

No. 24, 1994

24 February 1994

BUSINESSES REGULATIONS

The Administrator has, with effect from 1 April 1994 made the following regulations in terms of section 6 of the Businesses Act, 1991 (Act No. 71 of 1991).

Definitions

1. In these regulations, and unless the context otherwise indicates—
 - “days” excludes Saturdays, Sundays and Public Holidays;
 - “health inspector” means a health inspector defined in section 1 the Health Act, 1977 (Act No. 63 of 1977);
 - “inspector” means a person appointed under regulation 10(1) whose duties include the inspection of premises for the purpose of administering the Act and these regulations;
 - “the Act” means the Businesses Act, 1991 (Act No. 71 of 1991).and any word or expression to which a meaning has been assigned the Act shall, when used in these regulations, have the meaning assigned to it.

Composition of a licensing authority

2. (1) When appointing a person as a licensing authority in terms of section 2(1)(a) of the Act, the Administrator shall, in each case and in his sole discretion—
 - (a) fix the period of such appointment;
 - (b) determine the terms and conditions of such appointment;
 - (c) determine the seat of such licensing authority and the area for which it is appointed; and
 - (d) specify the date with effect from which the licensing of businesses in that area will commence.
- (2) Where the person so appointed—
 - (a) is in the employ of a local authority, he shall remain in the employ of and continue to be remunerated by such local authority;
 - (b) is not in the employ of a local authority, the Administrator may, after consultation with each local authority whose area of jurisdiction falls wholly or partly within the area specified by him in terms of section 2(1)(a) of the Act, remunerate the aforesaid person at a rate and on such conditions as he may determine, and determine the extent to which such local authorities shall contribute to the cost of such remuneration.
- (3) When appointing a body as a licensing authority in terms of section 2(1)(a) of the Act, the Administrator shall, in each case and in his sole discretion—
 - (a) appoint
 - (i) a chairman,
 - (ii) a deputy chairman, and

- (iii) such other members and alternate as he deems fit;
- (b) fix the period of such appointments;
- (c) determine the terms and conditions of such appointments, including where appropriate the payment of remuneration from State funds or from such other sources as may have been agreed to by the relevant local authorities or from both such State funds and other sources;
- (d) determine the seat of such licensing authority and the area for which it is appointed;
- (e) determine how many members shall constitute a quorum at meetings of that licensing authority; and
- (f) specify the date from which the licensing of businesses in the area will commence.

(4) A licensing authority shall have the power to delegate or assign any or all of its powers, duties and functions to such person or persons in the employ of that authority or in the employ of a local authority whose area of jurisdiction falls within the area for which the licensing authority has been designated or appointed, as it sees fit.

Provision of staff for a licensing authority

3. The local authority in whose area of jurisdiction the seat of a licensing authority is situated shall, from the ranks of its own personnel, provide such administrative assistance to the licensing authority as may be necessary for the proper performance of its functions, and any persons so engaged shall remain in the employ of and be remunerated by that local authority.

4. Where the seat of a licensing authority does not fall within any local authority area, the Administrator may, subject to the laws governing the Public Service, appoint such administrative staff as may be necessary for the proper performance of the functions of that licensing authority, which appointments may be made wholly or partially—

- (a) from the ranks of the public service; or
- (b) from the private sector, in which event the salaries and other expenditure necessary for the efficient and proper execution of their duties shall be borne by the State.

Sittings of licensing authorities

5. (1) The intervals at which a licensing authority shall sit and the procedures to be followed at such sittings shall be determined by the licensing authority concerned.

(2) A licensing authority may, but shall not be obliged to grant an applicant or a licence holder an oral hearing; provided that it shall in any event convey to the applicant or licence holder concerned any fact or allegation of fact which would justify—

- (a) in the case of an applicant, the refusal of his application on any of the grounds set forth in section 2(4) of the Act;
- (b) in the case of a licence holder, the withdrawal or suspension of his licence on any of the grounds set forth in section 2(4) of the Act;
- (c) the conditional granting or issue of an application or licence; or

(d) the refusal of an application contemplated by section 2(7) of the Act,

and shall give him a reasonable opportunity of refuting any such allegation and of submitting representations in regard to such fact.

Applications for a licence

6. (1) An application for a new business licence shall be made to the licensing authority for:

- (a) the area in which the applicant has his business premises; or
- (b) in the case of a business referred to in Item 3 of Schedule 1 to the Act, the area in which the applicant conducts business.

(2) The application shall be in the form prescribed by the licensing authority concerned and shall be accompanied—

- (a) by the written consent of the landlord, if any;
- (b) in the case of an application lodged on behalf of a registered company, the certificate of incorporation of such company;
- (c) in the case of an application lodged on behalf of a close corporation, the founding statement of such close corporation; and
- (d) in the case of premises not previously licensed for the type of business intended to be undertaken by the applicant, by building plans of such premises to the satisfaction of the licensing authority.

