

CHAPTER 29:08

HOUSING STANDARDS CONTROL ACT

Acts 29/1972, 57/1972 (s. 28), 39/1973 (s. 46), 22/1976 (s. 87), 48/1976 (s. 82), 3/1979 (ss. 115-120), 15/1981 (s. 66), 8/1988 (s. 164), 9/1997 (s. 10), 22/2001(s. 4); R.G.N. 918/1973.

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FIRST SCHEDULE: Minimum Requirements in Relation to Unsatisfactory Standards.

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AN ACT to establish housing courts and to confer upon them certain powers and functions; to provide for the repair, demolition or closure of buildings of an unsatisfactory standard; to provide for the abatement of overcrowding of dwellings; to control the harmful use or occupation of premises and the undue interference with the rights of the residents of a neighbourhood; to institute a procedure whereby clearance warrants may be granted to local authorities for the acquisition and clearance of areas in which buildings of an unsatisfactory standard are prevalent; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 10th November, 1972.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Housing Standards Control Act [*Chapter 29:08*].

2 Interpretation

In this Act—

“abatement order” means an abatement order made in terms of paragraph (a) of section *forty-two*;

“abatement summons” means an abatement summons issued in terms of subsection (2) of section *thirty-seven*;

“authority” means a municipality, town or rural district council or such other local authority as the Minister may, by statutory instrument, declare to be an authority for the purposes of this Act;

“authority area” means, in the case of—

(a) a municipality, the area of the municipality in terms of the Urban Councils Act [*Chapter 29:15*];

(b) a town, the area of the town in terms of the Urban Councils Act [*Chapter 29:15*];

(c) a rural district council, a town ward of the council or any area that is declared to be a specified area in terms of the Rural District Councils Act [*Chapter 29:13*];

(d) an authority other than a municipality, town or rural council, such area as may be specified by the Minister, by statutory instrument, as the authority area of such authority;

and includes any other area—

(i) owned by, or under the jurisdiction or administration of, the authority concerned; and

(ii) declared by the Minister, by statutory instrument, after consultation with the authority referred to in subparagraph (i), to form part of the authority area of such authority;

“board” means a board of investigation appointed in terms of paragraph (a) of section *sixty-seven*;

“building” includes any man-made structure whatsoever or any part thereof, whether temporary or permanent in character, used or designed or intended to be used by persons—

(a) for the purpose of habitation or sleeping; or

(b) from time to time for the performance of any action or task; or

(c) for carrying on any activity;

“clearance area” means the area in respect of which a clearance warrant is granted;

“clearance notice” means a notice referred to in subsection (1) of section *seventy-five*;

“clearance warrant” means a clearance warrant granted in terms of paragraph (a) of subsection (3) of section *eighty*;

“clerk of court” means a clerk of court attached to the appropriate magistrates court referred to in section *four*;

“closure order” means an order referred to in subparagraph (ii) of paragraph (b) of section *sixteen*;

“control order” means a control order made in terms of section *fifty-six*;

“control summons” means a control summons issued in terms of section *fifty-three*;

“demolition order” means an order referred to in subparagraph (i) of paragraph (b) of section *sixteen*;

“Director of Physical Planning” means the person appointed as Director of Physical Planning in terms of section 63 of the Regional, Town and Country Planning Act [*Chapter 29:12*];

“dwelling” means a building used by persons wholly or partly for the purpose of habitation or sleeping;

“former provisional clearance area” means a provisional clearance area declared by a clearance notice which has lapsed in terms of section *seventy-eight*;

“housing court” means a housing court referred to in section *four*;

“lessee” means a lessee other than a right holder of the land concerned;

“local planning authority” has the meaning given by section 2 of the Regional, Town and Country Planning Act [*Chapter 29:12*];

“man-made structure” includes any tent or other shelter;

“Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“occupation quota” means the maximum number of persons specified in terms of subparagraph (ii) of paragraph (a) of section *forty-five*;

“order” means a repair, demolition or closure order;

“overcrowded”, in relation to a dwelling, means that the number of occupants of the dwelling concerned is—

- (a) considered by an authority; or
- (b) determined by a housing court;

as the context may require, to be excessive by reference to section *forty-three*;

“owner”, in relation to any building, land or property affected by this Act, includes—

- (a) the administrator or executor of a deceased estate; or
- (b) the trustee or assignee of an insolvent or assigned estate; or
- (c) the liquidator or judicial manager of a company which is being wound up or is under judicial management; or
- (d) in the case of any building, land or property—
 - (i) of an individual under a legal disability—
 - A. the legal representative of such individual; or
 - B. any person other than the legal representative referred to in subparagraph A having, whether in an official or private capacity, the possession, disposal, control or management of such building, land or property;
 - or
 - (ii) subject to a usufruct, *fideicommissum* or other limited interest, the person having the administration or control of such building, land or property;

“property” means a building affected by the provisions of this Act, together with the piece of land upon which such building is situate;

“provisional clearance area” means an area declared to be a provisional clearance area in terms of subsection (1) of section *seventy-five*;

“repair order” means an order referred to in paragraph (a) of section *sixteen*;

“responsible person” means—

- (a) the person in immediate control; or
- (b) the owner;

of a dwelling affected by Part IV;

“right holder” means the holder of any registered real right in or over any building, land or property affected by this Act;

“stand” has the meaning given by section 2 of the Land Survey Act [*Chapter 20:12*];

“standard rate” means a rate of interest of not more than one *per centum* per annum above the current rate of interest charged by the State in respect of loans to local authorities;

“summons” means a summons issued in terms of subsection (2) of section *seventeen*;

“unsatisfactory standard”, in relation to the condition of a building, means a standard which is—

- (a) considered by an authority; or
- (b) determined by a housing court;

as the context may require, to be unsatisfactory by reference to section *twenty-three*.

3 Application of Act

This Act shall apply to every authority area.

PART II

HOUSING COURTS

4 Housing courts

(1) For the purposes of this Act, every magistrates court shall be a housing court for every authority area within the area of jurisdiction of such magistrates court.

(2) In subsection (1)—

“magistrates court” means the court of a senior magistrate or a provincial magistrate.

5 Assessors

(1) A housing court shall select from a list of persons nominated by the Minister responsible for justice—

- (a) any person who has; or
- (b) any two persons who have;

skill and experience in any matter which may have to be considered in the proceedings concerned to sit with it, in an advisory capacity, as an assessor or assessors, as the case may be.

(2) An assessor referred to in subsection (1) shall be entitled to—

- (a) a refund of such expenses; and
- (b) such remuneration for his services;

as may be fixed by the Minister responsible for justice from moneys appropriated for the purpose by Act of Parliament.

6 Housing courts to be courts of record

(1) A record of the proceedings of every housing court, including details of the decision and the reasons therefor, shall be kept and filed with the clerk of court.

(2) The record kept and filed in terms of subsection (1) shall be accessible to the public and copies thereof shall be obtainable upon like conditions and upon payment of the same fees as if they were civil records of a magistrates court.

7 Proceedings to be in public

The proceedings of a housing court shall be conducted in public.

8 Representation

At any hearing before a housing court, a party may appear—

- (a) in person; or
- (b) represented by a legal practitioner:

Provided that an authority may be represented by any member or employee of the authority.

9 Adjournments

A housing court may adjourn its proceedings for periods not exceeding twenty-one days at a time.

10 Summoning of witnesses and privileges thereof

(1) A housing court shall have power to—

- (a) summon witnesses; and
- (b) call for the production of, and grant inspection of, books and documents; and
- (c) examine witnesses on oath.

(2) A subpoena for the attendance of witnesses or the production of books and documents shall be—

- (a) signed by the clerk of court; and
- (b) served in the same manner as a subpoena for the attendance of a witness at a civil trial in a magistrates court is served.

(3) Any person—

- (a) subpoenaed to give evidence or to produce any book or document; or
- (b) giving evidence;

before a housing court shall be entitled to the same privileges and immunities as if he were subpoenaed to attend or were giving evidence at a civil trial in a magistrates court.

