

KWAZULU-NATAL BUSINESS BILL, 2020

BILL

To provide for an integrated provincial business regulatory framework for businesses both within the formal and informal sector; to provide a conducive environment for economic development in the Province of KwaZulu-Natal; to provide for the designation and appointment of Licencing, Permitting and Registration Authorities, Committees and Officers in the Province; to provide for the objects, powers, duties and functions of Licencing, Permitting and Registration Authorities, Committees and Officers; to provide for a standardized framework for the regulation of informal business in the Province; to provide a conducive environment to ensure the graduation of small businesses in the informal economy into the mainstream economy; to provide for the establishment of the Provincial Inspectorate; to provide for the powers of the responsible Member of the Executive Council to designate and determine twenty-four hour trading zones and mall tenancy arrangements in the Province; to provide for an Appeal and Review process; to provide for the establishment of Municipal, District and Provincial Traders Associations; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows: –

ARRANGEMENT OF SECTIONS

CHAPTER 1 DEFINITIONS

1. Definitions

CHAPTER 2 OBJECTS, APPLICATION AND INTERPRETATION OF ACT, POWERS, DUTIES AND FUNCTIONS OF RESPONSIBLE MEMBER OF EXECUTIVE COUNCIL

2. Objects of Act
3. Application and interpretation of Act
4. Powers, duties and functions of responsible Member of Executive Council

CHAPTER 3
DESIGNATION AND APPOINTMENT OF LICENCING AUTHORITIES, LICENCING
COMMITTEES AND LICENCING OFFICERS

5. Designation of Licencing Authorities
6. Objects of Licencing Authorities
7. Powers, duties and functions of Licencing Authorities
8. Licencing Committees
9. Powers, duties and functions of Licencing Committees
10. Composition of Licencing Committees
11. Designation of Licencing Officers
12. Powers, duties and functions of Licencing Officers
13. Expert and other assistance to Licencing Committees and Licencing Officers.

CHAPTER 4
BUSINESS LICENCING

Part 1
General: Business licencing

14. Compulsory licencing, prohibitions and restrictions
15. Disqualifications

Part 2
Licencing procedure

16. Applications
17. Public inspections, objections and representations
18. Inspection of premises subsequent to objection
19. Objection hearings
20. Consideration of applications by the Licencing Committee
21. Communication of the decision
22. Issuing of business licences
23. Validity of licence

Part 3
Provisions applicable to licenced persons or permit holders

- 24. Renewal of business licence or permit
- 25. Cancellation of licence or permit
- 26. Transfer of licence or permit
- 27. Relocation of business operations to other premises
- 28. Management of businesses

*Part 4
Licencing fees*

- 29. Application and renewal fees

*Part 5
Regulation of informal businesses*

- 30. Compulsory permitting
- 31. Validity of permit
- 32. Application and renewal fees
- 33. Municipal informal trading by-laws

*Part 6
Business registration*

- 34. Registration of formal and informal businesses

**CHAPTER 5
COMPLIANCE AND ENFORCEMENT**

- 35. Appointment of inspectors
- 36. Powers, duties and functions of inspectors
- 37. Entry with warrant
- 38. Entry without warrant
- 39. Use of force
- 40. Inspector may be accompanied
- 41. Duty to produce documents and to answer questions

- 42. Compliance notices
- 43. Establishment of the Provincial Inspectorate Function
- 44. Objects, powers, duties and functions of the Provincial Inspectorate Function
- 45. Code of conduct for inspectors

CHAPTER 6
ESTABLISHMENT OF PROVINCIAL AND MUNICIPAL COMPLIANCE, MONITORING
AND ENFORCEMENT STRUCTURES

- 46. Provincial compliance, monitoring and enforcement structure
- 47. Municipal compliance, monitoring and enforcement structure
- 48. Objects of Provincial and Municipal compliance, monitoring and enforcement structures
- 49. Functions of the Provincial and Municipal compliance, monitoring and enforcement structures

CHAPTER 7
APPEALS AND REVIEWS

- 50. Review of decisions
- 51. Appeals

CHAPTER 8
BUSINESS SUPPORT AND DEVELOPMENT

- 52. Business support and development of formal and informal economy

CHAPTER 9
GENERAL PROVISIONS

- 53. Delegations
- 54. Regulations and notices
- 55. Offences and penalties

- 56. Repeal of laws
- 57. Transitional arrangements
- 58. Short title and commencement

SCHEDULES

Schedule 1: Repeal of Laws

Schedule 2: Businesses exempted in respect of business licences and permits, contemplated in chapter 4 of this Act

CHAPTER 1 DEFINITIONS

Definitions

1. In this Act, unless the context otherwise indicates –

“applicant” means any person who has lodged an application for a business licence in terms of section 16;

“application” means an application for a business licence in terms of section 16;

“assistant’s permit” means a permit issued to an assistant of a permit holder in terms of section 30(1)(b);

“authorised officer” means –

- (a) any peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) a municipal or metropolitan police officer as contemplated in the South African Police Service Act, 1995 (Act No.68 of 1995); or
- (c) an inspector contemplated in section 35 of this Act;

“business” means the activity of buying and selling commodities, products or services;

“Businesses Act” means the Businesses Act, 1991 (Act No. 71 of 1991);

“business licence” means a business licence to carry on any formal business within any area of jurisdiction of any Licencing, Permitting and Registration Authority in the Province and **“licence”** and **“business licence certificate”** have a corresponding meaning;

“business registration” means the registration of a business as contemplated in section 22;

"Department" means the Department in the Provincial Government of KwaZulu-Natal responsible for economic development;

"Executive Council" means the Executive Council of the Province of KwaZulu-Natal;

"financial interest" means a –

- (a) right or entitlement to share in profits or revenue;
- (b) real right in respect of property of a company, corporation or business;
- (c) real or personal right in property used by a company, corporation or business;
- or
- (d) direct or indirect interest in the voting shares, or voting rights attached to shares, of a company or an interest in a close corporation;

"foodstuff" means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

"formal business" means all economic activities that are covered by formal arrangements;

"Gazette" means the official *Provincial Gazette* of KwaZulu-Natal;

"Head of Department" means the Head of the Department in the Provincial Government of KwaZulu-Natal responsible for economic development;

"Head of Inspectorate" means any person appointed by the responsible Member of the Executive Council as the Head of the Provincial Inspectorate in terms of section 43(1);

"informal business" means a business trading in the informal economy;

"informal economy" means all economic activities that are not sufficiently covered by formal arrangements;

“informal business permit” means a permit to trade in the informal economy as contemplated in section 30;

“informal trader” means any person who conducts trade in the informal economy;

“inspector” means any person appointed in terms of section 35(1);

“licenced business” means any business, person or body licenced in terms Chapter 4 and **“licenced person”** or **“licence holder”** has a corresponding meaning;

“Licencing Authority” means the Licencing, Permitting and Registration Authority designated in terms of section 5;

“Licencing Committee” means the Licencing, Permitting and Registration Committee for each Licencing Authority in the Province established in terms of section 8;

“Licencing Officer” means the Licencing, Permitting and Registration Officer for any Licencing Authority contemplated in section 11;

“Manager’s permit” means a permit issued to any manager of a licenced business in terms of section 28(2);

“Member of the Executive Council responsible for finance” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

“Member of the Executive Council responsible for local government” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for local government;

“municipality” means a municipality referred to in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with

sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

“objector” means any person who has lodged an objection against an application for a business licence in terms of section 17(4);

“permit holder” means any informal trader who has been issued with an informal trading permit to trade –

- (a) in an informal trading site contemplated in section 33(3); or
- (b) in any area within the boundaries of any municipality in the Province;

“permit holders assistant” means an assistant or helper that is appointed by an informal trader who has been issued with an informal trading permit to trade –

- (a) in an informal trading site contemplated in section 33(3); or
- (b) in any area within the boundaries of any municipality in the Province;

“Premier” means the Premier of the Province of KwaZulu-Natal referred to in section 125 of the Constitution;

“prescribed” means prescribed by regulation in terms of the Act;

“prospective holder” means any person for the benefit of whom an application contemplated in section 26 has been made;

“Province” means the Province of KwaZulu-Natal contemplated in section 103 of the Constitution and **“provincial”** has a corresponding meaning;

“Provincial Government” means the government of the Province of KwaZulu-Natal;

“Provincial Automated Business Licencing, and information management system” means the standardized electronic Licencing, Permitting and information management system as contemplated in section 4(1);

“Provincial Inspectorate” means the KwaZulu-Natal Provincial Inspectorate contemplated in section 43;

"Provincial Legislature" means the Legislature of the Province of KwaZulu-Natal as contemplated in section 105 of the Constitution, and having the legislative authority for the Province as contemplated in section 104 of the Constitution;

"Regulations” means Regulations made in terms of section 54;

"responsible Member of the Executive Council" means the member of the Executive Council responsible for economic development in the Province; and

"this Act" includes the Regulations made under this Act.

CHAPTER 2
OBJECTS, APPLICATION AND INTERPRETATION OF ACT,
POWERS, DUTIES AND FUNCTIONS OF RESPONSIBLE MEMBER OF EXECUTIVE
COUNCIL

Objects of Act

2. The objects of this Act are to –

- (a) provide an integrated provincial business regulatory framework to ensure –
 - (i) sustainable economic development; and
 - (ii) protection of consumers against unhealthy, harmful and unsafe goods and business practices in the Province;
- (b) provide a standardized informal trading regulatory framework in the Province;
- (c) provide a conducive environment for the growth and development of informal traders in the Province into the mainstream economy;
- (d) provide measures to foster business development and skills transfer in the Province;
- (e) create an enabling environment for the interaction and exchange of ideas amongst and between –
 - (i) formal and informal businesses; and

- (ii) Provincial and local government in the Province; and
- (f) provide for a regulatory framework which promotes and enforces legislative compliance by all businesses trading within KwaZulu-Natal.

