interest and shall not be repayable to the fund."

Amendment of section 1 of Act 155 of 1993, as amended by section 1 of Act 8 of 1994 and section 2 of Act 33 of 1994

2. Section 1 of the Housing Arrangements Act, 1993 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the deletion of the definition of "committee";

(b) by the insertion after the definition of "executive committee" of the following definition:

" *'former fund' means-*

(a) the Development and Housing Fund established by section 12 of the Development and Housing Act, 1985;

(b) the Development Fund established by section 11 of the Development Act (House of Representatives), 1987;

(c) the fund referred to in section 72(3) of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991);

(d) the Housing Development Fund established by section 12 of the Housing Development Act (House of Delegates), 1987 (Act No. 4 of 1987);

(e) the Housing Fund established by section 9 of the Housing Act (House of Representatives), 1987 (Act No. 2 of 1987); the National Housing Fund referred to in section 2 of the Housing Act, 1966;"

(c) by the deletion of the definition of "fund";

(d) by the insertion after the definition of "former fund" of the following definition:

" *'Fund' means the South African Housing Fund established by section 12B;"*

(e) by the insertion after the definition of "Fund" of the following definition:

" *'Head of the Department' means the officer of the provincial administration in charge of the department of the provincial administration responsible for the administration of housing matters in a province and, for the purposes of section 13, if such officer is not, in terms of a law of the provincial legislature, the accounting officer for the vote in respect of housing, 'Head of the Department' means the officer of the provincial administration who is in terms of such a law the accounting officer for such vote;"*

(f) by the insertion of the following definition after the definition of "Housing Development Board":

"'local authority' means–

(a) a transitional local council, a transitional metropolitan council or a transitional metropolitan substructure as defined in section 1(1) of the Local Government Transition Act, 1993 (Act No. 209 of 1993); or

(b) a district council, a transitional representative council or a transitional rural council as defined in section 9A of the said Local Government Transition Act, 1993;"

(g) by the deletion of the definition of "National Housing Fund"; and

(h) by the insertion of the following definition before the definition of "provincial board":

" 'national housing programme' means any housing or housing related programme as determined by the Minister that may be financed out of the Fund in terms of section 10B, 10C or 10D of the Housing Act, 1966."

Amendment of section 4 of Act 155 of 1993

3. Section 4 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) For the purposes of subsection (1), a provincial board and the Head of the Department shall furnish such reports, returns or other information to the Director-General as the board may require."

Amendment of section 9 of Act 155 of 1993

4. Section 9 is hereby amended by the deletion of subsection (3).

Amendment of section 11 of Act 155 of 1993, as substituted by section 4 of Act 8 of 1994

5. Section 11 of the principal Act is hereby amended–

(a) by the insertion after subsection (4) of the following subsection:

"(4A) (a) A provincial board shall, in the performance of its functions in terms of subsection (4)(a), carry out the policy directives, if any, of the member of the executive council not inconsistent with the national policy in respect of housing as determined by the Minister.

(b) The chairperson of the provincial board shall, whenever he or she is called upon to do so by the member of the executive council, report to the said member on the

activities of the provincial board." and

(b) by the addition of the following subsection:

"(9) (a) The member of the executive council shall within 60 days after 31 December of each year lay upon the Table of the provincial legislature a report on the activities of the provincial board during the previous year if the provincial legislature is then in session or, if the provincial legislature is not then in session, within 14 days after the commencement of its next session, to be dealt with as the provincial legislature may determine.

(b) The member of the executive council shall immediately after laying the report upon the Table of the provincial legislature as provided in paragraph (a), transmit to the Minister as many copies of the report as the Minister may require."

Insertion of section 11B in Act 155 of 1993

6. The following section is hereby inserted in the principal Act after section 11A:

"Powers of local authority to carry out national housing programmes

11B. (1) Any local authority may apply in writing to the member of the executive council, in the form determined by that member, to be accredited under subsection (2) for the purposes of carrying out one or more national housing programmes.

(2) The member of the executive council shall consider any application made to him or her under subsection (1) and, if he or she is satisfied that the local authority complies with the criteria for the accreditation of local authorities as determined by the Minister for the purposes of this section, he or she shall accredit the local authority for the purposes of carrying out one or more of the national housing programmes mentioned in the application.

