

SCHEDULE 6

Transitional Arrangements

[Schedule 6 amended by s. 3 of Constitution First Amendment Act of 1997, by s. 5 of Constitution Second Amendment Act of 1998 and by s. 20 of Constitution Sixth Amendment Act of 2001.]

Definitions

1. In this Schedule, unless inconsistent with the context—
“homeland” means a part of the Republic which, before the previous Constitution took effect, was dealt with in South African legislation as an independent or a self-governing territory;
“new Constitution” means the Constitution of the Republic of South Africa, 1996;
“old order legislation” means legislation enacted before the previous Constitution took effect;
“previous Constitution” means the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).

Continuation of existing law

2. (1) All law that was in force when the new Constitution took effect, continues in force, subject to—
 - (a) any amendment or repeal; and
 - (b) consistency with the new Constitution.
- (2) Old order legislation that continues in force in terms of subitem (1)—
 - (a) does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application; and
 - (b) continues to be administered by the authorities that administered it when the new Constitution took effect, subject to the new Constitution.

Interpretation of existing legislation

3. (1) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation that existed when the new Constitution took effect—
 - (a) to the Republic of South Africa or a homeland (except when it refers to a territorial area), must be construed as a reference to the Republic of South Africa under the new Constitution;
 - (b) to Parliament, the National Assembly or the Senate, must be construed as a reference to Parliament, the National Assembly or the National Council of Provinces under the new Constitution;
 - (c) to the President, an Executive Deputy President, a Minister, a Deputy Minister or the Cabinet, must be construed as a reference to the President, the Deputy President, a Minister, a Deputy Minister or the Cabinet under the new Constitution, subject to item 9 of this Schedule;
 - (d) to the President of the Senate, must be construed as a reference to the Chairperson of the National Council of Provinces;
 - (e) to a provincial legislature, Premier, Executive Council or member of an Executive Council of a province, must be construed as a reference to a provincial legislature, Premier, Executive Council or member of an Executive Council under the new Constitution, subject to item 12 of this Schedule; or
 - (f) to an official language or languages, must be construed as a reference to any of the official languages under the new Constitution.
- (2) Unless inconsistent with the context or clearly inappropriate, a reference in any remaining old order legislation—
 - (a) to a Parliament, a House of a Parliament or a legislative assembly or body of the Republic or of a homeland, must be construed as a reference to—
 - (i) Parliament under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or
 - (ii) the provincial legislature of a province, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive; or
 - (b) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of the Republic or of a homeland, must be construed as a reference to—

- (i) the President under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to the national executive; or
- (ii) the Premier of a province under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Schedule to a provincial executive.

National Assembly

4. (1) Anyone who was a member or office-bearer of the National Assembly when the new Constitution took effect, becomes a member or office-bearer of the National Assembly under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution.
- (2) The National Assembly as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) The National Assembly consists of 400 members for the duration of its term that expires on 30 April 1999, subject to section 49(4) of the new Constitution.
- (4) The rules and orders of the National Assembly in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

Unfinished business before Parliament

5. (1) Any unfinished business before the National Assembly when the new Constitution takes effect must be proceeded with in terms of the new Constitution.
- (2) Any unfinished business before the Senate when the new Constitution takes effect must be referred to the National Council of Provinces, and the Council must proceed with that business in terms of the new Constitution.

Elections of National Assembly

6. (1) No election of the National Assembly may be held before 30 April 1999 unless the Assembly is dissolved in terms of section 50(2) after a motion of no confidence in the President in terms of section 102(2) of the new Constitution.
- (2) Section 50(1) of the new Constitution is suspended until 30 April 1999.

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- (3) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies—
- (a) to the first election of the National Assembly under the new Constitution;
 - (b) to the loss of membership of the Assembly in circumstances other than those provided for in section 47(3) of the new Constitution; and
 - (c) to the filling of vacancies in the Assembly, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the Assembly under the new Constitution.
- (4) Section 47(4) of the new Constitution is suspended until the second election of the National Assembly under the new Constitution.