(3) An applicant for a licence to carry on a business referred to in Item 2 of Schedule 1 to the Act shall state whether he is or will be in actual and effective control of the business, and if another person will be so in control the applicant shall disclose in his application the full names, address and national identity number of that person.

(4) An applicant shall, when called upon by the licensing authority to do so, furnish it with such other information as it may require to enable his application to be considered.

(5) Any licence issued by a licensing authority in terms of section 2(3) of the Act shall be in a form determined by that licensing authority, and shall include details of—

- (a) the category of licence granted;
- (b) the name of the licence holder;
- (c) any conditions imposed by the licensing authority; and
- (d) except in respect of a licence contemplated in Item 3 of Schedule 1 to the Act, the premises in respect whereof the licence is issued.

Other applications

7. An application for relief of the nature described in section 2(7) of the Act or for approval in terms of regulation 13(3) shall be in the form prescribed by the licensing authority concerned and the applicant shall furnish such additional information as that authority may require to enable it to consider the application.

Refusal, suspension or withdrawal of a licence

8. (1) A licence holder who, having been notified in terms of section 2(10)(a)

of the Act that his licence has been suspended or withdrawn, carries on business during the period of such suspension or, in the case of withdrawal of his licence, after such notification, shall be deemed to be carrying on business without licence and shall be guilty of an offence.

(2) A licensing authority shall, when notifying a licence holder of the suspension of his licence, specify the steps required to be taken by him to enable the suspension to be lifted and the period within which such steps must be completed.

(3) If a licence holder fails to fulfil the requirements of a notice advising him of the suspension of his licence to the satisfaction of the licensing authority, it may withdraw the licence.

(4) A person whose application for a licence has been refused or whose licence has been withdrawn shall not re-apply for a licence of the same category or in respect of the same premises, whichever is applicable, unless the matters upon which such refusal or withdrawal were based have been remedied or resolved to the satisfaction of the licensing authority.

Inspection of premises

9. (1) A licensing authority may, for the purpose of the exercise or performance of its powers, duties or functions or for the enforcement of the Act or these regulations, cause any premises to be inspected.

(2) Where in order to ensure compliance with the provisions of any law designed to protect the health of the public it is necessary to inspect and report on premises which are being or are to be used for the purpose of a business contemplated in Schedule 1 to the Act, such inspection and report shall be undertaken by a health inspector.

Appointment of inspectors

10. (1) The Provincial Administration of Natal, a licensing authority or a local authority may appoint such persons as it sees fit as inspectors for the purposes of the Act and these regulations; provided that when the licensing authority is a person who is in the employ of a local authority, the appointment of inspectors shall be made by that local authority.

(2) Any person so appointed shall, on demand, produce proof of such appointment.

Powers, duties and functions of inspectors

11. An inspector appointed under regulation 10(1), in relation to any business which is licensed in terms of the Act or which he has reasonable grounds for believing requires to be licensed in terms of the Act or when directed to do so by a licensing authority—

- (a) shall at all reasonable times have access to any premises, and may inspect the same and make such investigations and enquiries as are reasonably necessary to determine whether any provision of the Act, these regulations or any licence issued thereunder is being contravened;
- (b) may require the licence holder or any person who is or appears to be in control of such a business to produce for his inspection—
 - (i) a valid licence contemplated in section 2(3) of the Act;

- (ii) such other documents or records which are reasonably necessary for the investigation which he is conducting and may make copies of or extracts from such licenses, documents or records, and demand explanations of entries therein;
- (c) may take possession of any licence, document or record if in his opinion it could furnish evidence of a contravention of the Act or these regulations; provided that the inspector shall, upon taking possession of such documents, issue to the holder of such documents a written receipt specifying the documents in question;
- (d) may require any person referred to in paragraph (b) to furnish his full name and address and to produce an identity document;
- (e) shall report to the relevant licensing authority any contravention or suspected contravention of the Act, these regulations or any other law which has or in his opinion could have a bearing on the grant, refusal, suspension or withdrawal of a licence contemplated in the Act.

Issue of duplicate licence

12. Where a valid licence is lost, destroyed, unserviceable or illegible, the holder thereof may apply in writing to the licensing authority for the issue of a duplicate of such licence, and if the licensing authority is satisfied that the licence is in fact lost, destroyed, unserviceable or illegible, it shall issue a duplicate of such licence against surrender of the unserviceable or illegible licence, where applicable.

Change of ownership or control of licensed business

13. (1) Whenever there is a change in the ownership of a business referred to in Item 1 of Schedule 1 to the Act, the new owner shall within fourteen days of such change, provide the licensing authority with—

- (a) proof to the satisfaction of the licensing authority of such change of ownership; and
- (b) such relevant additional information as the licensing authority may require.

whereupon the licensing authority shall take such steps as may be necessary to effect transfer of the licence issued in respect of that business into the name of the new owner.