(3) Subject to the directions of the member of the executive council not inconsistent with the national policy in respect of housing as determined by the Minister, any local authority that has been accredited under subsection (2) may carry out any national housing programme in respect of which accreditation has been granted, and for this purpose that local authority may exercise such powers and perform such functions and shall carry out such duties of the board as may be necessary for the carrying out of such national housing programme."

Repeal of section 12 of Act 155 of 1993, as substituted by section 5 of Act 8 of 1994, and savings

7. (1) Subject to this section, section 12 of the principal Act is hereby repealed. (2) (a) Anything purporting to have been done under or in terms of the principal Act by a committee appointed under section 12 of the principal Act repealed by subsection (1) of this section, shall, subject to paragraph (b), be deemed to have been done by the relevant provincial board established under section 11 of the principal Act under or in terms of the corresponding provision of the principal Act as amended by this Act.

(b) Any function of the Director-General of Housing purporting to have been performed, by virtue of a determination by the Minister of Housing under subsection (1)(b) of the said section 12, by a committee appointed under the said section 12, shall be deemed to have been performed by the Director-General of the provincial administration concerned by virtue of a delegation under section 4(2) of the Housing Second Amendment Act, 1994 (Act No. 33 of 1994).

(3) Any function of the National Housing Board referred to in section 2 of the principal Act which, immediately before the repeal of section 12 of the principal Act by subsection (1) of this section, could by virtue of a determination by the Minister of Housing under subsection (1)(b) of the said section 12 have been performed by a committee appointed under the said section 12, shall, subject to any instruction approved by the said Minister in relation to such function, be performed by the relevant provincial board established under section 11 of the principal Act until determined otherwise under section 12A of the principal Act as inserted by section 8 of this Act.

(4) Any function of the Director-General of Housing which, immediately before the repeal of section 12 of the principal Act by subsection (1) of this section, could by virtue of a determination by the Minister of Housing under subsection (1)(b) of the said section 12 have been performed by a committee appointed under the said section 12, shall be deemed to be a power that has been delegated to the Director-General of the provincial administration concerned under section 4(2) of the Housing Second Amendment Act, 1994 (Act No. 33 of 1994): Provided that any instruction approved by the said Minister in relation to such a function shall be deemed to be a condition determined under the said section 4(2).

Insertion of section 12A in Act 155 of 1993

8. The following section is hereby inserted in the principal Act before section 13:

"Management and administration of assets of board

12A. (1) The assets of the board situated in the province for which a provincial board has been established shall, subject to the instructions of the board, be managed and administered by the provincial board.

(2) The member of the executive council may, after consultation with the provincial board, direct an officer of the provincial administration or a committee of officers of the provincial administration established by him or her for the purpose, generally or in a particular case or category of cases, to perform any function which the provincial board may or shall perform under subsection (1)."

Insertion of section 12B in Act 155 of 1993

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

"South African Housing Fund

12B. (1) (a) *There is hereby established a fund to be known as the South African Housing Fund into which shall be deposited all moneys which become payable to the board or the Director-General and from which shall be met all expenditure incurred by the board or the Director-General in the performance of its or his or her functions under this Act, the Housing Act, 1966 (Act No. 4 of 1966), or any law mentioned in paragraph (a), (b), (c) or (d) of section 9(1).*

(b) Every former fund is hereby abolished.

(c) All moneys which—

(i) immediately before 1 April 1996 stood to the credit of any former fund shall devolve upon the Fund on that date;

(ii) immediately before 1 April 1996 were payable to or for the credit of any former fund, shall be payable to the Fund;

(iii) on or after 1 April 1996 would have become payable to or for the credit of any former fund, were it not for the abolition of such a former fund by paragraph (b), shall become payable to the Fund; and

(iv) were advanced out of any former fund shall be deemed to have been advanced out of the Fund.

(d) Any reference in the Housing Act, 1966, or any law mentioned in paragraph (a), (b), (c) or (d) of section 9(1) to any fund mentioned in the definition of "former fund" in section 1 shall be construed as a reference to the Fund.