Application and interpretation of Act

3.(1) This Act applies to any person or entity carrying on, or intending to carry on, any formal or informal business in the area designated as a municipality in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), in KwaZulu-Natal and in the area within the jurisdiction of the KwaZulu Ingonyama Trust Act, 1994 (Act No. 3 of 1994), as amended.

(2) In the event of any conflict between any provision of this Act and any municipal by-law, the provisions of this Act prevail.

Powers, duties and functions of responsible Member of Executive Council

4.(1) The responsible Member of the Executive Council must, within six months after the coming into operation of this Act, develop a Provincial Automated Business Licencing, and information management system.

(2) The responsible Member of the Executive Council, after consultation with the Member of the Executive Council responsible for finance and by notice in the *Gazette*, from time to time, must determine –

- (a) fees for business licence and permit applications and renewals contemplated in Parts 4 and 5 of Chapter 4 of this Act; and
- (b) fines payable for any contraventions of this Act as contemplated in section 55(1)(a).

(3) Within 18 months of the coming into operation of this Act, after consultation with the Member of Executive Council responsible for local government and by notice in the *Gazette*, the responsible Member of the Executive Council must develop the Codes of Conduct for –

- (a) licenced persons and permit holders who have been granted licences and permits in terms of this Act;
- (b) Licencing Committees in the Province; after consultation with the Member of the Executive Council responsible for local government; and
- (c) inspectors.

(4) The responsible Member of Executive Council may –

- (a) upon submission of an application by the relevant municipality in the Province in the prescribed manner;
- (b) after consultation with the municipality concerned, designate any area by notice in the *Gazette*, within the boundaries of the municipality concerned, as a 24 hour trading zone; and
- (c) prescribe, by notice in the *Gazette* trading days and trading hours for both formal and informal business.

(5) The responsible Member of the Executive Council may, after consultation with the municipality concerned and by notice in the *Gazette*, withdraw or amend any designation contemplated in subsection (4).

(6) The responsible Member of the Executive Council must, within 18 months of the coming into operation of this Act, prescribe the criteria for the –

- (a) suspension of trading operations of licenced businesses; and
- (b) immediate closure of trading operations of illegal and un-licenced businesses.

CHAPTER 3 DESIGNATION AND APPOINTMENT OF LICENCING AUTHORITIES, LICENCING COMMITTEES AND LICENCING OFFICERS

Designation of Licencing Authorities

5.(1) The responsible Member of the Executive Council, must, after inviting the relevant municipality to make representations in the manner prescribed and by notice in the *Gazette* may ~~withdraw the designation of~~ designate ~~ion~~ of such municipality as Licencing Authority for –

- (a) the whole area falling under the municipality concerned; and or
- (b) a particular area within the municipal boundaries of the municipality concerned.

(the withdrawal is found in sub-section 5)

(2) If any municipality in the Province lacks the necessary capacity to be designated as a Licencing Authority in respect of any area contemplated in subsection (1)(a) or (b), the responsible Member of the Executive Council may –

- (a) for a period not exceeding 24 months;
- (b) in the manner contemplated in subsections (1) and (3)(a), designate any other municipality or any person or body in the Province as the Licencing Authority for the area concerned; and
- (c) determine the terms of reference for that person or that body.

(3) The responsible Member of the Executive Council must –

- (a) prior to exercising his or her powers in terms of subsection (2)(b), consult the municipality being designated as the Licencing Authority;
- (b) ensure that the Licencing Authority designated in terms of subsection (2) has the necessary administrative capacity and support to –
 - (i) exercise and perform its powers, duties and functions in terms of this Act; and
 - (ii) assist with the capacity development of the municipality concerned to take over as the Licencing Authority at the expiry of the period contemplated in subsection (2)(a).

(4) The responsible Member of the Executive Council may exercise his or her powers in terms of subsection 2(b) –

- (a) if he or she has established that the municipality concerned does not have the requisite capacity to perform the powers and functions of a Licencing Authority contemplated in section 7; or
- (b) upon receipt of a request, in the prescribed form, from the relevant municipality.

(5) The responsible Member of the Executive Council, after inviting the relevant municipality to make representations in the manner prescribed and by notice in the *Gazette*, may withdraw the designation of such municipality as a Licencing Authority, if the

municipality concerned has –

- (a) contravened the provisions of this Act or the Regulations issued in terms of this Act; or
- (b) failed to perform its functions and duties as a Licencing Authority in accordance with the provisions of this Act.

Objects of Licencing Authorities

6. The objects of Licencing Authorities are to –

- (a) ensure that all persons, bodies and entities conducting businesses within the area of jurisdiction of each Licencing Authority –
 - (i) possess the necessary business licences or informal business permits issued in terms of this Act, Regulations and any applicable by-law; and
 - (ii) are properly registered in terms of section 34;
- (b) ensure that all businesses and persons licenced, permitted and registered in terms of this Act –
 - (i) are conducted or conduct themselves in a manner that promotes the integrity of the business industry in the Province; and
 - (ii) do not cause harm to the public;
- (c) ensure the participation of historically disadvantaged individuals in the economy; and
- (d) limit restrictive practices that hinder economic development in the Province.

Powers, duties and functions of Licencing Authorities

7.(1) Licencing Authorities in the Province, in respect of their respective areas of jurisdiction, must –

- (a) receive, consider and process all –
 - (i) business licence and informal business permit applications; and
 - (ii) manager's and assistant's permit applications, contemplated in Chapter 4 of this Act;
- (b) refuse or grant applications contemplated in paragraph (a);
- (c) refuse or grant any application for the transfer of any business licence contemplated in section 26;

- (d) register all formal and informal businesses operating within their respective areas of jurisdiction in the Provincial Automated Business Licencing and information management system; and
- (e) exercise and perform such other powers, duties and functions assigned to them by any other legislation or by-law.

(2) Licencing Authorities, in exercising and performing their powers, duties and functions in terms of sub-section 1(a) –

- (a) must determine –
 - (i) any conditions or restrictions to be attached to any business licence or informal trading permit;
 - (ii) the scope of the business licence or informal business permit; and
 - (iii) trading hours;
- (b) may amend, substitute or rescind any –
 - (i) condition or restrictions;
 - (ii) scope or trading hours, contemplated in paragraph (a);
- (c) must in terms of the prescribed criteria contemplated in section 4(6), suspend or withdraw for an indefinite period of time or for such a period as it may determine –
 - (i) any business licence or informal trading permit; or
 - (ii) any right or privilege attached to any business licence or informal trading permit;
- (d) must, where there has been a breach of any condition attached to the business licence or informal trading permit, revoke and cancel the business licence or informal trading permit;
- (e) must cause any business to cease operations until such time as the Licencing Authority is satisfied that the business has met all minimum requirements as stipulated in the licence;
- (f) must engage any inspector to undertake any investigation to determine the suitability of –
 - (i) an applicant in respect of a business licence or informal trading permit; or
 - (ii) business premises in respect of any business licence application;
- (g) may institute any legal proceedings against –
 - (i) any licenced person or permit holder; or

- (ii) any other person,
in respect of any contravention of any provision of this Act;
- (h) must impose any fine against any person found to have contravened any provisions of this Act, which must not exceed the prescribed amount stipulated in section 4(2)(b); and
- (i) take such other lawful steps to ensure compliance with the provisions of this Act.

(3) A Licencing Authority, must –

- (a) in exercising and performing its powers, duties and functions, implement and monitor the implementation of applicable by-laws;
- (b) exercise and perform any other powers conferred on it by this Act;
- (c) in appointing members of a Licencing Committee, follow such procedures and processes, prescribed by the Licensing Authority; and
- (d) generally take such other steps and perform such other acts as may be reasonably necessary for, or conducive to, the achievement of the objects of this Act.

Licencing Committees

8.(1) Each Licencing Authority in the Province must, in respect of its area of jurisdiction, establish a Licencing Committee to undertake –

- (a) licensing of formal businesses;
- (b) permitting of informal businesses; and
- (c) registration of formal and informal businesses.

(2) The responsible Member of the Executive Council may prescribe further provisions applicable to subsection (1).

(3) The Licencing Committee contemplated in subsection (1) is not a juristic person.

Powers, duties and functions of Licencing Committees

9.(1) Licencing Committees must –

- (a) consider and process all applications and transfers contemplated in Chapter 4;
- (b) advise and furnish reports to the Licencing Authority on any matter relating to licencing, permitting and registration of businesses and persons as contemplated in this Act; and
- (c) exercise and perform such other powers, duties and functions conferred to it by the Licencing Authority.

(2) The Licencing Committee must, in the execution and performance of its powers, duties and functions contemplated in subsection (1), take cognisance of –

- (a) the provisions of this Act;
- (b) any other applicable laws and by-laws; and
- (c) the Code of Conduct for Licencing Committees contemplated in section 4(3).

Composition of Licencing Committees

10.(1) Each Licencing Committee must consist of –

- (a) a minimum of five members appointed by the Licencing Authority who are employed by local government; and
- (b) a Licencing Officer, contemplated in section 11, as an *ex-officio* member.

(2) The members of the Licencing Committee may include person with the following skills –

- (a) legal;
- (b) environmental health;
- (c) town planning;
- (d) building regulations;
- (e) fire and safety;
- (f) local economic development; and
- (g) any other persons, who, in the opinion of the Licencing Authority, will benefit the Licencing Committee in executing and performing its powers, duties and functions in terms of this Act or other applicable legislation and by-laws.