National Council of Provinces

7. (1) For the period which ends immediately before the first sitting of a provincial legislature held after its first election under the new Constitution—
- (a) the proportion of party representation in the province's delegation to the National Council of Provinces must be the same as the proportion in which the province's 10 senators were nominated in terms of section 48 of the previous Constitution; and
 - (b) the allocation of permanent delegates and special delegates to the parties represented in the provincial legislature, is as follows:

PROVINCE	PERMANENT DELEGATES	SPECIAL DELEGATES
1. Eastern Cape	ANC 5 NP 1	ANC 4
2. Free State	ANC 4 FF 1 NP 1	ANC 4
3. Gauteng	ANC 3 DP 1 FF 1 NP 1	ANC 3 NP 1

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PROVINCE	PERMANENT DELEGATES	SPECIAL DELEGATES
4. KwaZulu-Natal	ANC 1 DP 1 IFP 3 NP 1	ANC 2 IFP 2
5. Mpumalanga	ANC 4 FF 1 NP 1	ANC 4
6. Northern Cape	ANC 3 FF 1 NP 2	ANC 2 NP 2
7. Northern Province	ANC 6	ANC 4
8. North West	ANC 4 FF 1 NP 1	ANC 4
9. Western Cape	ANC 2 DP 1 NP 3	ANC 1 NP 3

- (2) A party represented in a provincial legislature—
 - (a) must nominate its permanent delegates from among the persons who were senators when the new Constitution took effect and are available to serve as permanent delegates; and
 - (b) may nominate other persons as permanent delegates only if none or an insufficient number of its former senators are available.
- (3) A provincial legislature must appoint its permanent delegates in accordance with the nominations of the parties.
- (4) Subitems (2) and (3) apply only to the first appointment of permanent delegates to the National Council of Provinces.
- (5) Section 62(1) of the new Constitution does not apply to the nomination and appointment of former senators as permanent delegates in terms of this item.

- (6) The rules and orders of the Senate in force when the new Constitution took effect, must be applied in respect of the business of the National Council to the extent that they can be applied, subject to any amendment or repeal.

Former senators

8. (1) A former senator who is not appointed as a permanent delegate to the National Council of Provinces is entitled to become a full voting member of the legislature of the province from which that person was nominated as a senator in terms of section 48 of the previous Constitution.
- (2) If a former senator elects not to become a member of a provincial legislature that person is regarded as having resigned as a senator the day before the new Constitution took effect.
- (3) The salary, allowances and benefits of a former senator appointed as a permanent delegate or as a member of a provincial legislature may not be reduced by reason only of that appointment.

National executive

9. (1) Anyone who was the President, an Executive Deputy President, a Minister or a Deputy Minister under the previous Constitution when the new Constitution took effect, continues in and holds that office in terms of the new Constitution, but subject to subitem (2).
- (2) Until 30 April 1999, sections 84, 89, 90, 91, 93 and 96 of the new Constitution must be regarded to read as set out in Annexure B to this Schedule.
- (3) Subitem (2) does not prevent a Minister who was a senator when the new Constitution took effect, from continuing as a Minister referred to in section 91(1)(a) of the new Constitution, as that section reads in Annexure B.

Provincial legislatures

10. (1) Anyone who was a member or office-bearer of a province's legislature when the new Constitution took effect, becomes a member or office-bearer of the legislature for that province under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution and any provincial constitution that may be enacted.

- (2) A provincial legislature as constituted in terms of subitem (1) must be regarded as having been elected under the new Constitution for a term that expires on 30 April 1999.
- (3) For the duration of its term that expires on 30 April 1999, and subject to section 108(4), a provincial legislature consists of the number of members determined for that legislature under the previous Constitution plus the number of former senators who became members of the legislature in terms of item 8 of this Schedule.
- (4) The rules and orders of a provincial legislature in force when the new Constitution took effect, continue in force, subject to any amendment or repeal.

Elections of provincial legislatures

11. (1) Despite the repeal of the previous Constitution, Schedule 2 to that Constitution, as amended by Annexure A to this Schedule, applies—
 - (a) to the first election of a provincial legislature under the new Constitution;
 - (b) to the loss of membership of a legislature in circumstances other than those provided for in section 106(3) of the new Constitution; and
 - (c) to the filling of vacancies in a legislature, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the legislature under the new Constitution.
- (2) Section 106(4) of the new Constitution is suspended in respect of a provincial legislature until the second election of the legislature under the new Constitution.