(2) Whenever there is a change in the ownership of a business referred to in Item 2 or 3 of Schedule 1 to the Act, the licence issued in respect thereof shall lapse, and the new owner shall be required to submit an application for the appropriate licence.

(3) In the case of a business referred to in Item 2 of Schedule 1 to the Act a licence holder shall not effect any change in the identity of the person who is in actual and effective control of the business as contemplated by section 2(4)(b) of the Act, without the prior approval of the licensing authority, except in the event that he assumes such control himself.

Change in licensed premises

14. A licence issued in respect of a business referred to in Item 1 or 2 of Schedule 1 to the Act shall only be valid in respect of the premises described therein.

Annual notification of carrying on of business

15. (1) Not later than the last working day in December of each year the licensing authority shall post to every licence holder a form on which such licence holder is required to provide the following information—

- (a) confirmation that the business for which the licence was issued is continuing to be conducted from the premises specified in the licence, and that no other business for which a licence is required in terms of the Act is being conducted from the same licensed premises.
- (b)
 - (i) in the case of a registered company or close corporation, the full name and registered address of that company or close corporation;
 - (ii) in every other case, the full name, postal address, street address and residential address of every person having a proprietary interest in that business;
 - (iii) in the case of a business referred to in Item 2 of Schedule 1 to the Act, the name of the person in actual and effective control of the business.

(2) The completed and signed form contemplated in sub-regulation (1), shall be lodged with the relevant licensing authority by every licence holder not later than 15:00 on the last working day of January in each year.

Appeal committees

16. (1) The Administrator may, in his sole discretion and upon such terms and conditions as he may deem fit—

- (a) establish one or more appeal committees;
- (b) determine the area of jurisdiction of each such committee;
- (c) appoint in respect of each such committee upon such terms and conditions and for such periods as he deems fit—
 - (i) a chairman;
 - (ii) an alternate who shall, in the absence of the chairman, act as chairman;
 - (iii) such other members, if any, as he deems fit; and
 - (iv) subject to the laws governing the Public Service, a secretary and such other staff as may be necessary.
- (d) where applicable—
 - (i) determine the voting powers of the chairman and members of the committee;
 - (ii) determine how many members shall constitute a quorum at meetings of that appeal committee.

(2) The Administrator may at any time and in his sole discretion withdraw or vary any such appointment.

17. The chairman of an appeal committee shall have the power, with the prior consent of the Administrator, to appoint one or more assessors to assist him when considering an appeal; provided that such assessors shall not have a vote in determining the outcome of such appeal.

18. The rates of remuneration of the chairman, acting chairman, other members and assessors shall be determined by the Administrator, and such remuneration and

other expenditure incurred in connection with the deliberations of the committee, other than the fees and expenses incurred by the appellant and respondent, shall be met from State funds.

Sittings of an appeal committee

19. An appeal committee shall sit on the date, and at the place and time fixed by the chairman.

Noting of an appeal

20. (1) An applicant or licence holder who wishes to appeal against a decision of a licensing authority shall give written notice of such appeal to the appeal committee having jurisdiction and the licensing authority against whose decision the appeal is brought—

- (a) within fourteen days of the date of the notice conveying that decision to him; or
 - (b) in the case of failure by a licensing authority to make a decision as contemplated in section 3(2) of the Act, within fourteen days of—
 - (i) the lapse of the period of twenty-one days after the receipt of the application by the licensing authority; or
 - (ii) such extended period as may be agreed upon between the licensing authority and the applicant or licence holder.
- (2) Every notice of appeal shall—
- (a) state concisely the grounds upon which the appeal is brought;
 - (b) be submitted in triplicate; and
 - (c) be accompanied by proof of payment to the Administrator of such fee as may be prescribed by him by notice in the Gazette.

21. The licensing authority shall, within twenty one days of having received the notice of appeal, lodge with—

- (a) the appeal committee, four copies,
- (b) the appellant, one copy,

of the licensing authority's reply to the notice of appeal, which reply shall include—

- (i) a statement of such facts as may be relevant,
- (ii) the reasons for the licensing authority's decision against which the appeal has been noted; and
- (iii) any notices, exhibits or other documents which are in the possession of or are available to the licensing authority and which could have a bearing on the decision of the appeal committee.

22. The appellant may, within a period of fourteen days after receipt by him of a copy of the reply referred to in regulation 21, amend his notice of appeal or file additional grounds of appeal in triplicate.

23. The appeal committee may, on good cause being shown, in its sole discretion extend the periods contemplated in regulations 20, 21 or 22.