(3) The relevant Licencing Authority must, from the members of the Licencing Committee, designate the Chairperson and the Deputy Chairperson of the Licencing Committee.

Designation of Licencing Officers

11.(1) Each Licencing Authority in the Province, must designate one of its senior officials with the requisite skills and experience in business licencing as a Licencing Officer.

(2) The Licencing Officer must, in the performance of his or her functions and duties in terms of this Act, be assisted by officers and employees appointed in terms of the prescripts applicable to the Licencing Authority concerned.

Powers, duties and functions of Licencing Officers

12.(1) Licencing Officers must –

- (a) provide the necessary administrative support services to both a Licencing Authority and a Licencing Committee, in order to enable them to perform and discharge their powers, duties and functions in terms of this Act; and
- (b) ensure that both a Licencing Authority and a Licencing Committee –
 - (i) exercise and perform their powers, duties and functions in terms of this Act, applicable by-laws and any other applicable laws; and
 - (ii) comply with the provisions of this Act and any other applicable legislation.

(2) In respect of any application for a business licence or informal trading permit, the Licencing Officer must –

- (a) receive and acknowledge receipt of the applications;
- (b) after an application for a licence has been granted by the Licencing Committee, issue a licence or an informal trading permit in the prescribed form;
- (c) keep and maintain, in proper order, a register of all the decisions of the Licencing Committee; and
- (d) communicate the decisions of the Licencing Committee to applicants and other affected parties.

(3) The Licencing Officer must oversee the registration of all businesses on the Provincial Automated Business Licencing and information management system.

(4) The Licencing Officer may delegate any of his or her powers, duties and functions to any official of the Licencing Authority concerned, and the delegation by the Licencing Officer –

- (a) must be in writing;
- (b) must not prohibit the Licencing Officer from exercising or performing that power, duty or function or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by the Licencing Officer.

(5) Where a Licencing Officer is for any reason unable to perform any of his or her functions, the Licencing Authority may appoint another person **for a period not exceeding six months** as the Acting Licencing Officer until the Licencing Officer is able to resume those functions.

Expert and other assistance to Licencing Committees and Licencing Officers

13.(1) The Licencing Authority may appoint such experts or other persons as service providers to assist a Licencing Committee and a Licencing Officer in the exercise and performance of their powers, duties and functions.

(2) The experts or other persons appointed under subsection (1) may attend any meetings of a Licencing Committee, but may not vote at such meetings.

CHAPTER 4 Part 1 *General: Business licencing*

Compulsory licencing, prohibitions and restrictions

14.(1) No person or business may conduct any business in any area within the jurisdiction of any Licencing Authority in the Province unless –

- (a) that person is a holder of a business licence issued to him or her in terms of this Act; or

(b) it is a business which has been exempted in terms of subsection (2)(b) from the application of this Chapter.

(2) The responsible Member of the Executive Council may, by notice in the *Gazette* –

- (a) amend Schedule 2;
- (b) exempt certain businesses from the application of the provisions of this Chapter;
- and
- (c) withdraw the exemption of any businesses contemplated in subparagraph (b).

(3) No person or business may –

- (a) employ or offer employment to any person to manage any business activity, if such a person is subject to a disqualification referred to in section 15 of this Act;
- (b) sell products that are harmful to consumers or do not comply with the relevant approved health and safety standards.

(4) Any person or business who –

- (a) contravenes subsections (1) or (3);
- (b) conducts any business using a business licence issued to another person;
- (c) lets or allows any person to conduct business using a business licence issued to another licenced person; or
- (d) employs any person as a business manager if such person does not possess a manager's permit contemplated in section 28,

is guilty of an offence.

Disqualifications

15.(1) No person may be issued with a licence if he or she –

- (a) is an illegal immigrant;
- (b) is a minor;
- (c) is under curatorship;
- (d) is or has been declared by a competent court to be of unsound mind;
- (e) has been convicted and sentenced to a term of imprisonment without the option of a fine, except where such disqualification ends immediately on expiry of the

term of imprisonment;

(f) has had his or her business licence cancelled in terms of this Act, dependent on that disqualification ending –

(i) after three years of the date of cancellation of the licence; or

(ii) **on such other date determined by the Licencing Authority**; or

(g) has been convicted of an offence in terms of this Act, subject to that disqualification ending after three months of the date of conviction.

(2) No company, close corporation, association, partnership or trust may be issued with a business licence, if a person who is disqualified in terms of subsection (1) –

(a) has a controlling interest in that company, close corporation, association or trust;

(b) is a partner in that partnership; or

(c) is the main beneficiary in that trust.

Part 2

Licencing procedure

Applications

16.(1) Any person who wishes to apply for a business licence must lodge an application –

(a) at the offices of the relevant Licencing Authority;

(b) in the prescribed manner and form; and

(c) make payment of the non-refundable application fee as contemplated in section 16(1)(c).

(2) The application contemplated in subsection (1) must be accompanied by such information and documentation as prescribed.

(3) A Licencing Officer must, within 14 days of receipt of the application submitted in terms of subsection (1) –

(a) acknowledge receipt of the application in writing; and

(b) examine the application in order to determine whether it is complete, and where the application is not complete, issue a notice in the prescribed form calling on the

applicant to supplement or remedy the incomplete application, within 21 days of dispatch of the notice.

Public inspections, objections and representations

17.(1) Any application submitted in terms of section 16(1), must –

(a) on the expiration of the periods contemplated in section 16(3); and

(b) subject to subsection (3),

be open to public inspection by interested persons –

(i) in the offices of the relevant Licencing Authority by interested persons; and

(ii) for a period of 10 days.

(2) Any person wishing to obtain a copy of the application must pay the prescribed fee to the Licencing Authority.

(3) A Licencing Officer may –

(a) on the application of the applicant in the prescribed form; or

(b) on his or her own accord,

determine that any part of the application may, subject to the provisions of Chapter 4 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), not be open to public inspection contemplated in subsections (1) and (2).

(4) Any person wishing to lodge any objection to the application contemplated in subsection (1) must do so by making written representations within five days of the expiry of the inspection period contemplated in subsection (1)(b)(ii), in the manner prescribed.

(5) If, upon the expiration of the period contemplated in subsection (4), any objections and representations received, a Licencing Officer, must –

(a) forthwith, furnish the applicant with a copy of any objection and written representations submitted in terms of subsection (4); and

(b) invite the applicant to submit in writing, within five days, his or her responses to the issues raised in the objection and written representations contemplated in subsection (4).

Inspection of premises subsequent to objection

18.(1) The Licencing Officer, must, upon the expiry of the periods contemplated in section 17(5)(b) **allow an inspector to undertake necessary inspections to enable the Licencing Committee to consider the objections.**

(2) The inspection contemplated in subsection (1) may include –

(a) an inspection of any premises to determine –

(i) the location of the premises; and

(ii) the suitability of the premises for the proposed business;

(b) conducting an inspection and enquiries, in the manner prescribed, into the eligibility of the applicant to be granted the licence sought, including whether the applicant is disqualified in terms of section 15.

(3) The inspector must submit a report in the prescribed form to the Licencing Committee within 10 days of the inspection as contemplated in subsection (2).

Objection hearings

19.(1) A Licencing Committee must, if any objection as contemplated in section 17(4) was received, hold an objection hearing within 10 days of receipt of the inspector's report as contemplated in terms of section 18(3).

(2) The Licencing Committee must –

(a) determine the date, time and venue for the objection hearing; and

(b) notify the affected parties of the hearing in the manner prescribed.

(3) At the objection hearing, both the applicant and the objector, must be afforded an opportunity to –

(a) be heard and to lead evidence; and

(b) cross-examine any witnesses.

- (4) For the purposes of the objection hearing the Licencing Committee may –
- (a) by written notice delivered in the manner prescribed, require any person to appear before it to give evidence or to produce any book, plan or other document or article in his or her possession or under his or her control;
 - (b) call upon any person to appear before it to give evidence or to produce any book, plan or other document or article which such person may at the time have in his or her possession;
 - (c) question any person appearing before it;
 - (d) refuse to hear a person appearing before it who refuses to be sworn in or to be affirmed; and
 - (e) not hear any matter –
 - (i) which is frivolous or vexatious; or
 - (ii) to which it does not have jurisdiction as provided for in this Act.

- (5) An objection hearing must be –
- (a) held in the manner prescribed; and
 - (b) open to the public, unless the Licencing Committee has ruled that the hearing must be held in private in terms of subsection (6)(b).

- (6) The Licencing Committee may direct that –
- (a) any person who disrupts the good order of the hearing, must leave the hearing; and
 - (b) the objection hearing be held in private if the Licencing Committee deems fit.

(7) The Chairperson or Deputy Chairperson of the Licencing Committee presiding over the objection hearing at which a person appears as a witness must administer an oath or affirmation to the witness, provided that the Chairperson and Deputy Chairperson must be Commissioners of Oaths in terms of the Justice and Peace and Commissioners of Oath Act, 1963 (Act no.16 of 1963).

Consideration of applications by the Licencing Committee

20.(1) A Licencing Committee must, within 14 days –

(a) an objection hearing contemplated in section 19; and
(b) receipt of an inspection report in terms of section 18(3),
consider the application.

(2) In considering an application, a Licencing Committee must consider –

- (a) all the documents and representations submitted by the applicant in terms of section 16(2) and 17(5) and the objector in terms of section 17(4);
- (b) all the reports submitted by the inspector in terms of section 18(3);
- (c) the inspector's reports contemplated in section 36(2);
- (d) the suitability of the premises for the proposed business in relation to –
 - (i) land use management;
 - (ii) environmental health;
 - (iii) fire and safety;
 - (iv) environmental management;
 - (v) building control;
 - (vi) law enforcement; and
 - (vii) any other criteria;
- (e) whether the application is contrary to the provisions of this Act or any other law;
- (f) whether the application contributes to the objects of the Act as contemplated in section 2; and
- (g) any matter of public interest.