Provincial executives

12. (1) Anyone who was the Premier or a member of the Executive Council of a province when the new Constitution took effect, continues in and holds that office in terms of the new Constitution and any provincial constitution that may be enacted, but subject to subitem (2).
- (2) Until the Premier elected after the first election of a province's legislature under the new Constitution assumes office, or the province enacts its constitution, whichever occurs first, sections 132 and 136 of the new Constitution must be regarded to read as set out in Annexure C to this Schedule.

Provincial constitutions

13. A provincial constitution passed before the new Constitution took effect must comply with section 143 of the new Constitution.

Assignment of legislation to provinces

14. (1) Legislation with regard to a matter within a functional area listed in Schedule 4 or 5 to the new Constitution and which, when the new Constitution took effect, was administered by an authority within the national executive, may be assigned by the President, by proclamation, to an authority within a provincial executive designated by the Executive Council of the province.
- (2) To the extent that it is necessary for an assignment of legislation under subitem (1) to be effectively carried out, the President, by proclamation, may—
 - (a) amend or adapt the legislation to regulate its interpretation or application;
 - (b) where the assignment does not apply to the whole of any piece of legislation, repeal and re-enact, with or without any amendments or adaptations referred to in paragraph (a), those provisions to which the assignment applies or to the extent that the assignment applies to them; or
 - (c) regulate any other matter necessary as a result of the assignment, including the transfer or secondment of staff, or the transfer of assets, liabilities, rights and obligations, to or from the national or a provincial executive or any department of state, administration, security service or other institution.
- (3) (a) A copy of each proclamation issued in terms of subitem (1) or (2) must be submitted to the National Assembly and the National Council of Provinces within 10 days of the publication of the proclamation.
- (b) If both the National Assembly and the National Council by resolution disapprove the proclamation or any provision of it, the proclamation or provision lapses, but without affecting—
 - (i) the validity of anything done in terms of the proclamation or provision before it lapsed; or
 - (ii) a right or privilege acquired or an obligation or liability incurred before it lapsed.
- (4) When legislation is assigned under subitem (1), any reference in the legislation to an authority administering it, must be construed as a reference to the authority to which it has been assigned.

- (5) Any assignment of legislation under section 235(8) of the previous Constitution, including any amendment, adaptation or repeal and re-enactment of any legislation and any other action taken under that section, is regarded as having been done under this item.

Existing legislation outside Parliament's legislative power

15. (1) An authority within the national executive that administers any legislation falling outside Parliament's legislative power when the new Constitution takes effect, remains competent to administer that legislation until it is assigned to an authority within a provincial executive in terms of item 14 of this Schedule.
- (2) Subitem (1) lapses two years after the new Constitution took effect.

Courts

16. (1) Every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of the legislation applicable to that office, subject to—
- (a) any amendment or repeal of that legislation; and
- (b) consistency with the new Constitution.
- (2) (a) The Constitutional Court established by the previous Constitution becomes the Constitutional Court under the new Constitution.
- (b).....

[Subitem (b) deleted by s. 20(a) of the Constitution Sixth Amendment Act of 2001.]

- (3) (a) The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution.
- (b).....

[Subitem (b) deleted by s. 20(a) of the Constitution Sixth Amendment Act of 2001.]

- (4) (a) A provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its area of jurisdiction, subject to any rationalisation contemplated in subitem (6).

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- (b) Anyone holding office or deemed to hold office as the Judge President, the Deputy Judge President or a judge of a court referred to in paragraph (a) when the new Constitution takes effect, becomes the Judge President, the Deputy Judge President or a judge of such a court under the new Constitution, subject to any rationalisation contemplated in subitem (6).
- (5) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation or process to—
 - (a) the Constitutional Court under the previous Constitution, must be construed as a reference to the Constitutional Court under the new Constitution;
 - (b) the Appellate Division of the Supreme Court of South Africa, must be construed as a reference to the Supreme Court of Appeal; and
 - (c) a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or general division of that court, must be construed as a reference to a High Court.
- (6) (a) As soon as is practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.
 - (b) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must manage the rationalisation envisaged in paragraph (a).
- (7) (a) Anyone holding office, when the Constitution of the Republic of South Africa Amendment Act, 2001, takes effect, as—
 - (i) the President of the Constitutional Court, becomes the Chief Justice as contemplated in section 167(1) of the new Constitution;
 - (ii) the Deputy President of the Constitutional Court, becomes the Deputy Chief Justice as contemplated in section 167(1) of the new Constitution;
 - (iii) the Chief Justice, becomes the President of the Supreme Court of Appeal as contemplated in section 168(1) of the new Constitution; and
 - (iv) the Deputy Chief Justice, becomes the Deputy President of the Supreme Court of Appeal as contemplated in section 168(1) of the new Constitution.