11 Witnesses failing to attend or refusing to be sworn or to give evidence

(1) If any person who has been subpoenaed to give evidence or to produce any book or document before a housing court fails to attend or to remain in attendance until duly excused by the housing court from further attendance, the housing court may, if it is satisfied upon oath or by the return of the person charged with the service of the subpoena that the subpoena was duly served upon such person, and if no sufficient excuse for such failure seems to it to exist, issue a warrant signed by the housing court for the apprehension of such person, and such person shall thereupon be apprehended by any police officer to whom such warrant is delivered and shall be brought before the housing court to give his evidence or to produce the book or document.

(2) If any person who has been subpoenaed to give evidence or to produce any book or document before a housing court refuses without sufficient excuse, the onus of proof whereof shall rest upon him, to be sworn as a witness or, having been sworn, to answer fully and satisfactorily any question lawfully put to him, or to produce any such book or document, the housing court may order that person to be removed and detained in custody, as if he were a prisoner awaiting trial, until the rising of the housing court or until he sooner consents to do what is required of him.

(3) Nothing in this section contained shall prevent the housing court from giving judgment in any case or otherwise disposing of the same in the meantime according to any other sufficient evidence taken but, if such

judgment be given or the case be otherwise disposed of, any person committed to prison in terms of subsection (2) shall thereupon be released.

(4) Any person referred to in subsection (1) or (2) shall be liable, in addition to being detained in custody in terms of subsection (2), to be sentenced summarily by the housing court to pay a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(5) No person shall be bound to produce any document or thing not specified or otherwise insufficiently described in the subpoena unless he actually has it in the housing court.

12 Witness giving false evidence

Any witness who, after being duly sworn, makes a false statement of fact material to any question under investigation before a housing court, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

13 Contempt of housing court

If any person wilfully insults a housing court or any assessor thereof during any sitting of the housing court or wilfully interrupts the proceedings of the housing court or otherwise wilfully disturbs the peace or order of such proceedings, the housing court may order the person to be removed and detained in custody until the rising of the housing court and the person shall be liable, in addition to such removal and detention, to be sentenced summarily by the housing court to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

14 Costs

(1) In determining any question referred to it, a housing court may make such order as to costs as it may deem just.

(2) The costs referred to in subsection (1) shall be payable in accordance with—

- (a) the scale of costs for the time being in use in a magistrates court in civil cases; or
- (b) such scale of costs as the Minister responsible for justice may otherwise provide by statutory instrument.

(3) Any costs awarded by a housing court shall be taxed by the clerk of court in terms of subsection (2) and the taxation of such costs shall be subject to appeal to the housing court.

15 Appeal from decision of housing court

(1) Any party who is dissatisfied with any decision of a housing court may appeal against such decision to the High Court within thirty days from the announcement by the housing court of such decision:

Provided that if, before the hearing commenced, the parties had lodged with the clerk of court an agreement in writing that the decision of the housing court should be final, no appeal shall lie from such decision.

(2) Upon the hearing of the appeal, the High Court may, subject to this Act—

- (a) confirm, vary, reverse or set aside the decision appealed from;
- (b) remit the matter to the housing court concerned with instructions in regard to the taking of further evidence or the setting out of further information;
- (c) order the parties or any of them to produce at some convenient time before the Supreme Court such further evidence as shall to it seem necessary or desirable;
- (d) take any other course which may lead to the just, speedy and, as far as possible, inexpensive settlement of the matter;
- (e) make such order as to costs as it may deem just.

(3) The Chief Justice and the Judge President of the High Court, after consultation with a committee appointed by the Chief Justice, may make rules relating to the procedure of bringing matters on appeal to the High Court in terms of this section:

Provided that, until such rules are made, the rules governing an appeal from a magistrates court in a civil case shall, subject to subsection (1), apply, *mutatis mutandis*, and be followed.

(4) Rules made in terms of subsection (3) shall not have effect until they have been approved by the Minister responsible for justice and published in statutory instrument.

[Section amended by section 10 of Act 9 of 1997]

PART III

REPAIR, DEMOLITION AND CLOSURE ORDERS

16 Authority may apply for repair, demolition or closure order

Where an authority considers that any building within its authority area is of an unsatisfactory standard and—

- (a) can be raised or restored at a reasonable cost to a satisfactory standard, the authority may apply to a housing court for a repair order; or
- (b) cannot be raised or restored at a reasonable cost to a satisfactory standard, the authority may apply to a housing court for—
 - (i) a demolition order; or
 - (ii) if the authority considers that the building should not be the subject of a demolition order, a closure order.

17 Issue of summons

(1) Where an authority wishes to apply to a housing court for an order, it shall apply in writing to the clerk of court for the issue of a summons.

(2) Upon an application in terms of subsection (1), the clerk of court shall issue a summons in the prescribed form calling upon the owner and any right holder of the building concerned to show cause at the time, upon the date and at the place stated in the summons why the order should not be made:

Provided that the date stated in the summons shall not be—

- (a) less than twenty-one days; or
- (b) more than thirty days;

from the date of issue of the summons.

18 Contents of summons

A summons shall set out—

- (a) the nature of the order applied for; and
- (b) a full description of the building concerned and the location thereof; and
- (c) the grounds upon which the authority considers that the building concerned is of an unsatisfactory standard; and
- (d) in the case of an application for a repair order, the nature of the work required to be done in order to raise or restore the building concerned to a satisfactory standard; and
- (e) in the case of an application for a closure order, the grounds upon which the authority considers that the building concerned should not be the subject of a repair order or a demolition order.

19 Service of summons

Subject to this Part, a summons shall be served on the owner and any right holder of the building concerned in the same manner as a subpoena for the attendance of a witness at a civil trial in a magistrates court is served.

20 Delivery of grounds of opposition

Not less than four days before the date stated in the summons, the owner or any right holder of the building concerned may, if he intends to show cause why an order should not be made—

- (a) in the case of the owner, deliver to the clerk of court, the authority and any right holder;
- (b) in the case of any right holder, deliver to the clerk of court, the authority and the owner;

copies of a written statement setting out his reasons for opposing the making of the order.

21 Inquiry to be held into application

(1) At the time, upon the date and at the place stated in the summons, the housing court shall, subject to subsection (2), inquire into the application for an order.

(2) If—

- (a) the owner; or
- (b) any right holder;

of the building concerned or his representative fails to appear in compliance with the summons, the housing court may—

- (i) upon proof of service of the summons on the owner or right holder, as the case may be; or
- (ii) upon proof that the owner or right holder, as the case may be, cannot be found by diligent search;

proceed in terms of subsection (1) in his absence.

22 Making of order

Having considered any evidence or argument tendered by the parties or requested by itself at the inquiry referred to in subsection (1) of section *twenty-one*, the housing court may—

- (a) where it is satisfied that the building concerned is of an unsatisfactory standard, make the order applied for or any other order; or
- (b) refuse to make any order.

23 When building deemed to be of unsatisfactory standard

A building shall be deemed to be of an unsatisfactory standard if the condition of the building—

- (a) in respect of one or more of the following—
 - (i) repair;

- (ii) stability;
- (iii) internal arrangement;
- (iv) means of escape from fire;
- (v) natural and artificial lighting;
- (vi) ventilation;
- (vii) water supply;
- (viii) personal washing facilities;
- (ix) drainage and latrines;
- (x) freedom from damp;
- (xi) freedom from termite or other insect infestation;
- (xii) in the case of a dwelling, facilities for—
 - A. the storage, preparation and cooking of food; and
 - B. the disposal of waste water;
- (xiii) any contravention of the Public Health Act [*Chapter 15:09*] or regulations made thereunder;
- (xiv) any factor other than those set out in subparagraphs (i) to (xiii) which, in the opinion of the housing court, renders the building unhealthy or unsafe;

is so far defective that the building is not reasonably suitable for occupation in such condition; or

- (b) in the case of a dwelling, fails to satisfy one or more of the minimum requirements set out in the First Schedule.