(3) A Licencing Committee may, if it is considered necessary and subject to the timeframe contemplated in subsection (1) –

- (a) carry out an inspection of the premises;
- (b) call upon the services of experts or service providers to undertake such further investigations necessary to assist the Licencing Committee to consider the application; and
- (c) hold a hearing, in which case the provisions of section 19 will be applicable, with the necessary changes.

(4) After having considered an application, a Licencing Committee must either –

- (a) grant the application subject to –

- (i) such terms and conditions it may deem fit;
- (ii) such trading hours it may deem to be necessary: Provided that the powers of the Licencing Committee in respect of issuing licences or permits to businesses to trade 24 hours will be subject to the determinations of the responsible Member of the Executive Council as contemplated in terms of section 4(4)(c);
- (b) refuse the application;
- (c) uphold or refuse an objection contemplated in section 17(4); or
- (d) postpone the matter to a later date, if the circumstances so dictate.

Communication of the decision

21.(1) A Licencing Officer must, within ten days of a Licencing Committee having made a decision on the application in terms of section 20, communicate the decision in writing to –

- (a) the applicant; and
- (b) any objector, where the objection was lodged in terms of section 17(4).

(2) In the event that an application or objection is refused, any decision must include –

- (a) written reasons for the decision;
- (b) advice on the right to appeal or review the decision of the Licencing Committee;
- and
- (c) the details of the Appeal Committee.

Issuing of business licences

22.(1) If an application is granted, the Licencing Officer must within seven days issue a business licence to the applicant in the prescribed form, which must include –

- (a) a licence number;
- (b) the date of issue;
- (c) the premises in respect of which a licence has been granted;
- (d) the terms and conditions upon which the licence has been granted, including the trading days and trading hours; and

(e) the date for the renewal of the licence.

(2) A licenced business must –

- (a) display a certified copy of the licence certificate or permit at any fixed premises in respect of such licence, including a certified copy of the terms and conditions applicable to the licence or permit; and
- (b) display visible signage at each main entrance indicating the trading name of the licenced business in the manner prescribed.

Validity of licence

23.(1) Any licence issued in terms of this Act is valid for a period of three years.

(2) The licence of any licenced person or premises takes effect on the date on which the business licence certificate is issued and remains in effect until –

- (a) the licence is cancelled in terms of this Act;
- (b) has lapsed; or
- (c) the licenced person is –
 - (i) deceased;
 - (ii) sequestrated or the estate is wound up;
 - (iii) dissolved or deregistered; or
 - (iv) no longer trading.

Part 3

Provisions applicable to licenced persons or permit holders

Renewal of business licence or permit

24.(1) Any licenced or permitted person must –

- (a) at least 60 days prior to the expiry of the term of the licence or permit in terms of section 23(1); and
- (b) in the prescribed form,

apply to the Licencing Officer for the renewal of the licence or permit.

(2) The application contemplated in subsection (1) must be accompanied by the supporting documents as prescribed.

(3) The Licencing Officer, must, within ten days of receipt of the application for renewal in terms of subsection (1), direct an inspector, in the prescribed form, to conduct an investigation on the application.

(4) The inspector must, within five days of receipt of the directive contemplated in subsection (3), conduct the investigation contemplated in subsection (3) and submit a report in the prescribed form to the Licencing Officer.

(5) The report contemplated in subsection (4) must indicate whether –
(a) the criteria listed in section 20(2) are still applicable; and
(b) conditions attached to the licence have been satisfied.

(6) The Licencing Officer must, within ten days of receipt of the report contemplated in subsection (4), consider the application.

(7) In considering the application for renewal in terms of subsection (6) the Licencing Officer must consider all the documents submitted with the application and the report submitted by the inspector in terms of subsection (4).

(8) If the Licencing Officer is satisfied that the –
(a) licenced or permitted person and the premises still meet the criteria contemplated in section 20(2); and
(b) conditions attached to the licence have been satisfied,
he or she must issue a notice in the prescribed form calling upon the licenced or permitted person to pay the prescribed renewal fee within the prescribed period.

(9) If the Licencing Officer determines that the –
(a) licenced or permitted person and the premises no longer meet the criteria contemplated in section 20(2); or
(b) the conditions attached to the licence or permit have been satisfied,

he or she must immediately refer the application to the Licencing Committee for determination in terms of section 20.

(10) If the licenced or permitted person fails to –

- (a) apply for the renewal of the licence or permit in terms of subsection (1); or
- (b) pay the renewal fee within the prescribed period,

then the –

- (i) business licence will immediately be suspended;
- (ii) the business must immediately cease to trade; and
- (iii) a renewal fee will attract a penalty, calculated as prescribed.

(11) If the licenced or permitted person fails to pay the renewal fee and the penalty contemplated in subsection (10)(b) during the fourth month ,the license or permit expires.

(12) The suspension of the business licence or permit contemplated in subsection 10(b)(i), will be lifted upon –

- (a) the submission and approval of the renewal application; and
- (b) payment of the licence fee together with the penalty.

(13) If the licence or permit has lapsed, all the rights, benefits and allowances accruing thereto lapse immediately.

Cancellation of licence or permit

25.(1) The Licencing Committee may, subject to subsection (2) direct the Licencing Officer to cancel the licence or permit if the licenced or permitted person –

- (a) has violated –
 - (i) any of the conditions attached to the licence; and
 - (ii) any provisions of this Act, any other applicable law or bylaw;
- (b) becomes disqualified in terms of section 15; or
- (c) has ceased to trade.

(2) Prior to directing the Licencing Officer to cancel the licence or permit in terms of subsection (1), the Licencing Committee must, in the manner prescribed, afford the licenced person, an opportunity to be heard and to make representations as to why the licence or permit should not be cancelled.

(3) A licenced or permitted person may, in the manner prescribed, surrender his or her licence.

(4) The responsible Member of the Executive Council must prescribe the manner in which the licence or permit held by a person who –

(a) is deceased;

(b) has been sequestrated or placed in liquidation;

(c) is under judicial management; or

(d) has been declared by court to be incapable of handling his or her own affairs,

must be dealt with.

(5) Once a licence or permit has been cancelled in terms of subsections (1) or (3), all rights, benefits and allowances accruing thereto lapse immediately.

Transfer of licence or permit

26.(1) Any licenced or permitted person who intends to transfer his or her licence or permit to another person, must submit an application to the Licencing Authority in the prescribed form.

(2) The prospective holder of a licence or permit to whom the licence or permit is to be transferred in terms of subsection (1) must not be disqualified in terms of section 15.

(3) The application for a transfer of licence or permit to a prospective holder must be processed in terms of the provisions of sections 16, 17, 18, 19, 20 and 21 of this Act.

(4) Where the Licencing Authority has granted the application for the transfer of a licence and the licenced or permitted person has paid the prescribed transfer fee, a certificate of

transfer must be issued –

- (a) reflecting the name of the prospective holder; and
- (b) with such conditions as may be imposed by the Licencing Authority in terms of section 20(4)(a)(i).

Relocation of business operations to other premises

27.(1) Any licenced or permitted person who intends to relocate his or her licence or permit from a licenced or permitted premises to other premises, must submit an application to the Licencing Authority in the prescribed form.

(2) The application for the removal of a business licence or permit to other premises must be processed in terms of the provisions of sections 16, 17, 18, 19, 20 and 21 of this Act.

(3) The Licencing Authority must issue a certificate of relocation, as prescribed after –

- (a) it has granted the application for the relocation of a licence or permit; and
- (b) the licenced or permitted person has paid the prescribed relocation fee.

(4) The certificate of relocation must –

- (a) reflect the name of the prospective holder; and
- (b) contain conditions as may be imposed by the Licencing Authority in terms of section 20(4)(a)(i).

Management of businesses

28.(1) A licenced or permitted person may appoint any natural person as a manager of the licenced or permitted business.

(2) The manager contemplated in subsection (1) must –

- (a) be in possession of a manager's permit issued in terms of subsection (3); and
- (b) not be disqualified in terms of section 15.

(3) Any licenced or permitted person wishing to appoint a manager for any licenced or permitted business must submit an application for the manager's permit to the Licencing Authority in the prescribed form.

(4) The Licencing Authority must process the application for a manager's permit submitted in terms of subsection (3) in the manner and within the timeframes, as prescribed.

(5) If the application contemplated in subsection (3) has been granted, the Licencing Officer must, upon payment of the prescribed manager's permit fee, issue the manager's permit.

Part 4
Licencing fees

Application and renewal fees

29.(1) The responsible Member of the Executive Council, must, in consultation with the Member of the Executive Council responsible for finance, in a prescribed manner and by notice in the *Gazette*, determine the standard tariffs that must be applicable for business licences in terms of this Act for –

- (a) application fees, contemplated in section 16(1)(c);
- (b) renewal fees, contemplated in section 24(8);
- (c) transfer fees, contemplated in section 26(4);
- (d) relocation fees, contemplated in section 27(3)(b); and
- (e) manager's permit fees contemplated in section 28(5).

(2) The responsible Member of the Executive Council may, by notice in the *Gazette* determine the framework for the determination of tariffs contemplated in subsection (1) based on the size and location of the business.

(3) The responsible Member of the Executive Council, must, in consultation with the Member of the Executive Council responsible for finance, by notice in the *Gazette* and from time to time revise and [publish in the Gazette](#) the tariffs contemplated in subsection

(1).

