

PROVINCE OF THE WESTERN CAPE

**WESTERN CAPE
LOCAL GOVERNMENT LAWS
RATIONALISATION BILL**

(As introduced)

(MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING)

[B 4—2017]

PROVINSIE WES-KAAP

**WETSONTWERP OP RASIONALISASIE
VAN WES-KAAPSE
PLAASLIKEREGERINGSWETTE**

(Soos ingedien)

(MINISTER VAN PLAASLIKE REGERING, OMGEWINGSAKE EN ONTWIKKELINGSBEPLANNING)

[W 4—2017]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOLUNGELELANISO
LWEMITHETHO KARHULUMENTE
WOMMANDLA WENTSHONA KOLONI**

(Njengoko wazisiwe)

(UMPHATHISWA KARHULUMENTE WOMMANDLA, IMICIMBI YEZOKUSINGQONGILEYO NOCWANGCISO
LOPHUHLISO)

[B 4—2017]

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BILL

To repeal certain redundant laws pertaining to local government and applicable in the Province of the Western Cape; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

Repeal of legislation

1. The laws specified in the second column of the Schedule, in so far as they apply in or have been assigned to the Province of the Western Cape, are hereby repealed to the extent indicated in the third column of the Schedule. 5

Short title and commencement

2. This Act is called the Western Cape Local Government Laws Rationalisation Act, 2017, and comes into operation on a date to be determined by the Premier by proclamation in the *Provincial Gazette*. 10

SCHEDULE**LEGISLATION OF THE PROVINCE OF THE WESTERN CAPE AND THE
FORMER PROVINCE OF THE CAPE OF GOOD HOPE**

	Title, number and year of law	Extent of repeal
1	Municipal Ordinance, 1974 (Ordinance 20 of 1974)	Sections 2, 65, 122, 126 to 128, 137 to 145, 148 to 151, 153, 154, 163 to 170, 176, 180 to 182, 184, 196, 202, 207, 210, 213, 216 and 217
2	Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976)	Sections 2, 65, 121, 126 to 128, 138 to 146, 149 to 152, 154, 155, 164 to 171, 177, 182 to 186, 198, 204, 209, 212, 215, 218 and 219
3	Municipal Second Amendment Ordinance, 1977 (Ordinance 16 of 1977)	Sections 1 and 13
4	Divisional Councils Second Amendment Ordinance, 1977 (Ordinance 17 of 1977)	Section 1
5	Municipal Second Amendment Ordinance, 1978 (Ordinance 12 of 1978)	Sections 1, 8 and 13
6	Divisional Councils Amendment Ordinance, 1978 (Ordinance 18 of 1978)	Section 12
7	Municipal Amendment Ordinance, 1979 (Ordinance 7 of 1979)	Sections 25 to 28
8	Divisional Councils Second Amendment Ordinance, 1979 (Ordinance 14 of 1979)	Sections 29 to 31
9	Divisional Councils Second Amendment Ordinance, 1980 (Ordinance 19 of 1980)	Section 1
10	Changing of the Financial Year of Local Authorities Ordinance, 1983 (Ordinance 4 of 1983)	Section 6
11	Divisional Councils Amendment Ordinance, 1985 (Ordinance 10 of 1985)	Section 2
12	Divisional Councils Second Amendment Ordinance, 1986 (Ordinance 15 of 1986)	Sections 3 and 5

**NATIONAL LAWS ASSIGNED TO THE PROVINCE OF THE
WESTERN CAPE**

	Title, number and year of law	Extent of repeal
1	Cape Local Authorities Gas Ordinance, 1912 (Ordinance 7 of 1912)	The whole
2	Disused Cemeteries Ordinance, 1920 (Ordinance 23 of 1920)	The whole
3	Cremation Ordinance, 1926 (Ordinance 6 of 1926)	The whole
4	Pounds Ordinance, 1938 (Ordinance 18 of 1938)	The whole
5	Dryfe House and The Deanery Alienation Ordinance, 1964 (Ordinance 21 of 1964)	The whole
6	Civil Protection Ordinance, 1977 (Ordinance 8 of 1977)	The whole
7	Dog Tax Ordinance, 1978 (Ordinance 19 of 1978)	The whole
8	Exhumations Ordinance, 1980 (Ordinance 12 of 1980)	The whole

MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE LOCAL GOVERNMENT LAWS RATIONALISATION BILL, 2017

1. BACKGROUND

The provincial statute book contains a number of the pre-1994 legislation (old ordinances) that were assigned to the Province of the Western Cape but that have been superseded by legislation adopted since 1994. In 2010, the Department of Local Government (the Department) repealed most of the redundant provincial ordinances pertaining to local government matters by the enactment of the Western Cape Local Government Laws Rationalisation Act, 2010 (Act 4 of 2010). However, certain provisions in some provincial ordinances and other ordinances were retained. The reason for retaining those ordinances was that municipalities were still enforcing the same. The municipalities were requested to develop by-laws on the functional areas covered by the old ordinances.