24 Contents of repair order

A repair order—

- (a) shall specify the building in respect of which the repair order is made; and
- (b) may stipulate that the building concerned be vacated by all or any of its occupants—
 - (i) if the building is in a dangerous condition, forthwith; or
 - (ii) within a period of not less than thirty days;
 until the building has been raised or restored to a satisfactory standard; and
- (c) shall require the owner of the building concerned to do such work as may be specified in the repair order for the purpose of raising or restoring such building to a satisfactory standard; and
- (d) shall determine the period during which the work referred to in paragraph (c) shall be commenced and completed.

25 Contents of demolition order

A demolition order—

- (a) shall specify the building in respect of which the demolition order is made; and
- (b) may stipulate that the building concerned be vacated by all or any of its occupants—
 - (i) if the building is in a dangerous condition, forthwith; or
 - (ii) within a period of not less than thirty days;
 and
- (c) shall require the owner of the building concerned to demolish the building and remove from the site thereof such materials and debris as may be specified in the demolition order; and
- (d) shall determine the period during which the demolition and removal referred to in paragraph (c) shall be commenced and completed.

26 Contents of closure order

A closure order—

- (a) shall specify the building in respect of which the closure order is made; and
- (b) subject to paragraph (d), may stipulate that the building concerned be vacated by all or any of its occupants—
 - (i) if the building is in a dangerous condition, forthwith; or
 - (ii) within a period of not less than thirty days;
 and
- (c) shall require the owner of the building concerned to close such building in a specified manner; and
- (d) shall determine the date, and the duration, of closure of the building concerned; and
- (e) shall specify—
 - (i) the use or uses, if any, to which the building concerned may be put; and
 - (ii) the person or persons, if any, who may occupy the building concerned;
 after the date, and during the duration, of closure thereof.

27 Criteria in making of order

A housing court shall, in making an order, have regard to—

- (a) the age, character, value and locality of the building concerned, including its architectural or historical interest, if any;

- (b) the cost of the work necessary to raise or restore the building concerned to a satisfactory standard and the value of the building after the completion of such work;
- (c) in the case of a dwelling, any proposal made by any of the parties that the dwelling concerned be used for a purpose other than human habitation;
- (d) whether or not it is desirable and feasible to make an order in respect of part only of the building concerned;
- (e) in the case of a demolition order, any effect which the demolition of the building concerned may have on any property or building adjacent thereto.

28 Order binding on successors in title

An order shall be binding upon the owner of the building concerned and his successors in title.

29 Effect of order stipulating vacation

(1) Where an order stipulates that the building in respect of which the order is made shall be vacated by all or any of its occupants, no person, other than a person permitted in terms of the order to occupy the building, shall enter or occupy the building during the period for which such vacation is stipulated without the permission of the housing court.

(2) Any person who enters or occupies a building in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(3) An order referred to in subsection (1) shall—

- (a) have the same effect in relation to an occupant required to vacate the building concerned as an order for ejectment made by a magistrates court against such occupant; and
- (b) be enforceable at the instance of the authority.

30 Persons on whom copy of order shall be served

(1) A copy of every order shall be served by the clerk of the court on—

- (a) the authority; and
- (b) the Registrar of Deeds; and
- (c) the owner and any right holder of the building concerned.

(2) Upon receipt of the copy referred to in subsection (1), the Registrar of Deeds shall note the contents of the order concerned in his registers in respect of the property concerned and on the title deed of the property:

Provided that, if at any time the owner's copy of such deed is lodged with the Registrar of Deeds for any purpose, the Registrar of Deeds shall make a note on the copy to the same effect.

31 Certificate of compliance with order

(1) Where a repair order or a demolition order has been complied with by the owner of the building concerned, the authority shall serve on—

- (a) the clerk of court; and
- (b) the Registrar of Deeds;

a certificate to that effect:

Provided that, if—

- (a) such owner considers that he has complied with the order; and
- (b) the authority has not served such certificate;

such owner may apply to the housing court for a direction that such certificate be served.

(2) Upon receipt of the certificate referred to in subsection (1), the Registrar of Deeds shall cancel the note made by him in terms of subsection (2) of section *thirty*.

32 Variation, revocation or replacement of order

(1) After the expiration of six months from the date on which an order was made and from time to time—

- (a) the owner or any right holder of the building concerned; or
- (b) the authority;

may, after having given the other party or parties to the proceedings in which the order was made seven days' written notice of his or its intention to do so, apply in the prescribed form to the housing court for the order to be varied, revoked or replaced by a different order.

(2) Upon an application made in terms of subsection (1), the housing court may, after having taken into account the representations, if any, of the applicant and the other party or parties referred to in that subsection—

- (a) if it considers that the circumstances in which the order was made have since changed, vary or revoke the order or substitute a different order for the order; or
- (b) refuse the application.

(3) Where a housing court has, in terms of paragraph (a) of subsection (2), varied or revoked an order or substituted a different order for an order, the clerk of court shall notify the Registrar of Deeds in writing of the varia-

tion, revocation or substitution, as the case may be, and the Registrar of Deeds shall alter or cancel the note made by him in terms of subsection (2) of section *thirty* accordingly.

33 Failure to comply with order an offence

- (1) Any owner of a building who fails to comply with—
- (a) a stipulation made in terms of paragraph (b); or
 - (b) a requirement made in terms of paragraph (c); or
 - (c) a determination made in terms of paragraph (d);

of section *twenty-four*, *twenty-five* or *twenty-six*, as the case may be, in relation to the building of which he is the owner shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(2) Any owner of a building who fails to comply with a specification made in terms of paragraph (e) of section *twenty-six* in relation to the building of which he is the owner shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

34 Authority may carry out order and recover cost thereof

(1) If the owner of a building in respect of which an order has been made fails to comply with the order, the authority may—

- (a) in the case of a repair order, do the work; or
- (b) in the case of a demolition order, carry out the demolition and removal; or
- (c) in the case of a closure order, close the building concerned in the manner;

specified in such order.

(2) Where an authority has acted in terms of subsection (1), it may recover the cost of such action, together with interest on such cost at the standard rate, by doing one or more of the following—

- (a) proceeding in a competent court against the owner of the building concerned; or
- (b) directing—

- (i) that the whole or any portion of the amount of such cost and interest be paid to the authority from rent in respect of the property concerned by—

- A. any person receiving such rent on behalf of the owner of the property concerned:

- Provided that such person may, before making payment to the authority, deduct from such rent the amount of any commission or reward *bona fide* payable to such person in consideration of the receipt of such rent on behalf of the owner of the property concerned; or

- B. any person paying such rent to—

- I. the owner of the property concerned; or

- II. a person referred to in subparagraph A;

or

- (ii) that the Registrar of Deeds make entries in his registers and an endorsement on the registry duplicate of the title deed of the property concerned, which entries and endorsement shall constitute a hypothecation of such property—

- A. in favour of the authority, ranking from the date on which such entries and endorsement were made; and

- B. for the whole or any portion of the amount of such cost and interest:

- Provided that, if at any time the owner's copy of such deed is lodged with the Registrar of Deeds for any purpose, the Registrar of Deeds shall endorse such copy to the same effect;

or

- (c) except in the case of a building which is the subject of a closure order, taking possession of the property concerned and selling such property by public auction; or

- (d) where materials and debris have resulted from such action, selling such materials and debris by public auction or otherwise.

(3) The Registrar of Deeds shall not pass transfer of any property hypothecated in terms of subparagraph (ii) of paragraph (b) of subsection (2) unless he receives—

- (a) a written request by the authority for the cancellation of such hypothecation; or
- (b) a written agreement—

- (i) signed by the authority and the transferee; and

- (ii) stating that any sums due and unpaid in respect of the cost and interest referred to in that paragraph, together with interest on such sums at the standard rate, shall remain and be registered as a charge against such property after transfer has been passed.