- (b) All rules, regulations or directions made by the President of the Constitutional Court or the Chief Justice in force immediately before the Constitution of the Republic of South Africa Amendment Act, 2001, takes effect, continue in force until repealed or amended.
- (c) Unless inconsistent with the context or clearly inappropriate, a reference in any law or process to the Chief Justice or to the President of the Constitutional Court, must be construed as a reference to the Chief Justice as contemplated in section 167(1) of the new Constitution.

[Subitem (7) added by s. 20(b) of the Constitution Sixth Amendment Act of 2001.]

Cases pending before courts

17. All proceedings which were pending before a court when the new Constitution took effect, must be disposed of as if the new Constitution had not been enacted, unless the interests of justice require otherwise.

Prosecuting authority

18. (1) Section 108 of the previous Constitution continues in force until the Act of Parliament envisaged in section 179 of the new Constitution takes effect. This subitem does not affect the appointment of the National Director of Public Prosecutions in terms of section 179.
- (2) An attorney-general holding office when the new Constitution takes effect, continues to function in terms of the legislation applicable to that office, subject to subitem (1).

Oaths and affirmations

19. A person who continues in office in terms of this Schedule and who has taken the oath of office or has made a solemn affirmation under the previous Constitution, is not obliged to repeat the oath of office or solemn affirmation under the new Constitution.

Other constitutional institutions

20. (1) In this section “constitutional institution” means—
- (a) the Public Protector;
 - (b) the South African Human Rights Commission;

[Para (b) amended by s. 4 of the Constitution Second Amendment Act of 1998.]

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- (c) the Commission on Gender Equality;
 - (d) the Auditor-General;
 - (e) the South African Reserve Bank;
 - (f) the Financial and Fiscal Commission;
 - (g) the Judicial Service Commission; or
 - (h) the Pan South African Language Board.
- (2) A constitutional institution established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a commission member, a member of the board of the Reserve Bank or the Pan South African Language Board, the Public Protector or the Auditor-General when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office, subject to—
- (a) any amendment or repeal of that legislation; and
 - (b) consistency with the new Constitution.
- (3) Sections 199(1), 200(1), (3) and (5) to (11) and 201 to 206 of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution.
- (4) The members of the Judicial Service Commission referred to in section 105(1)(h) of the previous Constitution cease to be members of the Commission when the members referred to in section 178(1)(i) of the new Constitution are appointed.
- (5) (a) The Volkstaat Council established in terms of the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a member of the Council when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office, subject to—
- (i) any amendment or repeal of that legislation; and
 - (ii) consistency with the new Constitution.
- (b) Sections 184A and 184B (1)(a), (b) and (d) of the previous Constitution continue in force until repealed by an Act of Parliament passed in terms of section 75 of the new Constitution.

Enactment of legislation required by new Constitution

21. (1) Where the new Constitution requires the enactment of national or provincial legislation, that legislation must be enacted by the relevant authority within a reasonable period of the date the new Constitution took effect.
- (2) Section 198(b) of the new Constitution may not be enforced until the legislation envisaged in that section has been enacted.
- (3) Section 199(3)(a) of the new Constitution may not be enforced before the expiry of three months after the legislation envisaged in that section has been enacted.
- (4) National legislation envisaged in section 217(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect, but the absence of this legislation during this period does not prevent the implementation of the policy referred to in section 217(2).
- (5) Until the Act of Parliament referred to in section 65(2) of the new Constitution is enacted each provincial legislature may determine its own procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces.
- (6) Until the legislation envisaged in section 229(1)(b) of the new Constitution is enacted, a municipality remains competent to impose any tax, levy or duty which it was authorised to impose when the Constitution took effect.