Part 5

Regulation of informal businesses

Compulsory permitting

30.(1) A person who –

- (a) conducts business as an informal trader in the Province must **always**, subject to subsection (2) be in possession of an informal business permit issued by the relevant Licencing Authority; and
- (b) is employed by the permit holder as a **permit holder's assistant**, must **always** be in possession of an assistant's permit.

(2) The responsible Member of the Executive Council may, subject to subsection (3) and by notice in the *Gazette* –

- (a) exempt certain persons from the application of the provisions of this Part; and
- (b) amend or withdraw, the exemption of any person contemplated in subparagraph (a).

(3) The responsible Member of the Executive Council –

- (a) must within six months of coming into operation of this Act, determine and publish by notice in the *Gazette*, the criteria and procedures applicable to the exemption contemplated in subsection (2); and
- (b) may, from time to time and by notice in the *Gazette*, amend any criteria or procedures contemplated in paragraph (a).

(4) A person who –

- (a) contravenes subsection (1);
- (b) conducts any business in the informal economy, using an informal trading permit issued to another person; or
- (c) is a permit holder and lets **another** person conduct business using the permit issued to the permit holder,

is guilty of an offence.

Validity of permit

31.(1) Any permit issued in terms of this Act is valid for a period of three years.

(2) The permit of any permitted person or premises takes effect on the date on which the trading permit is issued and remains in effect until –

- (a) the permit is cancelled in terms of this Act;
- (b) has lapsed; or
- (c) the permitted person is –
 - (i) deceased;
 - (ii) sequestered or the estate is wound up;
 - (iii) dissolved or deregistered; or
 - (iv) no longer trading.

Mark: the business is regulated as not the land or building. The person operating the premises could be leasing it.

Application and renewal fees

32.(1) The responsible Member of the Executive Council, must, in consultation with the Member of the Executive Council responsible for finance, in a prescribed manner and by notice in the *Gazette*, determine the standard tariffs that must be applicable for permits in terms of this Act for –

- (a) application fees;
- (b) renewal fees;
- (c) transfer fees; and
- (d) relocation fees.

(2) The responsible Member of the Executive Council may, by notice in the *Gazette* determine the framework for the determination of tariffs contemplated in subsection (1) based on the size and location of the business.

(3) The responsible Member of the Executive Council, must, in consultation with the Member of the Executive Council responsible for finance, by notice in the *Gazette* and from time to time revise and publish the tariffs contemplated in subsection (1).

Municipal informal trading by-laws

33.(1) Municipalities in the Province, must, within 18 months of the coming into operation of this Act and by notice in the *Gazette*, make municipal informal trading by-laws to regulate informal trading in their respective areas of jurisdiction.

(2) The municipal informal trading by-laws contemplated in subsection (1) must be subject to the –

- (a) provisions of this Act;
- (b) written approval of –
 - (i) the responsible Member of the Executive Council; and
 - (ii) the Member of the Executive Council responsible for local government.

(3) Municipal informal trading by-laws contemplated in subsection (1) must provide for –

- (a) the demarcation and designation of informal trading areas or sites by each municipality within its area of jurisdiction;
- (b) the processes and procedures for –
 - (i) the allocation or leasing of informal trading sites to informal traders; and
 - (ii) the application for an informal trading permit to trade on any –
 - (aa) informal trading site contemplated in subparagraph (i); or
 - (bb) area falling within the boundaries of the municipality concerned; and
 - (iii) the application for an assistant's permit contemplated in section 30(1)(b);
- (c) the powers of the municipality concerned to –
 - (i) grant, refuse, amend, transfer, withdraw or suspend any informal trading permit;
 - (ii) determine, amend, vary or withdraw any conditions and trading hours or days on the informal trading permit; and
 - (iii) charge fees for –
 - (aa) the allocation or leasing of informal trading sites; and

- (bb) application, issuing and transfer of permits and the fees, which should not exceed the maximum fees determined by the responsible Member of the Executive Council, by notice in the *Gazette*;
- (d) the disqualifications to be considered when considering an application for an informal trading permit and –
 - (i) a permit to trade as an informal trader will not be issued if that person –
 - (aa) is a foreign national without proper documentation which allows him or her to trade in the Republic;
 - (bb) is a minor;
 - (cc) has been declared by a competent court to be of unsound mind;
 - (dd) has been convicted and sentenced to a term of imprisonment without the option of a fine: Provided that this disqualification ends immediately on the expiry of the term of imprisonment; or
 - (ee) has had his or her permit cancelled in terms of this Act: Provided that this disqualification ends after three years from the date of cancellation, or on such other date as determined by the Licensing Committee;
 - (ii) a person, who intends to conduct informal trade in any building or structure belonging to another person, may be issued with a permit and he or she must provide proof of the lease or consent from the owner of the building or structure concerned.

(4) Municipal trading by-laws for each municipality in the Province, must, subject to subsection (5), provide for the restriction and prohibition of –

- (a) informal trading in certain areas within the jurisdiction of the municipality concerned; and
- (b) certain activities and conduct by informal traders.

(5) The process for the determination and implementation of the restrictions and prohibitions contemplated in subsection (4), must be preceded by a transparent public consultation process.

(6) Municipal informal trading by-laws may prescribe a penalty or a fine for any contravention of any of the provisions of this Act or the applicable municipal by-law and they may not exceed the amount of a fine prescribed by the responsible Member of the Executive Council.

(7) Municipal informal businesses by-laws must provide for the powers of authorised officers to remove and impound any goods of an informal trader if such goods are used or intended to be used for, or in connection with the contravention of any provisions of the applicable municipal informal businesses by-law: Provided that the impoundment and removal of goods in terms of this section must be –

- (a) reserved for serious contraventions;
- (b) in the interest of the health and safety of the public;
- (c) considered for repeat offenders when all other alternative measures to prevent the informal traders from contravening the provisions of the by-law have been exhausted; and
- (d) in accordance with the framework prescribed for this purpose by the responsible Member of the Executive Council.

(8) The alternative measures contemplated in subsection (7) (c) include issuing –

- (a) verbal and written warnings calling upon the informal trader to desist from contravening the provisions of the by-law concerned; and
- (b) fines to the informal trader concerned.

Part 6

Business registration

Registration of formal and informal businesses

34. (1) All Licencing Authorities in the Province must, in respect of their respective areas of jurisdiction, register every business, body or entity conducting business in the Provincial Automated Business Licencing, and information management system.

(2) All licenced businesses, informal traders and licenced or permitted businesses in terms of any other legislation must be registered in the Provincial Automated Business Licencing, and information management system.

(3) Businesses listed in Schedule 2, which are regulated by industry specific codes or industry specific registration must comply with their industry codes and submit proof of registration of their business sector when applying for business registration.

(4) The main objectives of the registration of businesses contemplated in subsection (1) are to ensure the collection of –

- (a) economic data in respect of all businesses and informal traders in the Province;
- and
- (c) proper economic and spatial planning.

CHAPTER 5 COMPLIANCE AND ENFORCEMENT

Appointment of inspectors

35.(1) A Licencing Authority must, in respect of its area of jurisdiction, appoint any persons as inspectors to perform the powers, duties and functions contemplated in section 36.

(2) A Licencing Authority must issue every inspector appointed in terms of subsection (1) with –

- (a) the certificate in the prescribed form; and
- (b) an identification card.

(3) The identification card issued in terms of subsection (2)(b) is sufficient evidence of the authority of the inspector named on it.

(4) When an inspector exercises or performs any of his or her powers, duties and functions in terms of section 36, he or she must –

- (a) be in possession of the form of identification issued to that inspector in terms of subsection (2)(b); and

- (b) show the form of identification, issued to that inspector in terms of subsection (2)(b), to any person who –
 - (i) is affected by the inspector's actions in terms of this Act; and
 - (ii) requests to see identification.

(5) The inspectors contemplated in this section must be appointed as peace officers in terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Powers, duties and functions of inspectors

36.(1) An inspector may enter any premises if he or she has a reasonable suspicion that any business is being conducted on such premises and request the owner of the business or manager or employee of the business to produce –

- (a) a business licence contemplated in section 22;
- (b) a manager's permit contemplated in section 28;
- (c) an informal trading permit contemplated in section 30(1)(a); or
- (d) an assistant's permit contemplated in section 30(1)(b).

(2) An inspector may conduct an inspection and compile a report in respect of any –

- (a) licenced or permitted premises to monitor and enforce compliance, with this Act or any other law; and
- (b) objections contemplated in section 17 and 18; and
- (c) new applications contemplated in sections 16, 24, 26, 27, 28 and 30(1), and must include, where applicable, inspectors' reports in matters pertaining to –
 - (i) land use management;
 - (ii) environmental health;
 - (iii) fire and safety;
 - (iv) environmental management;
 - (vi) building control; and
 - (vii) any other report.

(3) Subject to subsections (2) and section 41(1) and (4) and the provisions of any other law, an inspector may –

- (a) question any person present on any premises in respect of any matter which may be relevant to the inspection;
- (b) question any person whom, the inspector on reasonable grounds, believes may have information relevant to the inspection;
- (c) inspect any document that a person is required to keep in terms of this Act or any other law or that may be relevant to any business-related inspection;
- (d) copy the document referred to in paragraph (c), or if necessary, remove the document in order to copy it;
- (e) take photographs or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises;
- (f) with the assistance of a police officer from the South African Police Services, seize and remove any item which in his or her opinion may furnish proof of a contravention of any provision of this Act or any other law;
- (g) do all things necessary for conducting the inspection without exceeding his or her powers as contemplated in this Act; and
- (h) order the immediate closure of business operations if the inspector, according to the powers vested in him or her as contemplated in this Act, can on reasonable grounds demonstrate that the business concerned is –
 - (i) in breach of its business licence or trading permit;
 - (ii) trading illegally;
 - (iii) trading without a licence or permit;
 - (iv) posing a danger to the interests of the health and safety of the public; or
 - (v) a repeat offender, where all other reasonable alternative measures to prevent the business from contravening the provisions of this Act and any other law, have been exhausted.