(4) Notwithstanding anything contained in this section, where—

- (a) the building concerned is the subject of a repair order; and
- (b) a direction has been made in terms of paragraph (b) of subsection (2);

the claim of the authority to the whole or any portion, as the case may be, of the cost and interest referred to in paragraph (b) of subsection (2) shall rank in priority to any claim or charge of any right holder of the property concerned against—

- (i) the rent referred to in subparagraph (i) of that paragraph; or
- (ii) the property concerned.

35 Rent not payable where building vacated

Notwithstanding anything contained in any law, no occupant of a building who—

- (a) pays rent in respect of such occupation; and
- (b) is required in terms of an order to vacate the building for a definite or indefinite period;

shall be liable to pay rent in respect of the period referred to in paragraph (b).

PART IV

ABATEMENT OF OVERCROWDING

36 Authority may apply for abatement order

Where an authority considers that any dwelling within its authority area is overcrowded, it may apply to a housing court for an abatement order.

37 Issue of abatement summons

(1) Where an authority wishes to apply to a housing court for an abatement order, it shall apply in writing to the clerk of court for the issue of an abatement summons.

(2) Upon an application in terms of subsection (1), the clerk of court shall issue an abatement summons in the prescribed form calling upon the responsible person of the dwelling concerned to show cause at the time, upon the date and at the place stated in the abatement summons why the abatement order should not be made:

Provided that the date stated in the abatement summons shall not be—

- (a) less than twenty-one days; or
- (b) more than thirty days;

from the date of issue of the abatement summons.

38 Contents of abatement summons

An abatement summons shall set out—

- (a) a full description of the dwelling concerned and the location thereof; and
- (b) the grounds upon which the authority considers that the dwelling concerned is overcrowded; and
- (c) the maximum number of persons which, in the opinion of the authority, should be permitted to occupy the dwelling concerned.

39 Service of abatement summons

Subject to this Part, an abatement summons shall be served on the responsible person of the dwelling concerned in the same manner as a subpoena for the attendance of a witness at a civil trial in a magistrates court is served.

40 Delivery of grounds of opposition

Not less than four days before the date stated in the abatement summons, the responsible person may, if he intends to show cause why an abatement order should not be made, deliver to the clerk of court and to the authority copies of a written statement setting out his reasons for opposing the making of the abatement order.

41 Inquiry to be held into application

(1) At the time, upon the date and at the place stated in the abatement summons, the housing court shall, subject to subsection (2), inquire into the application for an abatement order.

(2) If the responsible person or his representative fails to appear in compliance with the abatement summons, the housing court may—

- (a) upon proof of service of the abatement summons on the responsible person; or
- (b) upon proof that the responsible person cannot be found by diligent search;

proceed in terms of subsection (1) in his absence.

42 Making of abatement order

Having considered any evidence or argument tendered by the parties or requested by itself at the inquiry referred to in subsection (1) of section *forty-one*, the housing court may—

- (a) where it is satisfied that the dwelling concerned is overcrowded, make an abatement order; or
- (b) refuse to make an abatement order.

43 When dwelling deemed to be overcrowded

A dwelling shall be deemed to be overcrowded if—

- (a) the number of persons sleeping in the dwelling is such that any two of such persons—
 - (i) being persons ten years or more of age of opposite sex; and
 - (ii) not being persons living together as husband and wife;must sleep in the same room; or
- (b) it fails to satisfy one or more of the minimum requirements set out in the Second Schedule.

44 Persons on whom copy of abatement order shall be served

A copy of every abatement order shall be served by the clerk of court on—

- (a) the authority; and
- (b) the responsible person.

45 Contents of abatement order

An abatement order shall—

- (a) specify—
 - (i) the dwelling in respect of which the abatement order is made; and
 - (ii) the maximum number of persons permitted to occupy the dwelling referred to in subparagraph (i);and
- (b) require the responsible person to ensure that—
 - (i) the total number of persons occupying the dwelling concerned is reduced to the occupation quota within the period specified in terms of subsection (2) or proviso (i) to subsection (3), as the case may be, of section *forty-seven*; and
 - (ii) the occupation quota is not exceeded at any time after the expiry of the appropriate period referred to in subparagraph (i).

46 Abatement order binding on successors in title

An abatement order shall be binding upon the owner of the dwelling concerned and his successors in title.

47 Names of persons required to vacate dwelling to be listed

(1) Where an abatement order has been made in respect of a dwelling, the responsible person shall—

- (a) within a period of seven days from the date when the abatement order was made; and
- (b) after the expiry of the period referred to in paragraph (a), within a period of seven days from the date upon which he is requested in writing by the authority to do so;

determine which persons he will require to vacate the dwelling in order to reduce the total number of persons occupying the dwelling to the occupation quota and submit to the authority a list of the names of such persons:

Provided that, if the responsible person—

- (a) fails to submit such list; or
- (b) submits such list in an incomplete state;

within the period referred to in paragraph (a) or (b), as the case may be, of this subsection, the authority shall itself prepare or complete such list.

(2) Upon—

- (a) receipt of a list submitted in terms of subsection (1); or
- (b) the preparation or completion of a list in terms of the proviso to subsection (1);

as the case may be, the authority shall serve written notice on the persons whose names appear on such list that they are required to vacate the dwelling concerned within a specified period, which shall not be less than thirty days from the date of such service.

(3) The determination referred to in subsection (1) may from time to time be changed by agreement between the responsible person and the authority, in which event the list referred to in that subsection shall be changed accordingly:

Provided that—

- (i) *the* authority shall serve written notice on the persons whose names appear on such list that they are required to vacate the dwelling concerned within a specified period, which shall not be less than thirty days from the date of such service;
- (ii) no such change shall have the effect of causing the occupation quota of the dwelling concerned to be exceeded.

(4) An abatement order shall—

- (a) have the same effect in relation to a person whose name appears on a list—
 - (i) referred to in subsection (1); or
 - (ii) changed in terms of subsection (3);as an order for ejectment made by a magistrates court against such person; and

(b) be enforceable at the instance of the authority.

(5) Any person whose name appears on a list—

(a) referred to in subsection (1); or

(b) changed in terms of subsection (3);

and who, after the expiry of the period specified in terms of subsection (2) or proviso (i) to subsection (3)—

(i) continues to occupy the dwelling concerned; or

(ii) by resuming occupation of the dwelling referred to in subparagraph (i), causes the occupation quota of such dwelling to be exceeded;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

48 Variation or revocation of abatement order

(1) After the expiration of six months from the date on which an abatement order was made and from time to time, the authority or the responsible person may, after having given the responsible person or the authority, as the case may be, seven days' written notice of his intention to do so, apply in the prescribed form to the housing court for the abatement order to be varied or revoked.

(2) Upon an application made in terms of subsection (1), the housing court may, after having taken into account the representations, if any, of the authority and the responsible person—

(a) if it considers that the circumstances in which the abatement order was made have since changed, vary or revoke the abatement order; or

(b) refuse the application.

49 Failure to comply with abatement order an offence

Any responsible person of a dwelling which is the subject of an abatement order who fails to—

(a) comply with a requirement made in terms of paragraph (b) of section *forty-five*; or

(b) submit a list to the authority in terms of subsection (1) of section *forty-seven*;

in relation to such dwelling shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

50 Rent not payable where dwelling vacated

Notwithstanding anything contained in any law, no occupant of a dwelling who—

(a) pays rent in respect of such occupation; and

(b) is required in terms of an abatement order to vacate the dwelling for a definite or indefinite period;

shall be liable to pay rent in respect of such period.

PART V

CONTROL OF HARMFUL USE OR OCCUPATION OF PREMISES AND UNDUE INTERFERENCE

51 Application of this Part

A control order shall not prohibit the use of any premises for any purpose for which those premises are authorized to be used in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*] and no application shall be made or entertained for any such control order.