National unity and reconciliation

22. (1) Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading "National Unity and Reconciliation" are deemed to be part of the new Constitution for the purposes of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995), as amended, including for the purposes of its validity.
- (2) For the purposes of subitem (1), the date "6 December 1993", where it appears in the provisions of the previous Constitution under the heading "National Unity and Reconciliation", must be read as "11 May 1994".

[Subitem (2) added by s. 3 of the Constitution First Amendment Act of 1997.]

Bill of Rights

23. (1) National legislation envisaged in sections 9(4), 32(2) and 33(3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect.
- (2) Until the legislation envisaged in sections 32(2) and 33(3) of the new Constitution is enacted—
- (a) section 32 (1) must be regarded to read as follows:
“(1) Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights.”; and
- (b) section 33(1) and (2) must be regarded to read as follows:
“Every person has the right to—
- (a) lawful administrative action where any of their rights or interests is affected or threatened;
- (b) procedurally fair administrative action where any of their rights or legitimate expectations is affected or threatened;
- (c) be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and
- (d) administrative action which is justifiable in relation to the reasons given for it where any of their rights is affected or threatened.”
- (3) Sections 32(2) and 33(3) of the new Constitution lapse if the legislation envisaged in those sections, respectively, is not enacted within three years of the date the new Constitution took effect.

Public administration and security services

24. (1) Sections 82(4)(b), 215, 218(1), 219(1), 224 to 228, 236(1), (2), (3), (6), (7)(b) and (8), 237(1) and (2)(a) and 239(4) and (5) of the previous Constitution continue in force as if the previous Constitution had not been repealed, subject to—
- (a) the amendments to those sections as set out in Annexure D;
- (b) any further amendment or any repeal of those sections by an Act of Parliament passed in terms of section 75 of the new Constitution; and
- (c) consistency with the new Constitution.

- (2) The Public Service Commission and the provincial service commissions referred to in Chapter 13 of the previous Constitution continue to function in terms of that Chapter and the legislation applicable to it as if that Chapter had not been repealed, until the Commission and the provincial service commissions are abolished by an Act of Parliament passed in terms of section 75 of the new Constitution.
- (3) The repeal of the previous Constitution does not affect any proclamation issued under section 237(3) of the previous Constitution, and any such proclamation continues in force, subject to—
 - (a) any amendment or repeal; and
 - (b) consistency with the new Constitution.

Additional disqualification for legislatures

25. (1) Anyone who, when the new Constitution took effect, was serving a sentence in the Republic of more than 12 months' imprisonment without the option of a fine, is not eligible to be a member of the National Assembly or a provincial legislature.
- (2) The disqualification of a person in terms of subitem (1)—
 - (a) lapses if the conviction is set aside on appeal, or the sentence is reduced on appeal to a sentence that does not disqualify that person; and
 - (b) ends five years after the sentence has been completed.

Local government

26. (1) Notwithstanding the provisions of sections 151, 155, 156 and 157 of the new Constitution—
 - (a) the provisions of the Local Government Transition Act, 1993 (Act 209 of 1993), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force in respect of a Municipal Council until a Municipal Council replacing that Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution; and

[Subitem (a) substituted by s. 5(a) of the Constitution Second Amendment Act of 1998.]

- (b) a traditional leader of a community observing a system of indigenous law and residing on land within the area of a transitional local council, transitional rural council or transitional representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in

section 182 of the previous Constitution, is ex officio entitled to be a member of that council until a Municipal Council replacing that council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution.

[Subitem (b) substituted by s. 5(a) of the Constitution Second Amendment Act of 1998.]

- (2) Section 245(4) of the previous Constitution continues in force until the application of that section lapses. Section 16(5) and (6) of the Local Government Transition Act, 1993, may not be repealed before 30 April 2000.

[Sub item (2) amended by s. 5 (b) of Constitution Second Amendment Act of 1998.]

Safekeeping of Acts of Parliament and Provincial Acts

27. Sections 82 and 124 of the new Constitution do not affect the safekeeping of Acts of Parliament or provincial Acts passed before the new Constitution took effect.

Registration of immovable property owned by the state

28. (1) On the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.
- (2) No duty, fee or other charge is payable in respect of a registration in terms of subitem (1).