(4) An inspector who removes any item in terms of subsection (3)(f) from a premises being inspected, must issue a receipt, in the prescribed form, to the owner or person in charge of the business.

Entry with warrant

37.(1) An inspector, may, with the assistance of a police officer from the South African Police Services, enter any premises if a magistrate has issued a valid warrant, in the

prescribed form, to inspect the premises.

(2) A magistrate may issue a warrant, in the prescribed form, to enter and inspect any premises, if, from information in writing on oath or affirmation the magistrate has reason to believe that –

- (a) it is necessary to obtain information, in the interest of the public, that cannot be obtained without entering those premises; or
- (b) there is non-compliance with this Act.

(3) A warrant contemplated in subsection (2) must specifically –

- (a) identify the premises that may be entered and inspected; and
- (b) authorise the inspector to enter and inspect the premises and to do anything contemplated in section 36.

(4) A warrant issued in terms of subsection (2) is valid until –

- (a) it is executed;
- (b) it is cancelled by the magistrate who issued it or, in the magistrate's absence, by any other judicial officer;
- (c) the purpose for which it was issued has lapsed; or
- (d) 90 days have passed since the date it was issued.

(5) Before commencing any inspection, an inspector who carries out a warrant must, if the owner or a person apparently in control of the land or premises is –

- (a) present –
 - (i) identify himself or herself and explain his or her authority to that person and furnish proof of his or her appointment; and
 - (ii) hand a copy of the warrant to that person or a person named in it; or
- (b) absent or refuses to accept a copy, attach a copy of the warrant to the premises in a prominent and visible place.

Entry without warrant

38.(1) An inspector who does not have a warrant in his or her possession may, with or without the assistance of a police officer from the South African Police Services, enter and

inspect any –

- (a) premises with the consent of the owner or person apparently in control of those premises;
- (b) licenced premises on a routine basis, to determine compliance with the terms and conditions of the licence;
- (c) premises in respect of which there is an outstanding compliance notice issued in terms of section 42, for the purpose of determining whether that notice has been complied with;
- (d) premises where there are reasonable grounds to believe that a warrant would be issued in terms of section 39 and the delay in obtaining such warrant would defeat the object of the warrant; or
- (e) premises if authorised to do so by any other law.

(2) Before commencing an inspection on any premises in terms of this section, an inspector must identify himself or herself, explain his or her authority, and furnish proof of his or her appointment to the person apparently in control of the premises or the person who gave permission to enter.

Use of force

39.(1) An inspector carrying out a warrant in terms of section 37, may overcome any resistance to entry or inspection by using the force that is reasonably required, including breaking a lock, door or window of the premises to be entered.

(2) Before using force, the person carrying out the warrant must audibly demand admission and must announce his or her purpose, unless he or she reasonably believes that doing so may cause someone to destroy, dispose of, or tamper with, any object, document or evidence that is the subject of the inspection.

(3) Force may not be used to effect an entry or conduct an inspection in terms of section 36 except in the case of an emergency or subject to law.

Inspector may be accompanied

40. An inspector may be accompanied during an inspection by a police officer from the South African Police Service or any other person reasonably required to assist in conducting the inspection.

Duty to produce documents and to answer questions

41.(1) A person who is in possession of any document relevant to an inspection must produce such document at the request of the inspector.

(2) An inspector must inform a person of their right to –

(a) remain silent; or

(b) be informed promptly –

(i) of the right to remain silent; and

(ii) of the consequences of not remaining silent;

(c) not to be compelled to make any confession or admission that could be used in evidence against that person.

(3) A owner or occupier of any premises must provide any facility and assistance that is reasonably required by an inspector to conduct an inspection effectively.

(4) A person who fails to comply with subsection (1) is guilty of an offence.

Compliance notices

42.(1) Where an inspector is of the opinion that a licenced person or business has breached the terms and conditions of a licence or has failed to comply with the provisions of this Act, the inspector may issue and serve upon that licenced person or any person in control of licenced premises, a compliance notice in the prescribed form.

(2) A compliance notice must stipulate the –

(a) provisions of this Act or the conditions of the business licence which must be complied with;

(b) nature and extent of the non-compliance;

(c) measures which must be taken to comply;

- (d) date by which compliance must be completed; and
- (e) possible consequences of non-compliance, which may include cancellation of the licence.

(3) A compliance notice remains in force until the date for compliance or any extension thereof has expired or the issue by the inspector of a certificate of compliance, whichever is the earlier.

(4) An inspector may, at the request of the person served with the compliance notice, extend the period of compliance, upon good cause shown, by issuing an amended compliance notice.

(5) If the person served with the compliance notice has complied therewith, the inspector must issue a certificate of compliance.

(6) A Licencing Committee may set aside the complaint as set out in the compliance notice if it decides that the complaint is unjustified.

(7) If a Licencing Committee finds the complaint to be justified, it may order that the compliance notice be complied with by such date as it may determine.

(8) An inspector must, after the period stipulated for compliance, submit a report on compliance to the Licencing Committee.

(9) If the order referred to in subsection (7) has –

- (a) been complied with, the inspector must issue a certificate of compliance; or
- (b) not been complied with, the Licencing Committee may forthwith cancel the licence.

(10) In the event that the licenced person who is served with the compliance notice has failed to comply with the notice, the inspector must submit the compliance notice and all relevant documentation to the Licencing Committee for consideration.

(11) The Licencing Officer must inform the licence holder in writing of the cancellation of the licence as contemplated in subsection (9)(b) and provide reasons for such

cancellation.

(12) Any person who fails to comply with a compliance notice is guilty of an offence.

Establishment of the Provincial Inspectorate function

43.(1) There is hereby established the KwaZulu-Natal Provincial Inspectorate function within the Department whose responsibility is to regulate trade as contemplated in Schedule 4 Part A of the constitution.

(2) The Provincial Inspectorate function contemplated in subsection (1) must be –

(a) managed by the head of the business unit responsible for the regulation of matters pertaining to trade;

(b) appointed by the responsible Member of the Executive Council in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and

(c) in compliance with section 35, with necessary changes.

(3) The KwaZulu- Natal Provincial Inspectorate function must be performed in terms of this Act, by the functionaries in the Department appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(4) The head and the functionaries contemplated in subsection (2) and (3) must be appointed as peace officers in terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Objects, powers, duties and functions of the Provincial Inspectorate Function

44.(1) The objects of the Provincial Inspectorate Function are to ensure general compliance with the provisions of this Act in the Province.

(2) In the event that the inspectors appointed in terms section 35 are unable to perform their duties in terms of this Act, the Licensing Authority must in writing request -

- (a) the head of the Provincial Inspectorate function to assist the Licensing Authority to enable them to comply with their obligations in terms of this Act; and
- (b) the assistance of the provincial compliance monitoring and enforcement structure in section 45 in this Act.

(3) If the Licencing Authority fails to comply with subsection (2), the Provincial Inspectorate function is empowered to provide the inspectorate services contemplated in section 43.

(4) The powers, duties and functions of the Provincial Inspectorate function are, subject to subsection (1), similar to the powers contemplated in section 36 to 42.

Code of conduct for inspectors

45. The conduct of inspectors contemplated in sections 36 and 45 is subject to the Code Conduct for inspectors, issued by the responsible Member of the Executive Council in terms of section 4(3)(c).

CHAPTER 6

ESTABLISHMENT OF PROVINCIAL AND MUNICIPAL COMPLIANCE MONITORING AND ENFORCEMENT STRUCTURES

Provincial compliance, monitoring and enforcement structure

46.(1) The provincial compliance monitoring and enforcement structure is hereby established.

(2) Within twelve months of the coming into operation of this Act, the responsible Member of the Executive Council must, in consultation with the Members of the Executive Council of the regulatory departments and functionaries, establish a KwaZulu-Natal provincial compliance monitoring and enforcement structure –

- (a) by notice in the *Gazette*; and
- (b) in the prescribed manner.

Municipal compliance, monitoring and enforcement structure

47.(1) Municipal compliance monitoring and enforcement structure must be established within 12 months of the coming into operation of this Act, by the Accounting Officers of the respective municipalities; and

(2) The provisions of section 46(2)(a) and (b) applies mutatis mutandis.

Objects of the Provincial and Municipal compliance monitoring and enforcement structures

48. The objects of the provincial and municipal compliance monitoring and enforcement structures are to provide –

- (a) a multidisciplinary and intradepartmental compliance monitoring system;
- (b) a multifunctional system for the enforcement of this Act and other related laws regulating businesses and affecting the consumer public;
- (c) for tracking compliance by businesses; and
- (d) for an incentive mechanism for compliant businesses.

Functions of the Provincial and Municipal compliance monitoring and enforcement structures

49. The functions of the provincial and municipal compliance monitoring and enforcement structures are to executing functions as contemplated in section 36.

CHAPTER 7 APPEALS AND REVIEWS

Appeals

50.(1) Any person aggrieved by the decision of any Licencing Authority made in terms of Chapter 4, may within a period of 21 days lodge an appeal against the said decision with the Appeals Committee contemplated in subsection (2).

(2) Every Licencing Authority must establish an Appeals Committee as prescribed.

(3) The responsible Member of the Executive Council may on an *ad hoc* basis, appoint or nominate an Appeals Committee to assist the Licencing Authorities who lack the necessary capacity, to appoint a Licencing Authority Appeals Committee.