24. An appeal committee may reach its decision on consideration of the notice of appeal, the licensing authority's reply and other documents in its possession without a formal hearing; provided that if an appeal committee is aware of any fact or allegation of fact which is not reflected in such documents and which would justify the dismissal of the appeal it shall convey such fact or allegation of fact to the

appellant and give him an adequate opportunity of refuting any such allegation and of submitting representations in regard to such fact.

25. The secretary to the appeal committee shall give all parties to an appeal not less than fourteen days' written notice of the date, venue and time of the hearing of such appeal, if any.

26. An appellant shall have the right to withdraw an appeal prior to the date of hearing by written notice served on the appeal committee and the relevant licensing authority.

27. The appeal committee shall cause a record to be kept of the proceedings in every appeal, and any party to such appeal may, upon payment of the fee prescribed by the Administrator, obtain a copy of such record.

Proceedings of an appeal committee

28. The procedures to be followed when hearing an appeal shall be prescribed by the chairman of the appeal committee, but shall as far as is practical and feasible comply with the practice and procedures applicable when a civic action is heard in the Magistrate's Court.

Order as to costs

29. (1) Subject to subregulation (2), an appeal committee may, in its discretion, make an order as to costs.

(2) No order as to costs shall be made unless the appeal committee is of the opinion that the appeal or opposition thereto was frivolous, vexatious, needlessly delayed or unduly protracted.

(3) In the event of there being a dispute as to the amount payable, either party may require the chairman of the appeal committee to tax the Bill of Costs, in which event the principles, procedures and tariffs applicable when taxing a Bill of Costs in a civil action in the Magistrate's Court shall be followed as far as is practical in the circumstances.

Findings of appeal committees

30. (1) An appeal committee may uphold or reject an appeal, in whole or in part, and in the event of an appeal being upheld, the committee may—

- (a) reverse the decision of the licensing authority;
- (b) amend such decision, whether by the deletion or amendment of a condition or otherwise; or
- (c) refer the matter back to the licensing authority for further consideration.

(2) Findings of an appeal committee shall be conveyed in writing to the appellant and the licensing authority concerned.

(3) Findings of an appeal committee shall be final and binding

Service of documents

31. (1) When a notice or other document is in terms of these regulations required to be served on any person, it shall be deemed to be sufficiently served by—

- (a) delivering it to him personally;

- (b) delivering it at his residence or place of business in the Republic to any person apparently over the age of 16 years and apparently residing or employed thereat;
- (c) posting it by registered or certified mail to an address in the Republic furnished by such person to a licensing authority, appeal committee or inspector;
- (d) posting it by registered or certified post to his last known place of business or residence in the Republic, not being an address contemplated in paragraph (c);
- (e) in the event of his address in the Republic being unknown but the name or the name and address of his agent or representative in the Republic being known, serving it on such agent or representative in the manner provided by paragraphs (a) to (d); or
- (f) if his address and the identity of his agent or representative in the Republic are unknown, affixing it in a conspicuous place on the premises to which the notice or document relates.

Offences and penalties

32. Any person who—

- (a) contravenes or fails to comply with a provision of these regulations;
- (b) being a licence holder, contravenes or fails to comply with a condition imposed upon the grant of his licence;
- (c) wilfully disturbs the proceedings of a licensing authority or appeal committee or wilfully threatens, hinders or obstructs a licensing authority, an appeal committee or a member or officer thereof in the performance of its or his duties or the exercise of its or his powers;
- (d) in an application in terms of these regulations or in a form or document required for the purposes of these regulations knowingly furnishes information or makes a statement which is false or misleading;
- (e) threatens or wilfully hinders or obstructs an inspector or fails or refuses to comply with a lawful demand made by him;
- (f) wilfully furnishes false or misleading information to a licensing authority, an appeal committee or any of its members or officers or to an inspector;
- (g) falsely represents himself as an inspector—

shall be guilty of an offence and shall, on conviction, be liable to the penalties referred to in section 6(3) of the Act.

33. A fine imposed or bail estreated in respect of an offence under these regulations shall accrue—

- (a) where the offence was committed within the area of jurisdiction of a local authority, to that local authority; and
- (b) in any other case, to the Administrator.

34. Prosecutions for contraventions of section 2(3) of the Act and of these regulations may be instituted and conducted when the licensing authority is a local authority or a person in the employ of a local authority, by a person empowered to prosecute offences under the bylaws of that local authority.

35. The following fees shall be payable by an applicant to the licensing authority where his application is lodged or its duly authorised agent:

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- (a) On submission of an application for a licence contemplated in Schedule 1 to the Act—
- (i) where the business is to be conducted at or from fixed premises..... R200,00
 - (ii) in all other cases..... R25,00
- (b) On submission of an application for a duplicate of a licence currently held by the applicant..... R10,00

[Reg. 35 as inserted by P.N. 69/1994 dd. 5.5.1994.]

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