

(7 April 2000 - to date)

NATIONAL HERITAGE RESOURCES ACT 25 OF 1999

Government Notice 506 in Government Gazette 19974, dated 28 April 1999. Commencement date: 1 April 2000 [Proc. R18, Gazette No. 21050, dated 31 March 2000]

REGULATIONS

(in terms of section 59)

Government Notice R323 in Government Gazette 21051 dated 31 March 2000. Commencement date: 7 April 2000.

The Minister of Arts, Culture, Science and Technology has in terms of Section 59 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), made the regulations in the Schedule.

SCHEDULE

ARRANGEMENT OF REGULATIONS

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CHAPTER I

1. Definitions

- (1) In these regulations any word or expression which has been defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999), shall have the meaning assigned to it in that Act.
- (2) "The Act" means the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

CHAPTER II

APPOINTMENT OF SOUTH AFRICAN HERITAGE RESOURCES AGENCY COUNCIL (SECTION 14)

2. Appointment of Council Members

Prepared by:

In partnership with:

- (1) South African citizens are eligible for appointment to the Council.
- (2) The following persons shall be appointed as the nine members of the Council representing each of the provinces of South Africa:
 - (a) the chairperson of, or other representative nominated by, the council of each provincial heritage authority; or
 - (b) in the event that such a council does not exist in a province, a relevant official in the Provincial Directorate responsible for heritage nominated by the MEC.
- (3) At least 30 days before the date of appointment of the Council, the public and interested parties will, by means of notices in at least three national newspapers and by any other means deemed appropriate, be invited to nominate additional members of the Council.
- (4) Nominations under subregulations 2(2) and (3) above must be received at least 14 days before the date of appointment of the Council and must be accompanied by the curriculum vitae and, in the case of public nominations, the consent of the nominee.
- (5) Members will be appointed from nominees with due regard to the criteria in section 14(2) of the Act and the desirability of having a board range of experience, expertise and skills on the Council, inter alia in the fields of archaeology, architecture, Amasiko, financial management, law, palaeontology, shipwrecks, social history, victims of conflict and urban planning. :
- (6) The names of all appointed members will be published in the *Government Gazette*.
- (7) The period of appointment of each member of the Council will be specified, taking into account the desirability of a balance between continuity of experience from one term of the Council's office to the next, and change in representation.

CHAPTER III

REIMBURSEMENT OF EXPENSES INCURRED BY MEMBERS OF COUNCIL AND COMMITTEES (SECTION 19)

3. Reimbursement of expenses

- (1) Members of the SAHRA Council and members appointed to its committees are reimbursed by SAHRA for authorised expenses incurred in the execution of functions of SAHRA.
- (2) Any expenditure to be reimbursed by SAHRA must be authorised in advance by the chief executive officer.

- (3) Only reasonable actual cost is reimbursed, as stipulated in SAHRA guidelines.
- (4) Claims for reimbursement must be accompanied by receipts or other proof of expenses incurred.

CHAPTER IV

COMPETENCE TO PERFORM FUNCTIONS [SECTION 8 (6)]

4. Criteria to be used in assessing provincial capacity

- (1) In assessing the competence of a provincial heritage resources authority, the SAHRA shall consider the authority's capacity in general and in terms of specific functions referred to in the Act.
- (2) The following are the minimum requirements for the assumption of provincial functions:
 - (a) the existence of a provincial heritage authority with a Council appointed in accordance with the procedure and principles set out in section 23 of the Act;
 - (b) adequate staff for general administration of the heritage authority and performance of the specific functions for which application is made, including at least one suitably experienced and qualified full-time professional staff member and one administrative assistant;
 - (c) adequate premises and equipment for the performance of the functions to be undertaken, including a suitable computer with software compatible with the software used by SAHRA for the administration of the Inventory of the national estate referred to in S. 39 of the Act;
 - (d) access to a vehicle;
 - (e) procedure for the management of heritage resources and the consideration of applications, in accordance with the principles in section 10 of the Act;
 - (f) a three-year action plan and proposed budgets;
 - (g) budgetary and agency arrangements for the performance of any functions for which application is not made.