Review of decisions

51.(1) Any person aggrieved by the decision of any Licencing Authority made in terms of Chapter 4 may, within 21 days, lodge review proceedings against the said decision with Review Committee contemplated in subsection (2).

(2) Every Licencing Authority must establish a Review Committee as prescribed.

(3) The responsible Member of the Executive Council must by notice prescribe guidelines on the procedures to be followed during the review proceedings.

CHAPTER 8 BUSINESS SUPPORT AND DEVELOPMENT

Business support and development of formal and informal economy

52.(1) The responsible Member of the Executive Council must, within 18 months after the coming into operation of this Act, and after consultation with the Executive Council –

(a) develop and publish a strategy for the development and support of the informal economy;

(b) develop a framework for the development and support of the township and rural economy;

- (c) determine and publish guidelines on mall tenancy arrangements in respect of any new mall development yet to be developed in the Province; and
- (d) assist entrepreneurs from both the formal and informal sector of the economy, in the manner prescribed, to establish –
- (i) Municipal Traders Associations within all municipal areas in the Province;
 - (ii) District Traders Associations within all districts and metropolitan areas in the Province; and
 - (iii) a Provincial Traders Association.
- (2) The municipalities may, in the manner prescribed and subject to the availability of funds –
- (a) make funding available for the development and support of informal businesses in the Province; and
 - (b) develop and implement necessary programmes to ensure skills development and transfer for the benefit of informal traders in the Province.
- (3) The responsible Member of the Executive Council must prescribe additional provisions relating to the support and development of the formal and informal economy.

CHAPTER 9 GENERAL PROVISIONS

Delegations

- 53.**(1) The responsible Member of the Executive Council may delegate any power conferred on the responsible Member of the Executive Council by this Act, except the power to –
- (a) make Regulations referred to in section 54; or
 - (b) designate Licencing Authorities in terms of section 5.
- (2) Any power or duty delegated in terms of subsection (1) must be exercised or performed subject to such conditions as the responsible Member of the Executive Council considers necessary.

(3) A delegation referred to in subsection (1) –

- (a) must be in writing;
- (b) does not prohibit the responsible Member of the Executive Council from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended, in writing by the responsible Member of the Executive Council.

Regulations and notices

54.(1) The responsible Member of the Executive Council may, after consultation with the Member of the Executive Council responsible for local government and by notice in the *Gazette*, make Regulations regarding –

- (a) any administrative or procedural matter necessary to give effect to the provisions of this Act;
- (b) the framework in which the Licencing Authorities' Appeal and Review Committees may be constituted as well as their operations; and
- (c) any matter in respect of which the responsible Member of the Executive Council deems it necessary or expedient to make Regulations in order to achieve the objects of this Act.

(2) The responsible Member of the Executive Council may publish any notice contemplated in this Act, and necessary to give effect to the provisions of this Act: Provided that any notices regarding any fees or fines must be published in consultation with the Member of the Executive Council responsible for finance.

Offences and penalties

55.(1) Any person who is guilty of an offence in terms of sections 14; 41; and 42; is, on conviction, liable to –

- (a) a fine, not exceeding the amount determined by the responsible Member of the Executive Council in terms of section 4(2)(b);
- (b) imprisonment not exceeding three months; or

(c) both such fine and imprisonment.

(2) Any person operating –

(a) a nightclub or discothèque;

(b) adult premises contemplated to in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996); or

(c) an escort service;

who allows any person younger than the age of 18 years to enter the premises, is –

(i) guilty of an offence; and

(ii) liable to a fine or imprisonment not exceeding 3 years.

Repeal of laws

56. The laws mentioned in Part A and B of Schedule 1 are in so far as they apply to the Province, hereby repealed to the extent indicated in the third column of the said Schedule.

Transitional arrangements

57.(1) Upon the coming into operation of this Act the following issued in terms of the Businesses Act, will be deemed to be valid until they expire –

(a) licences issued under the Businesses Act;

(b) compliance notices;

(c) fines.

(2) Any person who holds a license issued in terms of the Businesses Act, must apply for renewal in terms of this Act.

(3) A person who holds a license in terms of subsection (1) of this Act, is not exempted from complying with any relevant provisions of the Businesses Act and from complying with any other law or legal requirement in relation to the business in question.

(4) Any application for a licence or matter received by a Licencing Authority under the Businesses Act, before the date of commencement of this Act and not disposed of prior to the date of commencement of this Act, must be dealt with in terms of this Act.

Short title and commencement

58.(1) This Act is called the KwaZulu-Natal Business Act, 2020, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.

**SCHEDULE 1
REPEAL OF LAWS
PART A: LEGISLATION**

<i>No. and Year of Law</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Act No. 71 of 1991	Business Act	The assignment of the whole, in so far as it relates to the Province.
Act No. 11 of 1984	KwaZulu Licences and Business Hours Act	Whole
Ordinance No. 11 of 1973	Business Hours Ordinance	Whole

PART B: REGULATIONS

<i>No. and Year of Law</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Regulation No. PN786 of 1991	Regulations Relating to Businesses	Whole, in so far as it relates to the Province.
Regulation No. PN690 of 1975	Business and Occupational Licences and Business Hours	Whole

**SCHEDULE 2
BUSINESSES EXEMPTED IN RESPECT OF BUSINESS LICENCES AND PERMITS,
CONTEMPLATED IN CHAPTER 4 OF THIS ACT**

1. state owned entities;
2. non-profit organizations;
3. welfare organizations;
4. faith-based organizations; and
5. businesses which are regulated by industry specific codes or industry specific registration.

MEMORANDUM ON THE OBJECTS OF THE KWAZULU-NATAL BUSINESS BILL, 2020

1. BACKGROUND

(1)The KwaZulu- Natal Department of Economic Development, Tourism and Environmental Affairs (hereinafter referred to as “the Department”) has a constitutional mandate to administer the Businesses Act, 1991 (Act No. 71 of 1991) as well as the Provincial Policy on the Informal Economy, under the sub-directorate Regulation Services, which oversees and regulates Formal and Informal Businesses in the KwaZulu-Natal Province.

(2)The Department’s priority is to provide a conducive regulatory environment and framework that will enhance the functioning of both formal and informal trade in a manner that advances economic development and growth in the Province, and an environment that will create sustainable development and support to the formal and informal business sectors, and ensure that businesses in the Province comply with the terms of the Act and the policies relating to informal trade.

(3)The constitutional mandate of the Department and the Provincial Legislature to legislate on the issue of trade in the Province emanates from Part A of Schedule 4 and Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996. Schedule 4 provides that both the National and Provincial spheres of government have functional and legislative competence on any matter relating to trade, and Schedule 5 Part B provides that provinces have exclusive legislative competence on –

- (a) licencing and control of undertakings to sell food to the public; and
- (b) street trading (forming part of the informal business sector).

(4)The Businesses Act, 1991, came into effect prior to the introduction of the Constitution and has since become difficult to apply to the regularization of businesses post 1994, and the delegated powers granted to provinces by the Constitution under section 104(1)(b) provides as follows –

Section 104 (1)(b), "The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power –

(b) to pass legislation for its province with regard to –

- (i) any matter within a functional area listed in Schedule 4(Part A – trade and, Part B trading regulations are local government competencies);*
- (ii) any matter within a functional area listed in Schedule 5;*
- (iii) any matter outside those functional areas, that is expressly assigned to the province by national legislation; and*
- (iv) any matter for which a provision of the constitution envisages the enactment of provincial legislation; and ...".*

(5) In light of these competencies the Province has drafted the KwaZulu-Natal Business Bill, 2020 which is intended to provide for -

- (a) an integrated provincial business regulatory framework in order to promote a conducive environment for economic development in the Province;
- (b) measures to protect consumers in the Province against unhealthy, harmful, and unsafe goods and business practices;

- (c) the designation of Licencing, Permitting and Registration Authorities, Committees and Officers in the Province and their objects, powers, duties and functions;
- (d) a standardized framework for the regulation of informal trading in the Province;
- (e) a conducive environment to ensure the graduation of small businesses in the informal sector into the main stream economy;
- (f) the establishment of a Provincial Inspectorate;
- (g) provide for the powers of the responsible Member of the Executive Council to designate twenty-four hour trading zones and mall tenancy arrangements;
- (h) provide for the establishment of District and Provincial Traders Associations; and
- (i) the establishment of District and Provincial Traders Associations; and
- (j) incidental matters.

2. CLAUSE-BY-CLAUSE EXPLANATION

CHAPTER 1

Clause 1:

Contains the definitions which are largely self-explanatory.

Clause 2:

Provides for the objects of the Act, which aim to provide an integrated provincial business regulatory framework; a standardized informal trading regulatory framework; a conducive environment for the growth and development of informal traders in the province; an environment that enables interactions and the exchange of ideas between businesses, both formal and informal, and provincial and local government. It also seeks to provide measures which foster business development and skills transfer in the province.

Clause 3:

Provides for the application of this Act, which includes municipalities in the Province; persons or entities carrying on business, or intending to carry on business as well as any person conducting an informal business or intending to do so.

Clause 4:

Provides for the powers, duties and functions of the Responsible Member of the Executive Council, which include the development of a Provincial Automated Business Licensing and Information Management System; the determination of fees after consultation with the Member of the Executive Council responsible for finance in the Province and other matters related thereto.

Clause 5:

Provides that the Responsible Member of the Executive Council may, after consultation with the relevant municipality and by notice in the Provincial Gazette designate a municipality as a Licencing Authority, and may intervene where any municipality in the province lacks capacity, by designating another municipality or a person or body to be a Licencing Authority in that area.