(2) The Fund shall consist of—

(a) all moneys which in terms of subsection (1)(c)(i) devolve upon the Fund;

(b) all moneys which in terms of subsection (1)(a) or (c)(ii) or (iii) are payable or will become payable to the Fund;

(c) all moneys appropriated by Parliament from time to time for the purposes of this Act, the Housing Act, 1966, or any law mentioned in paragraph (a), (b), (c) or (d) of section 9(1);

(d) moneys borrowed by the board in terms of the Housing Act, 1966, or any law mentioned in paragraph (a), (b), (c) or (d) of section 9(1); and

(e) any other moneys accruing to the board or the Director-General in terms of this Act, the Housing Act, 1966, or any law mentioned in paragraph (a), (b), (c) or (d) of section 9(1) or from any other source.

(3) Notwithstanding anything to the contrary contained in the Exchequer Act, 1975 (Act No. 66 of 1975), all the available moneys of the Fund may be utilised for the purposes set out in this Act, the Housing Act, 1966, and the laws mentioned in paragraphs (a) to (d) of section 9(1).

(4) All moneys in the Fund which are not required for immediate use, shall be invested in such manner as may be determined by the Minister with the concurrence of the Minister of Finance.

(5) The Director-General shall, subject to section 13, for the purposes of the Exchequer Act, 1975, and the regulations made thereunder, be the accounting officer in relation to the moneys in the Fund.

(6) The Director-General shall, subject to this Act, the Housing Act, 1966, and the laws mentioned in paragraphs (a) to (d) of section 9(1), be responsible for the administration of the Fund and in particular for—

(a) all expenditure out of the Fund; and

(b) the collection for the credit of the Fund of all moneys due or accruing to the board or the Director-General and the prosecution of all claims in favour of the board or the Director-General, whether under contract or otherwise.

(7) The Minister may, in consultation with the Minister of Finance, prescribe—

(a) the details of the management of the Fund;

(b) the procedure relating to issues from the Fund and the repayment to the Fund of amounts issued therefrom;

(c) the rates of interest to be charged in respect of moneys issued out of the Fund which may vary according to the purpose for which such moneys are to be used;

(d) the manner in which the accounts of the Fund are to be kept; and

(e) any other matter which he or she considers it necessary or expedient to prescribe in relation to the control of the Fund.

(8) The Director-General shall as soon as possible after 31 March in each year submit detailed statements signed by him or her showing the result of the previous year's transactions and the balance sheet of the Fund to the Minister who shall lay such statements and balance sheet upon the Table in Parliament within 14 days of receipt thereof by him or her, if Parliament is then in session, or if Parliament is not then in session, within 14 days after the commencement of its next session.

(9) (a) The books and statements of account and balance sheet of the Fund shall be audited annually by the Auditor-General.

(b) The Auditor-General may require any person (including any local government, company or other body or any person in the employ of such a government, company or body) to make available for examination all books, registers and documents in his or her possession or under his or her control which would, in the opinion of the Auditor-General, facilitate the carrying out of the audit referred to in paragraph (a)."

Amendment of section 13 of Act 155 of 1993

10. (1) Subject to this section, section 13 of the principal Act is hereby amended-

(a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

"(1) ***Whenever a provincial board or a committee has been established or appointed, The Director-General may, subject to such conditions as he or she may determine, make available moneys of the National Housing Fund or any fund concerned to the Director-General of the provincial administration of the province in which such provincial board or committee has its seat, the Head of the Department to be utilized in connection with the performance of the functions of the provincial board or committee any local authority accredited under section 11B situated in the province concerned.***

(2) The ***Director-General of a provincial administration Head of the Department*** shall be the accounting officer in respect of all money made available to him or her in terms of subsection (1) and shall be responsible for the administration of such money to such extent as the Director-General may determine.