52 Application for control order

(1) Where an authority or any resident of an authority area considers that the owner or occupier of residential premises in the authority area—

(a) is using or occupying or permitting the use or occupation of the premises in a manner which; or

(b) is carrying on or permitting the carrying on of any activity in respect of the premises which or in a manner which;

is having or is likely to have a harmful effect upon the general standard, character or amenity of the neighbourhood in which the premises are situated or is causing or is likely to cause undue interference with the rights of the residents thereof, the authority or resident concerned may apply to the housing court for a control order.

(2) A resident of an authority area may request the authority concerned to apply for a control order and if after investigating the matter the authority considers that grounds exist for a control order the authority shall apply therefor:

Provided that the failure or refusal by an authority to apply for a control order following upon a request in terms of this subsection shall not preclude the resident concerned or any other resident from applying for a control order.

53 Issue of control summons

(1) An authority which or resident who wishes to apply for a control order shall lodge with the clerk of court three copies of an application in writing therefor setting out—

- (a) a full description of the premises concerned; and
 - (b) the grounds upon which the application is based.
- (2) The clerk of court shall upon an application being lodged with him in terms of subsection (1) by—
- (a) an authority—
 - (i) issue a control summons to the owner or occupier of the premises concerned calling upon him to show cause before the housing court on a date to be specified therein why a control order should not be made and shall attach to such control summons a copy of the relevant application lodged in terms of subsection (1);
 - (ii) submit a copy of the control summons to the authority;
 - (b) a resident—
 - (i) submit a copy of the application lodged in terms of subsection (1) to the authority concerned requesting it to lodge with him three copies of a report upon the application;
 - (ii) on receipt of a report in terms of subparagraph (i) from the authority concerned, issue a control summons to the owner or occupier of the premises concerned calling upon him to show cause before the housing court on a date to be specified in the summons why a control order should not be made and shall attach to such control summons a copy of the application lodged in terms of subsection (1) and a copy of the report lodged in terms of subparagraph (i);
 - (iii) submit a copy of the control summons to the applicant with a copy of the report lodged in terms of subparagraph (i);
 - (iv) submit a copy of the control summons to the authority concerned.

(3) A control summons shall be served in the same manner as a subpoena for the attendance of a witness in a civil trial in the magistrates court is served.

54 Delivery of grounds of opposition

Not less than four days before the date of the inquiry specified in a control summons the owner or occupier of the premises concerned shall, if he intends to show cause why a control order should not be made, lodge with the clerk of court and deliver to the applicant for the control order copies of a written statement setting out his reasons for opposing the making of the control order:

Provided that a housing court may, on good cause shown, grant an adjournment of the inquiry to enable an owner or occupier to comply with this section or may exempt such person from the requirement to comply therewith.

55 Inquiry to be held into application

(1) On the date specified in a control summons the housing court shall, subject to this Part, inquire into the application for a control order.

(2) If the owner or occupier of the premises concerned or his representative fails to appear in compliance with a control summons the housing court may upon proof—

- (a) of service of the control summons; or
- (b) that the owner or occupier concerned cannot be found by diligent search;

proceed with the inquiry in his absence.

56 Making of control order

Having considered any evidence tendered by the parties or requested by itself at an inquiry referred to in subsection (1) of section *fifty-five* and after making any further inquiry, investigation or inspection it deems fit, the housing court may, subject to this Part—

- (a) if it considers that the owner or occupier of the premises concerned is—
 - (i) using or occupying or permitting the use or occupation of the premises concerned in a manner which; or
 - (ii) carrying on or permitting the carrying on of any activity in respect of the premises which or in a manner which;

is referred to in subsection (1) of section *fifty-two*, make a control order directing the owner or occupier of the premises concerned to take such measures within such period as may be specified in the control order to remedy the situation; or

- (b) refuse to make a control order.

57 Factors determining making of control order

In determining whether or not to issue a control order the housing court shall have regard, *inter alia*, to—

- (a) the normal type of household that uses or occupies premises in the neighbourhood concerned, with particular reference to the members and relationship of the members thereof, and where the premises concerned are used or occupied by any different such type of household;
- (b) the normal number of persons who use or occupy premises in the neighbourhood as guests, lodgers and servants, and where the premises concerned are used or occupied by any different such number of persons;

- (c) the general state of repair of premises in the neighbourhood, and where the premises concerned do not comply with such general state of repair;
- (d) the normal type of activity that is carried out with respect to premises in the neighbourhood and where in respect of the premises concerned any different such activity is being carried out;
- (f) the normal use to which premises in the neighbourhood are put and where the premises concerned are being put to any different such use;

whether any such factor has or is likely to have any harmful effect on the general standard, character or amenity of the neighbourhood or is or is likely to cause any undue interference with the rights of the residents thereof.

58 Factors determining measures to be taken under control order

(1) In determining the measures required to be taken in terms of a control order the housing court shall endeavour, so far as may be possible, by the issue of its order, to preserve the general standard, character and amenity of the neighbourhood and to prevent undue interference with the rights of the residents thereof.

(2) Without derogation from the generality of subsection (1), a control order may direct the owner or occupier of the premises concerned—

- (a) not to permit more than a specified number of persons to use or occupy the premises concerned;
- (b) not to permit more than a specified number of relatives, guests, lodgers or servants to use or occupy the premises concerned;
- (c) to take such steps as may be specified in the order relating to the state of repair of the premises concerned;
- (d) not to carry out or permit the carrying out of any specified activity in respect of the premises concerned;
- (e) not to use or permit the use of the premises for any specified purpose.

59 Persons on whom copy of control order shall be served

A copy of every control order shall be served by the clerk of court on—

- (a) the authority concerned; and
- (b) the owner or occupier of the premises concerned.

60 Control order binding on successors in title

A control order shall be binding upon the owner or occupier of the premises concerned and his successors in title.

61 Names of persons required to vacate premises to be listed

(1) Where a control order has specified a maximum number of persons who may use or occupy the premises concerned, the owner or occupier of the premises concerned shall, within seven days of the date of the service of the order, determine which persons who are using or occupying the premises he will require to vacate the premises in order not to exceed the maximum number and he shall submit that list to the authority within whose area the premises concerned are situated:

Provided that if such owner or occupier fails to submit such list within the aforesaid period the authority shall itself prepare such list.

(2) Upon receipt of a list submitted in terms of subsection (1) or upon the preparation of a list in terms of the proviso to that subsection, as the case may be, the authority shall serve written notice on the persons whose names appear on the list stating that they are required to vacate the premises concerned within a specified period which shall not be more than forty-five days from the date of such service.

(3) A list referred to in subsection (1) may from time to time be changed by agreement between the owner or occupier and the authority concerned:

Provided that—

- (i) the authority shall serve written notice on the persons whose names appear on such amended list that they are required to vacate the premises concerned within a specified period which shall not be more than forty-five days from the date of such service;
- (ii) no such change shall have the effect of causing the maximum number of persons who may occupy the premises in terms of the control order to be exceeded.

(4) A control order referred to in subsection (1) shall—

- (a) have the same effect in relation to a person whose name appears on the list referred to in subsection (1) or which has been changed in terms of subsection (3) as an order for ejection made by a magistrates court against such person; and
- (b) be enforceable at the instance of the authority concerned.

(5) Any person whose name appears on the list referred to in subsection (1) or which has been changed in terms of subsection (3) and who, after the expiry of the period within which he is required to vacate the premises in terms of subsection (2) or (3), as the case may be—

- (a) continues to use or occupy the premises concerned; or
- (b) by resuming use or occupation of the premises concerned causes the maximum number of persons who may use or occupy the premises in terms of the control order concerned to be exceeded;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

62 Variation or revocation of control order

(1) After the expiration of six months from the date on which a control order was made and from time to time—

- (a) the authority, after giving the owner or occupier concerned and, if the control order was made at the instance of a resident, that resident; or
- (b) the owner or occupier, after giving the authority concerned and, if the control order was made at the instance of a resident, that resident;

seven days written notice of intention to do so, may apply to the housing court for the control order to be varied or revoked.