Clause 6:

Provides for the objects of the Licencing Authorities which include, amongst other things, ensuring that persons or entities conducting businesses in their respective jurisdiction possess the necessary business licences or are properly registered; that they promote the integrity of the business industry and; that they do not harm the public.

Clause 7:

Provides for the powers, duties and functions of the Licencing Authorities which include receiving, considering and processing all applications for business licences and permits.

Clause 8:

Provides for the establishment of the Licencing Committees by the Licencing Authorities in their area of jurisdiction.

Clause 9:

Provides for the powers, duties and functions of the Licencing Committees which involves considering and processing all applications and transfers contemplated in Chapter 4 and

5 of the Act.

Clause 10:

Provides for the composition of the Licencing Committees, which comprises of not less than five members, appointed by the Licencing Authority who are employed by local government. A Licencing Officer will be appointed as an *ex officio* member.

Clause 11:

Provides for the designation by the Licencing Authorities, of senior officials with the requisite skills and experience in business licencing as Licencing Officers and how such Licencing Officers will be assisted by officials in the employ of the Licencing Authorities.

Clause 12:

Provides for the powers and functions of the Licencing Officers who must perform administrative and other duties.

Clause 13:

Provides for the appointment of experts to assist the Licencing Officers and the Licencing Committees in exercising and performing of their powers, duties and functions. It provides that the experts may attend meetings of the Licencing Committees but may not vote at such meetings.

Clause 14:

Provides for the compulsory licensing, prohibitions and restrictions of businesses and that the Member of the Executive Council, may exempt certain businesses from the application of this Act.

Clause 15:

Deals with disqualifications in terms of issuing business licences and the criteria for the disqualifications.

Clause 16:

Provides for the procedure to be followed when lodging an application for a business licence, the documents required when doing so, including the steps to be taken by Licencing Officers when dealing with the applications.

Clause 17:

Provides for public inspections, objections, and representations relating to an application.

Clause 18:

Deals with the inspections of premises subsequent to an objection to an application of a business license. The inspections may include an inspection relating to the suitability of the premises for the proposed business and its location.

Clause 19:

Deals with objection hearings and the responsibilities of the Licencing Committee in respect of such hearings.

Clause 20:

Provides for the consideration of an application by the Licencing Committee, which includes the duration in which the Licencing Committee should start considering the objection, the consideration of the documentation and representations submitted and granting relief after such consideration.

Clause 21:

Provides for the communication of a decision by Licencing Officers within ten days after the Licencing Committee has made the decision on the objection hearing and if the objection is refused, the decision must include the reasons and the right to appeal or review to the Licencing Committee.

Clause 22:

Deals with the issuing of a business licence to an applicant and the conditions which the applicant must adhere to.

Clause 23:

Provides for the validity period of a business licence, which is a period of three years.

Clause 24:

Provides for the renewal of a business licence, which must be done at least 60 days prior the expiry of the validity of the licence.

Clause 25:

Provides for the cancellation of a business license or permit, in terms of which a Licencing Committee can direct the Licencing Officer to cancel the licence, where the licensee or permit holder has violated the conditions of a licence or any of the provisions of the Act, has ceased to trade, or is deceased.

Clause 26:

Deals with the transfer of a business licence or permit from a licence or permit holder to another person, which must be done in the prescribed manner using the prescribed form.

Clause 27:

Provides for the relocation of a business licence to other premises, after the application for the removal has been processed, and the applicant has paid the removal fee.

Clause 28:

Provides for the appointment of a natural person as a manager by a licence holder to manage a business.

Clause 29:

Provides that the responsible Member of the Executive Council must, from time to time, and in consultation with the Member of the Executive Council responsible for finance, and by notice in the Provincial *Gazette*, prescribe all fees relating to an application for a business licence, renewal fees, transfer fees, relocation fees and fees for a manager's

permit.

Clause 30:

Provides for the compulsory permitting of informal businesses.

Clause 31:

Provides for the permit of an informal business to be valid for a period of three years.

Clause 32:

Provides for the member of the Executive Council, together with the member of the Executive Council responsible for finance to determine the standard tariffs applicable for the application; renewal; transfer and relocation fees.

Clause 33:

Provides for the municipal informal trading by-laws and requires municipalities to gazette the informal trading by-laws within 18 months of the coming into operation of this Act.

Clause 34:

Provides that all Licencing Authorities in the Province must register persons, bodies or entities conducting businesses in the Provincial Automated Business Licencing and Information Management System, and that businesses listed in Schedule 2 of the Act, which are regulated by specific industry codes or industry specific registration, must comply with specific industry codes and submit proof of registration when applying for business registration in terms of the Act.

Clause 35:

Provides for Licencing Authorities to appoint inspectors in respect of their area of jurisdiction to perform their powers, duties and functions in terms of section 36 of the Act.

Clause 36:

Provides for the powers, duties and functions of inspectors which include entering business premises on reasonable suspicion that a business is being conducted on the premises, and to also conduct any inspection in relation to that business without

exceeding his or her powers in relation to the Act and any provisions of any other law.

Clause 37:

Provides that an inspector may enter any premises with the help of a police officer from the South African Police Services using a valid search warrant provided by a magistrate, in the prescribed form, for the purposes of inspecting such premises.

Clause 38:

Provides for an inspector to enter business premises without a warrant on conditions provided for in the Act and that such inspector should produce proof of his or her authority to a person in control of such premises.

Clause 39:

Gives inspectors the right to use reasonable force when carrying out a warrant in terms of section 37, for instance breaking a lock, door or window of the premises to be entered.

Clause 40:

Allows the inspector to be accompanied by a police officer or any other person reasonably required to assist in conducting such an inspection, when conducting an inspection.

Clause 41:

Provides for the duty of any person who is in possession of any document for inspection to produce such document and answer questions related to the inspection.

Clause 42:

Provides for the issuing of compliance notices where the inspector finds that the licensed person is in breach of the terms and conditions of his or her licence and the Act. The compliance notice must stipulate the conditions which have been breached, and must be served on the person in control of the premises.

Clause 43:

Provides for the establishment of the KwaZulu-Natal Provincial Inspectorate which is a function within the Department managed by the Head of the Inspectorate who is

appointed by the responsible Member of the Executive Council in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Clause 44:

Provides for the objects, powers, duties and functions of the Provincial Inspectorate.

Clause 45:

Provides for the code of conduct of the inspectors.

Clause 46:

Provides for the establishment of the provincial and municipal compliance, monitoring and enforcement structure, which has to be established by the responsible Member of the Executive Council within 12 months of the coming into operation of this Act.

Clause 47:

Provides for the municipal compliance, monitoring and enforcement structures which will be established within 12 months of coming into operation of the Act.

Clause 48:

Provides for the objects of the provincial and municipal compliance, monitoring and enforcement structures, which are multidisciplinary and intra-departmental for compliance monitoring system which will track compliance by businesses and act as an incentive mechanism for compliant businesses.

Clause 49:

Provides for the functions of the provincial and municipal compliance, monitoring and enforcement structures.

Clause 50:

Provides for the appeals process of the Appeals Committee.

Clause 51:

Provides for the review of the decisions of the Licencing Authority, and the establishment of the Review Committee.

Clause 52:

Provides that the Member of the Executive Council must within 18 months after the coming into operation of this Act, develop and publish a strategy for the development and support of the informal economy and develop a framework to support the township and rural economy; provides for the determination and publication of mall tenancy guidelines.

Clause 53:

Provides for the delegation of powers by the responsible Member of the Executive Council, except the powers to make regulations in terms of section 51, and to designate Licencing, Authorities.

Clause 54:

Empowers the responsible Member of the Executive Council to publish regulations and notices in the *Provincial Gazette* in terms of the Act.

Clause 55:

Provides for offences and penalties in terms of the Act.

Clause 56:

Provides for the repeal of laws mentioned in Part A and Part B of Schedule 1, insofar as they apply in the Province.

Clause 57:

Provides for transitional arrangements.

Clause 58:

Provides for the short title and the commencement of the Act.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

This Bill will establish the Provincial Inspectorate which will be a function within the Department. Inspectors will be appointed as peace officers to conduct inspections on behalf of the Licencing Authorities. Application for business licences and permits will be performed by municipalities.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

The cost related to the implementation of the Bill will be budgeted for within the Regulation Services Business Unit in the Department and municipalities.

5. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

The Bill has been drafted in consultation with –

- 5.1 Provincial working committees;
- 5.2 Local and District Municipalities;
- 5.3 Provincial Informal Economy Chamber; and
- 5.4 Chambers of Commerce; and
- 5.5 Traditional Authorities.

6. CONSTITUTIONAL IMPLICATIONS

This Bill addresses the constitutional right enshrined in section 22 of the Constitution which provides that, *“Every citizen has the right to choose their trade, occupation or profession freely”*. This section also provides that, *“The practice of trade, occupation or profession may be regulated by the law”*. This Bill addresses the issue of regulating trade. Another essential Constitutional principle that is addressed by this Bill is the issue relating to section 154(2) which provides that, *“Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organized local government, municipalities and other interested*

persons an opportunity to make representations with regard to the draft legislation". The Department will publish the Bill for comments, as required by the Constitution, prior to its introduction to the provincial legislature.

7. CONTACT PERSONS

Department of Economic Development, Tourism and Environmental Affairs

Name : **Mr. Heinz Kuhn**
Position: Director: Legal Services
Telephone : (033) 264 5710
Cellular : 083 282 5119
e-mail : Heinz.Kuhn@kznedtea.gov.za

Name : **Ms. Sue Padayachee**
Position : Deputy Director: Legal Services
Telephone : (033) 264 2786
Cellular : 079 506 2073
e-mail : Sue.Padayachee@kznedtea.gov.za