(3) The accounting officer shall-

(a) keep full and proper records of all money received or expended, and of assets, liabilities and financial transactions, in connection with the functions of the provincial board or ***committee local authority*** concerned; and

(b) as soon as practicable after the end of each financial year prepare ***and submit to the Director-General*** financial statements *in the form specified by the Director-General and* reflecting, with suitable particulars, money received and expenses incurred in connection with the functions of the provincial board or ***committee local authority*** during, and the relevant assets and liabilities at the end of, the financial year in question ***and submit such statements audited by the Auditor-General to the Director-General.***"; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) The ***Director-General of a provincial administration Head of the Department*** shall be responsible for the collection for the credit of ***a fund referred to in subsection (1) the Fund*** of money accruing or due to the board by virtue of the performance of the functions of the provincial board or ***committee local authority*** concerned, whether under contract or otherwise."

(2) Any money made available under section 13(1) of the principal Act before 1 April 1996 to the Director-General of a provincial administration which is not utilized immediately before that date, shall be deemed to be money made available under section 13(1) of the principal Act, as amended by subsection (1) of this section, to

the relevant Head of the Department as defined in section 1 of the principal Act, as amended by section 2(e) of this Act.

(3) Notwithstanding the amendment of section 13(3) of the principal Act by subsection (1) of this section, the Director-General of a provincial administration shall prepare and submit financial statements as contemplated in the said section 13(3) for any period before 1 April 1996 in accordance with the provisions of the said section 13(3) before the amendment thereof by subsection (1) of this section.

Amendment of section 14 of Act 155 of 1993, as amended by section 6 of Act 8 of 1994

11. Section 14 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The administrative functions of a provincial board **or committee** shall be performed by officers and employees in the employment of the provincial administration concerned and who are designated by the member of the executive council."

Substitution of long title of Act 155 of 1993

12. The following long title is hereby substituted for the long title of the principal Act:

"

ACT

To provide for the establishment of a National Housing Board and **Regional Provincial** Housing Boards and the abolition of certain existing boards; *to provide for the control over the activities of a Provincial Housing Board by the member of the executive council of a province and for the tabling of reports on the activities of a Provincial Housing Board in the provincial legislature concerned; to provide for the accreditation of local authorities to carry out national housing programmes; to establish a South African Housing Fund; to consolidate certain funds in that Fund; to further regulate the administration of **certain funds** that Fund; to amend or repeal certain laws; and to provide for matters connected therewith.*"

Repeal of laws, and savings

13. (1) Subject to subsection (2), the laws mentioned in the Schedule to this Act are hereby repealed to the extent indicated in the third column thereof.

(2) Notwithstanding the repeal of any provision of a law by subsection (1), the preparation, submission and tabling of detailed statements showing the results of the

transactions and the balance sheets of any fund mentioned in the definition of "former fund" in section 1 of the principal Act, as inserted by section 2(b) of this Act, for any period before 1 April 1996 shall be carried out in accordance with the provisions of the law by which the fund concerned has been established.

Short title and commencement

14. This Act shall be called the Housing Amendment Act, 1996, and shall come into operation on the date when this Act is first published in the Gazette as a law, except-

(a) sections 2(b), (c), (d), (e) and (g), 4, 9, 10 and 13; and

(b) section 12, in so far as it relates to the South African Housing Fund mentioned in section 12B of the principal Act as inserted by section 9 of this Act, which shall come into operation on 1 April 1996.

Schedule

Laws repealed by section 13

Number and year of Act - Short title - Extent of repeal

Act No. 4 of 1966 Housing Act, 1966 *Sections 2, 3, 4(1), (2), (3), (5), (6), (7), (8) and (10), 4A and 9(2) and (3)*

Act No. 103 of 1985 Development and Housing Act, 1985 *Sections 12, 13, 14(1), (2), (3), (4) and (5), 15 and 16*

Act No. 2 of 1987 Housing Act (House of Representatives), 1987 *Sections 9, 10, 12(1), (2), (3), (6), (8) and (9) and 14(1)*

Act No. 3 of 1987 Development Act (House of Representatives), 1987 *Sections 11, 12, 13(1), (2) and (4), 14(1) and 17*

Act No. 4 of 1987 Housing Development Act (House of Delegates), 1987 *Sections 12, 13, 14(1), (2), (3) and (4), 15 and 16*

Act No. 108 of 1991 Abolition of Racially Based Land Measures Act, 1991 *Section 72(3)*