(2) Upon an application made in terms of subsection (1) the housing court may, subject to this Part—

- (a) if it considers that the circumstances in which the control order was made have since changed, vary or revoke the control order; or
- (b) refuse the application.

63 Failure to comply with control order an offence

An owner or occupier of premises who fails—

- (a) to comply with a control order which is served or which is binding upon him; or
- (b) to submit a list in terms of section *seventy-six*;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

64 Rent not payable where premises vacated

Notwithstanding anything contained in any law, no occupant of any premises who—

- (a) pays rent in respect of such occupation; and
- (b) is required in terms of a control order to vacate the premises for a definite or indefinite period;

shall be liable to pay rent in respect of such period.

65 Order for costs in respect of proceedings in terms of this Part

Notwithstanding this Act, no order as to costs in respect of any proceedings in terms of this Part shall be made against any person unless the housing court considers that that person behaved unreasonably.

PART VI

CLEARANCE AREAS

66 Authority may apply for appointment of board of investigation

(1) Where an authority considers that—

- (a) there are buildings of an unsatisfactory standard in any area within its authority area; and
- (b) the prevalence of buildings referred to in paragraph (a) is such that the most appropriate method of dealing with such buildings is the acquisition and clearance of the whole or any part of the land in the area referred to in that paragraph;

it may apply in writing to the Minister for the appointment of a board:

Provided that no such application shall be made unless—

- (a) at least fourteen days' notice of the meeting of the authority at which the proposal to make application in terms of this subsection is to be introduced has been given to the persons entitled to attend such meeting; or
- (b) the proposal referred to in paragraph (a) is introduced as a recommendation of a committee of the authority.

(2) An application made in terms of subsection (1) shall be accompanied by—

- (a) a map on which the area concerned is outlined together with a narrative description of the boundaries of such area; and
- (b) the grounds for the opinion of the authority set out in that subsection; and
- (c) details of alternative accommodation available, or to be provided, for persons—
 - (i) residing within the area concerned; and
 - (ii) likely to require such accommodation in the event of a clearance warrant being granted in respect of the area referred to in subparagraph (i).

67 Appointment and functions of board

Upon receipt of an application made in terms of subsection (1) of section *sixty-six*, the Minister may—

- (a) appoint a board of investigation to inquire into and report to him on—

- (i) whether or not the opinion of the authority set out in that subsection is well founded; and
 - (ii) if the opinion referred to in subparagraph (i) is well founded, whether or not the alternative accommodation referred to in paragraph (c) of subsection (2) of that section is adequate; and
 - (iii) whether or not it would be desirable—
 - A. to grant a clearance warrant in respect of the whole or any part of the area outlined and described in terms of paragraph (a) of subsection (2) of that section; or
 - B. to refuse to grant a clearance warrant;
 and
 - (iv) any other matters relevant to such application;
- or
- (b) refuse such application.

68 Composition and remuneration of board

(1) A board shall consist of—

- (a) a chairman, who has been a legal practitioner or magistrate in Zimbabwe for a period of not less than ten years; and
- (b) two other members, one of whom shall be—
 - (i) a Government medical officer or assistant health officer appointed in terms of section 5; or
 - (ii) a medical officer of health appointed in terms of section 7; of the Public Health Act [*Chapter 15:09*].

(2) No person shall be appointed as a member of a board if he—

- (a) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement with, his creditors which has not been rescinded or set aside;

or

- (b) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—
 - (i) within Zimbabwe of a criminal offence; or
 - (ii) outside Zimbabwe of an offence by whatever name called which, if committed within Zimbabwe, would have been a criminal offence;

and sentenced by a court to imprisonment for a period of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

- (c) has, or is married to a person who has, an interest in the outcome of the inquiry of the board which interest, in the opinion of the Minister, is likely to interfere with the impartial discharge by such member of the duties of his office; or
- (d) is a member or employee of the authority concerned.

(3) Any member of a board who would, but for the fact that he has already been appointed a member of the board concerned, have become disqualified in terms of subsection (2), shall vacate his office and his office shall become vacant.

(4) Members of a board and their assistants and advisers shall be paid from the funds of the authority concerned such fees and expenses as the Minister may fix.

69 Procedure of board

(1) The quorum of a board shall be the three members thereof.

(2) At any meeting of a board, all the members shall vote on any matter to be decided by the board and all decisions shall be reached by the vote of the majority of the members:

Provided that—

- (a) any matter of law arising for decision at a meeting of the board; and
- (b) any question arising at a meeting of the board as to whether a matter for decision is a matter of fact or a matter of law;

shall be decided by the chairman of the board and no other member of the board shall have a voice in the decision on any such matter.

(3) At any meeting of a board—

- (a) any person referred to in paragraph (c) of subsection (1) of section *seventy-six* may—
 - (i) appear personally; or
 - (ii) be represented by any—
 - A. person nominated by him in writing for the purpose; or
 - B. a legal practitioner;
- (b) an authority may be represented by any—

- (i) member or employee of the authority:
Provided that no employee of the authority who has been appointed to assist the board may represent the authority; or
 - (ii) a legal practitioner.
- (4) It shall be lawful for a board—
- (a) to hear and receive evidence upon oath, which oath the board is hereby empowered to administer; and
 - (b) by summons under the hand of the chairman of the board, to require such persons as the board may think fit—
 - (i) to appear personally before the board at a time and place to be stated in such summons; and
 - (ii) to produce such books and papers as may be necessary for the inquiry of the board.
- (5) The procedure to be followed by a board in the conduct of its meetings and of its inquiry generally shall be determined by the board.

70 Statement given to board not admissible in evidence

A statement given by any person to a board under any provisions of this Part shall not be admissible in evidence in any court of law, except with the consent of all persons affected thereby or for the purpose of prosecution under subsection (1), (2), (3) or (4) of section *seventy-three*.

71 Members and employees of authority to supply information to board

Every member or employee of the authority shall, when requested to do so, submit to a board all the information in his possession and produce to the board and give the board access to all books, documents, records, accounts and other sources of information of the authority.

72 Members, assistants and advisers of board to have access to or over property

The members of a board, together with such assistants and advisers as may be necessary, shall for the purposes of the inquiry of the board have access at all reasonable times to or over any property by the shortest and most practicable route reasonable in the circumstances.

73 Offences in relation to inquiry of board

- (1) Any member or employee of an authority who—
- (a) refuses or fails to answer to the best of his ability any lawful question put to him by, or wilfully makes any false statement to, a board; or
 - (b) refuses or fails to comply to the best of his ability with any lawful requirement made by a board;
- in the exercise of its powers or the execution of its duties under this Part, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

- (2) Any person who—
- (a) threatens, resists, hinders or obstructs, or uses foul, abusive or insulting language towards, or at, a board while the board is exercising its powers or executing its duties under this Part; or
 - (b) falsely holds himself out to be a member of a board; or
 - (c) without lawful excuse, having been summoned under paragraph (b) of subsection (4) of section *sixty-nine*—
 - (i) refuses or fails to attend or to produce books or papers in obedience to the summons; or
 - (ii) having so attended, refuses to be examined upon oath or to take the oath; or
 - (iii) having taken the oath, refuses to answer such questions as are lawfully put to him;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

- (3) Any person who, having taken an oath under paragraph (a) of subsection (4) of section *sixty-nine*, makes a false statement of fact material to any question under investigation by a board, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

- (4) Any member or employee referred to in section *seventy-one* who fails to comply with that section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

- (5) A conviction for an offence in terms of this section shall not exempt the person convicted from liability to do or perform the act, matter or thing required to be done or performed by him.