5. Criteria to be used in assessing local authority capacity

- (1) In accessing the competence of a local authority, the provincial heritage resources authority shall consider the local authority's capacity to manage Grade III heritage sites and heritage areas.
- (2) The following are the minimum requirements for the assumption of local functions:

- (a) protective provisions as referred to in section 30(11) and/or 31(7) of the Act;
- (b) procedures for the consideration of applications, in accordance with the principles in section 10 of the Act.

CHAPTER V

DELEGATION OF SAHRA FUNCTIONS [SECTION 26(1)]

6. Delegation of functions

- (1) SAHRA may by decision of the Council delegate functions to persons or bodies referred to in Section 26 of the Act.
- (2) The delegation must be in writing and must clearly state the functions delegated, any conditions attached to the delegation, the delegate and the period of delegation.
- (3) The SAHRA may at its discretion, by written agreement, provide financial or other resources to the delegate to assist the delegate to perform the delegated function.
- (4) A delegation may only be revoked in writing.

CHAPTER VI

APPEAL TO COUNCIL AGAINST THE DECISION OF A COMMITTEE OR OTHER DELEGATED REPRESENTATIVE OF SAHRA [SECTION 49(1)]

7. Appeal process

- (1) Persons and bodies with a bona fide interest in, or who are affected by, a decision of a committee or other delegated representative of the South African Heritage Resources Agency may appeal to SAHRA Council against such decision.
- (2) Such appeal must be made in writing within 14 days of the issuing of the minutes recording the decision and must include a motivation.
- (3) The Council must consider an appeal within 21 days.
- (4) On receipt of an appeal against a decision to grant an application for a permit, SAHRA shall notify the applicant, whereupon such permit shall be suspended and no action may be taken under authority of such permit until the appeal has been considered and a decision has been made to confirm or withdraw the permit.

- (5) The Council may appoint a committee of experts, which must include at least three of its members who were not present when the original decision was made, to consider the appeal. The decision of such committee is final.
- (6) In considering an appeal, the Council must have due regard to-
- (a) the cultural significance of the heritage resource in question;
 - (b) the principles set out in section 5 and prescribed under section 6(1) of the Act;
 - (c) any other relevant factor which is brought to its attention by the appellant, any other person directly affected by the decision, or the delegated representative of SAHRA.

CHAPTER VII

PENALTIES FOR CONTRAVENTION OF REGULATIONS [SECTION 51(2)]

8. Any person who contravenes or fails to comply with any regulation prescribed by the Minister or South African Heritage Resources Agency in terms of the Act is guilty of an offence and liable on conviction to a fine not exceeding R10 000 or imprisonment for a period not exceeding six months.

CHAPTER VIII

CIRCUMSTANCES FOR OBJECTION TO DECLARATION [SECTION 27(12)]

9. Circumstances for objection to declaration

The State, a local authority or a supported body may object to the declaration as a heritage site of a place which it owns or controls only in the following circumstances-

- (a) if the place does not fulfil the criteria for Grade I or Grade II status as set out in the regulations under section 7(1) of the Act, or
- (b) if the declaration of the place as a heritage site would jeopardise state security; or
- (c) if the State, local authority or supported body has offered to transfer ownership or control of the place to the heritage authority responsible for the proposed declaration or a third party approved by such heritage authority, and the offer has been refused.

CHAPTER IX

TRANSITIONAL PERFORMANCE OF FUNCTIONS

10. For a maximum of two years after the commencement of the Act, in any province where the MEC has not established a provincial heritage resources authority, te [sic] SAHRA may perform any functions

and carry out any powers and duties of a provincial heritage authority under the Act as the SAHRA considers essential for the functioning of the national system for the management of heritage resources; Provided that the MEC in such province shall make the necessary arrangements for the performance of functions as provided for in the Act within eighteen months of its commencement.

CHAPTER X
VICTIMS OF CONFLICT [SECTION 2(xviii)]

11.

- (1) Within one month of the commencement of the act [*sic*], the Minister shall appoint a panel consisting of at least three persons with knowledge and experience of the history of the liberation struggle and the organisations involved therein.

- (2) Such panel must investigate, consult stakeholders and within three months make recommendations to the Minister regarding the categories of persons who died in the liberation struggle who should be defined in the regulations as "victims of conflict" for the purposes of the Act.