74 Authority to meet expenses of, and provide facilities for, inquiry conducted by board

Subject to subsection (4) of section *sixty-eight* the authority shall meet the whole cost of the inquiry conducted by a board and shall provide the board with such staff, accommodation and other facilities as may reasonably be required by the board for the purposes of such inquiry.

75 Declaration of provisional clearance area and publication and service of clearance notice

(1) The authority shall, as soon as may be after the date of appointment of a board by notice in the *Gazette*, declare the area outlined and described in terms of paragraph (a) of subsection (2) of section *sixty-six* to be a provisional clearance area.

(2) Copies of a clearance notice shall be—

- (a) published once a week for two consecutive weeks, commencing one week after the date on which the clearance notice was published in the *Gazette*, in a newspaper circulating in the locality of the provisional clearance area; and
- (b) served on—
 - (i) every owner or right holder of land within the provisional clearance area; and
 - (ii) the Director of Physical Planning and the appropriate local planning authority.

76 Contents of clearance notice

(1) A clearance notice shall—

- (a) list every stand within the provisional clearance area; and
- (b) state that—
 - (i) a plan—
 - A. outlining the provisional clearance area; and
 - B. showing every stand referred to in paragraph (a);is available for inspection at a specified place and at specified times; and
 - (ii) a board has been appointed to inquire into and report to the Minister on whether or not a clearance warrant authorizing the authority to acquire by agreement or, in default of agreement, expropriation every stand referred to in paragraph (a) should be granted; and
 - (iii) information concerning the declaration of the provisional clearance area may be obtained at the place and times specified in terms of subparagraph (i);

and

- (c) call upon any owner, right holder or lessee of land within or adjacent to the provisional clearance area who wishes to do so to submit within a period of sixty days from the date of publication of the clearance notice in the *Gazette*—
 - (i) written representations or a written application to give oral evidence and argument; or
 - (ii) both the representations and application referred to in subparagraph (i);to the board at an address specified in such notice; and
- (d) advise that the Minister may, having considered the report of the board and any representations made by the authority, authorize the authority to acquire by agreement or, in default of agreement, expropriation all or some of the stands within the provisional clearance area; and
- (e) draw attention to section *seventy-seven*.

(2) The board shall, on the expiry of the period referred to in paragraph (c) of subsection (1), notify in writing any owner, right holder or lessee referred to in that paragraph who has submitted a written application to give oral evidence and argument of the place and time at which the board will hear and receive such evidence and argument.

77 Effect of clearance notice

While a clearance notice remains in force in terms of section *seventy-eight*, no person shall—

- (a) subdivide or apply for a permit to subdivide in terms of Part VI of the Regional, Town and Country Planning Act [*Chapter 29:12*]; or
- (b) construct permanent improvements or continue such construction in or on; any land within the provisional clearance area concerned without the permission in writing of the authority.

78 Duration of clearance notice and payment of compensation to persons suffering loss as result thereof

(1) A clearance notice shall lapse upon the expiry of a period of one year from the date of publication of the clearance notice in the *Gazette*:

Provided that the Minister may, on good cause shown by the authority, extend such period by—

- (a) a further period not exceeding six months; or
- (b) further periods not exceeding in aggregate six months.

(2) Notwithstanding anything contained in subsection (1), a clearance notice which has not yet lapsed in terms of that subsection shall lapse—

- (a) in respect of any stand which is the subject of a preliminary notice published in terms of section 5 of the Land Acquisition Act [*Chapter 20:10*], upon the date of such publication;
- (b) where a clearance warrant is granted, two months after the date of publication of the clearance warrant in the *Gazette*:

Provided that the clearance notice concerned shall lapse upon such date of publication in respect of any stand which is not included within the clearance area concerned;

- (c) upon the withdrawal of the clearance notice by the authority.
- (3) Where the period referred to in subsection (1) is extended in terms of the proviso to that subsection, the authority shall—

- (a) notify the Director of Physical Planning and the appropriate local planning authority in writing of such extension; and
- (b) give notice of such extension in the *Gazette*; and
- (c) publish a copy of the notice referred to in paragraph (b) once a week for two consecutive weeks, commencing one week after the date on which such notice was given in terms of that paragraph, in a newspaper circulating within the locality of the provisional clearance area concerned; and
- (d) serve on every owner or right holder of land within the provisional clearance area a copy of the notice referred to in paragraph (b).

- (4) Where a clearance notice has lapsed in terms of subsection (1) or (2), the authority shall—

- (a) notify in writing—
 - (i) the Minister of such lapse; and
 - (ii) the Director of Physical Planning or the appropriate planning authority of every stand affected by such lapse;

and

- (b) give notice of such lapse in the *Gazette*; and
- (c) publish a copy of the notice referred to in paragraph (b) once a week for two consecutive weeks, commencing one week after the date on which notice was given in terms of that paragraph, in a newspaper circulating within the locality of the former provisional clearance area concerned; and
- (d) serve a copy of the notice referred to in paragraph (b) on every owner or right holder of land within the former provisional clearance area concerned.

(5) Where a clearance notice has lapsed in terms of subsection (1) or (2), the authority shall pay compensation to any owner or right holder of land within the former provisional clearance area who has suffered loss as a result of the operation of such clearance notice and Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to such payment as if—

- (a) the authority were an acquiring authority; and
- (b) the lapse of such clearance notice were the withdrawal in terms of paragraph (b) of subsection (4) of section 5 of that Act of a preliminary notice;

referred to in that Act.

79 Impairment of land in provisional clearance area an offence

Any person who, while a clearance notice remains in force, demolishes, damages or in any other manner impairs any land within the provisional clearance area or any right in such land without the written permission of the authority, otherwise than in the exercise of rights acquired in terms of the Mines and Minerals Act [*Chapter 21:05*], shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

80 Submission by board of report and summary of representations and procedure for grant of clearance warrant

(1) A board shall, within a period of six months from the date of publication in the *Gazette* of the clearance notice concerned, submit—

- (a) its report and a summary of the representations made to it to the Minister; and
- (b) a copy of the report and summary referred to in paragraph (a) to the authority;

Provided that the Minister may, on good cause shown by the board, extend such period by—

- (a) a further period not exceeding six months; or
- (b) further periods not exceeding in aggregate six months.

(2) Within a period of three months from the date of submission of the report and summary referred to in subsection (1), the authority shall, while the clearance notice concerned remains in force—

- (a) apply in writing to the Minister for a clearance warrant and attach to such application its observations, if any, on such report and summary; or
- (b) withdraw such clearance notice in terms of paragraph (c) of subsection (2) of section *seventy-eight*;

Provided that the Minister may, on good cause shown by the authority, extend such period by—

- (a) a further period not exceeding three months; or
 - (b) further periods not exceeding in aggregate three months.
- (3) The Minister may, if the clearance notice concerned remains in force—
- (a) subject to such conditions, if any, as he may think fit to impose, grant a clearance warrant authorizing the authority to acquire such stands within the provisional clearance area as may be specified in the clearance warrant by agreement or, in default of agreement, by expropriation; or
 - (b) refuse the application made in terms of paragraph (a) of subsection (2);
- and notify the authority in writing accordingly.
- (4) Upon receiving notification in terms of subsection (3), the authority shall—
- (a) if the Minister has granted a clearance warrant, publish a copy thereof—
 - (i) forthwith in the *Gazette*; and
 - (ii) once a week for two consecutive weeks, commencing one week after the date on which publication was made in terms of subparagraph (i), in a newspaper circulating in the locality of the clearance area;
 - or
 - (b) if the Minister has refused the application made in terms of paragraph (a) of subsection (2), forthwith withdraw the clearance notice concerned in terms of paragraph (c) of subsection (2) of section *seventy-eight*.
- (5) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to an authorization to acquire land by expropriation referred to in paragraph (a) of subsection (3).

81 Cancellation of general plan representing public places

(1) Notwithstanding sections 46 and 47 of the Land Survey Act [*Chapter 20:12*] and subject to Part II of the Roads Act [*Chapter 13:12*], the Minister may, after consultation with the Minister to whom the administration of the first-mentioned Act has been assigned, direct the Surveyor-General to cancel a general plan or any portion thereof representing public places included in a clearance area.

(2) In subsection (1)—

“public places” has the meaning given by section 2 of the Land Survey Act [*Chapter 20:12*].

PART VII

GENERAL

82 Dangerous buildings

(1) Notwithstanding anything contained in this Act, an authority may, if it is satisfied that—

- (a) any building is—
 - (i) in a dangerous condition; or
 - (ii) being used in a dangerous manner;

and

- (b) it is necessary for immediate action to be taken for the protection of persons using, or in the vicinity of, the building referred to in paragraph (a);

shore up, fence, demolish or close the building referred to in paragraph (a) and recover the cost of such action, together with interest on such cost at the standard rate, in the manner provided in subsection (2) of section *thirty-four*.

(2) An authority shall, in taking action in terms of subsection (1), give such notice of its intention to take such action to the owner and any right holder of the building concerned as may be practicable in the circumstances.

83 Duty of occupant to disclose information to authority

(1) Any occupant of a building shall, at the request of an authority, disclose to the authority any information in his possession concerning the name, address and whereabouts of the owner, any right holder or the responsible person, as the case may be, of the building.

(2) Any occupant who fails to comply with subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

84 Authority to have all necessary powers

Subject to this Act, an authority shall have the power to do all things necessary for, or incidental to, the implementation of this Act, including the power to borrow, raise and expend moneys:

Provided that the enactment in terms of which an authority is constituted, relating to the power to borrow, raise or expend moneys, shall apply, *mutatis mutandis*, to the borrowing, raising and expenditure of moneys by the authority for the purposes of this Act.

85 President may amend First and Second Schedules

The President may, by statutory instrument, add to, amend or replace the whole or any part of the First or Second Schedule.

86 Absence of alternative accommodation

(1) Notwithstanding any provisions of this Act, no order, abatement order or control order shall be invalid, and no person shall be excused from compliance therewith, by reason only that suitable alternative accommodation is not available for any person required to vacate the building or premises concerned.

(2) An authority shall not be liable to provide an occupant of a building or premises with alternative accommodation, notwithstanding that the authority may have informed such occupant of the availability of such accommodation.

87 Power to enter and inspect buildings

(1) Any—

- (a) housing court or assessor; or
- (b) member, assistant or adviser of a board;

may at all reasonable times enter and inspect any building which is the subject of proceedings before a housing court or is within the provisional clearance area concerned, as the case may be.

(2) Any member or employee of an authority authorized in writing by the authority to do so may at all reasonable times enter and inspect any building which, on reasonable grounds, he suspects to be of an unsatisfactory standard or overcrowded.

(3) The powers referred to in subsections (1) and (2) may be exercised, *mutatis mutandis*, in relation to proceedings for a control order or, as the case may be, for the purpose of investigating premises in regard to which there is reasonable grounds for believing that it might form the subject of a control order:

Provided that this subsection shall not be construed as conferring any right to enter or search any dwelling-house without the consent of the occupant thereof.

(4) Any person who—

- (a) obstructs or hinders any person referred to in subsection (1), (2) or (3) in the exercise of his powers or the carrying out of his duties in terms of that subsection; or
- (b) knowingly gives false information or gives information which he does not know or believe to be true to any person referred to in, and exercising the powers conferred by, subsection (1), (2) or (3);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

88 Duties of authority in implementation of provisions of this Act

(1) An authority shall take all necessary, reasonable and practicable measures for—

- (a) preventing or causing to be prevented the development of unsatisfactory standards or overcrowding, or remedying or causing to be remedied unsatisfactory standards or overcrowding, within its authority area; and
- (b) ensuring the provision of suitable accommodation for persons required to vacate buildings—
 - (i) in terms of an order or abatement order; or
 - (ii) within clearance areas as a result of action taken by the authority in terms of a clearance warrant.

(2) If the Minister considers that an authority has failed—

- (a) to comply with any provisions of subsection (1); or
- (b) in any respect other than that referred to in paragraph (a), to implement this Act;

he may give the authority such directions to remedy such failure as he may think fit.

(3) Where an authority has failed to comply with any directions given by the Minister in terms of subsection (2), the Minister may do or cause to be done all or any of the things which the authority should have done—

- (a) to comply with any provisions of subsection (1); or
- (b) in any respect other than that referred to in paragraph (a), to implement this Act;

and may recover from the authority the cost of doing or causing to be done all or any of such things, together with interest on such cost at the standard rate.

89 Regulations

The Minister may, by regulation, provide for all matters which—

- (a) by this Act are required or permitted to be prescribed; or
- (b) in his opinion, are necessary or convenient in order to carry out or give effect to this Act.

90...

[Section repealed by Act No. 22 of 2001]

FIRST SCHEDULE (Sections 23 and 85)

MINIMUM REQUIREMENTS IN RELATION TO UNSATISFACTORY STANDARDS

1. Any room used, or intended, designed, constructed or adapted to be used, as the whole or any part of a dwelling shall—
 - (a) except in the case of a kitchen, pantry, bathroom or latrine, be of a minimum horizontal dimension of two metres; and
 - (b) be provided with a window area, including skylights—
 - (i) which shall be not less than one-tenth of the area of the floor of such room; and
 - (ii) of which not less than fifty *per centum* shall be capable of being opened to the external air:
Provided that—
 - (i) a window which opens from such room to a veranda or similar place shall be deemed to open directly to the external air if such room and the veranda or similar place, treated as one room, have adequate ventilation;
 - (ii) where mechanical ventilation is provided for such room to the satisfaction of the authority, it shall not be necessary for any of the window area of such room to be capable of being opened to the external air.
2. In every dwelling there shall be—
 - (a) not less than one water-closet for every unit of twelve occupants; or
 - (b) where the latrines in such dwelling are not linked to a water-borne sewerage system, not less than one latrine for every unit of eight occupants;or part thereof, so situated as to be accessible with reasonable convenience to all the occupants of the dwelling.
3. In every dwelling there shall be—
 - (a) an adequate supply of potable water; and
 - (b) not less than one water point for every unit of twelve occupants or part thereof, so situated as to be accessible with reasonable convenience to all the occupants of the dwelling.

SECOND SCHEDULE (Sections 43 and 85)

MINIMUM REQUIREMENTS IN RELATION TO OVERCROWDING

1. (1) Subject to subparagraph (2) and paragraphs 2 and 3, no room or part of a room used by persons for sleeping purposes shall be occupied for such purposes by a greater number of persons than will allow—
 - (a) eight comma five cubic metres of free air space and three comma six square metres of floor space for each person of or over the age of twelve years; or
 - (b) four comma two five cubic metres of free air space and one comma eight square metres of floor space for each person under the age of twelve years; or such greater dimensions as may be prescribed.(2) In calculating the cubic capacity of free air space in a room—
 - (a) no part of a room less than two comma one metres in height, measured from the floor to the ceiling; and
 - (b) no part of a room less than two comma one metres in any horizontal direction;shall be taken into consideration.
2. (1) No latrine, bathroom, staircase, cupboard, cellar or stable shall be used for sleeping purposes by any person.
(2) The authority may, by written notice served on the responsible person of the dwelling concerned, prohibit the use for sleeping purposes by any person of any passage, landing, loft, garage, storeroom, shed, outbuilding or tent of such dwelling or situated on the piece of land upon which such dwelling is situated, as the case may be.
3. Save in the case of a dwelling let in whole or in part to lodgers, or where alternative accommodation is available, an excessive number of persons occasioned by the presence of a child—
 - (a) who is under two years of age and was born to the owner or tenant of the dwelling concerned after his occupancy commenced; or
 - (b) who is under thirteen years of age and attained the age of twelve years whilst the owner or tenant was occupying the dwelling concerned;shall not be deemed to be overcrowding.