The Department conducted research on whether municipalities are still enforcing these ordinances or whether they have consequently developed by-laws on the functional areas covered by these ordinances. The Department also visited municipalities and consulted with them in order to conduct more research on the status of the old ordinances. The results of the research are that most municipalities have developed by-laws in areas covered by these ordinances.

The Bill, once enacted, will give those municipalities who still need to develop and adopt by-laws on the areas covered by the ordinances being repealed sufficient time to do so.

2. PURPOSE OF THE BILL

The purpose of the Bill is to repeal redundant provincial legislation pertaining to local government.

3. CONTENTS OF THE BILL

3.1 **Clause 1** states which legislation contained in the accompanying Schedule (list of ordinances) will be repealed and the extent of such repeal.

3.2 **Clause 2** provides for the short title and the commencement of the Bill.

4. CONSULTATION

The following stakeholders were consulted:

South African Local Government Association (Western Cape)
Branch: Legal Services, Department of the Premier
Western Cape municipalities
Legislative and Constitutional Task Team
Sectoral provincial departments

5. FINANCIAL IMPLICATIONS

None

6. LEGISLATIVE COMPETENCE

The Provincial Minister responsible for local government in the Province is satisfied that all the provisions of the Bill fall within the legislative competence of the Province.

WETSONTWERP

Om bepaalde oorbodige wetgewing wat op plaaslike regering betrekking het en op die Provinsie Wes-Kaap van toepassing is, te herroep; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

Herroeping van wetgewing

1. Die wette wat in die tweede kolom in die Bylae vermeld word, in soverre hulle van toepassing is in of toegeken is aan die Provinsie Wes-Kaap, word hiermee herroep in die mate aangedui in die derde kolom van die Bylae. 5

Kort titel en inwerkingtreeding

2. Hierdie Wet heet die Wet op Rasionalisasie van Wes-Kaapse Plaaslikeregeringswette, 2017, en tree in werking op 'n datum bepaal deur die Premier by proklamasie in die *Provinsiale Koerant*. 10

BYLAE

**WETGEWING VAN DIE PROVINSIE WES-KAAP EN DIE VOORMALIGE
PROVINSIE KAAP DIE GOEIE HOOP**

	Titel, nommer en jaar van wet	Omvang van herroeping
1	Munisipale Ordonnansie, 1974 (Ordonnansie 20 van 1974)	Artikels 2, 65, 122, 126 tot 128, 137 tot 145, 148 tot 151, 153, 154, 163 tot 170, 176, 180 tot 182, 184, 196, 202, 207, 210, 213, 216 en 217
2	Ordonnansie op Afdelingsrade, 1976 (Ordonnansie 18 van 1976)	Artikels 2, 65, 121, 126 tot 128, 138 tot 146, 149 tot 152, 154, 155, 164 tot 171, 177, 182 tot 186, 198, 204, 209, 212, 215, 218 en 219
3	Munisipale Tweede Wysigingsordonnansie, 1977 (Ordonnansie 16 van 1977)	Artikels 1 en 13
4	Tweede Wysigingsordonnansie op Afdelingsrade, 1977 (Ordonnansie 17 van 1977)	Artikel 1
5	Munisipale Tweede Wysigingsordonnansie, 1978 (Ordonnansie 12 van 1978)	Artikels 1, 8 en 13
6	Wysigingsordonnansie op Afdelingsrade, 1978 (Ordonnansie 18 van 1978)	Artikel 12
7	Munisipale Wysigingsordonnansie, 1979 (Ordonnansie 7 van 1979)	Artikels 25 tot 28
8	Tweede Wysigingsordonnansie op Afdelingsrade, 1979 (Ordonnansie 14 van 1979)	Artikels 29 tot 31
9	Tweede Wysigingsordonnansie op Afdelingsrade, 1980 (Ordonnansie 19 van 1980)	Artikel 1
10	Ordonnansie op Verandering van die Boekjaar van Plaaslike Owerhede, 1983 (Ordonnansie 4 van 1983)	Artikel 6
11	Wysigingsordonnansie op Afdelingsrade, 1985 (Ordonnansie 10 van 1985)	Artikel 2
12	Tweede Wysigingsordonnansie op Afdelingsrade, 1986 (Ordonnansie 15 van 1986)	Artikels 3 en 5

**NASIONALE WETGEWING VAN TOEPASSING OP DIE PROVINSIE
WES-KAAP**

	Titel, nommer en jaar van wet	Omvang van herroeping
1	Kaapse Plaaslike Owerhede se Gasordonnansie, 1912 (Ordonnansie 7 van 1912)	Geheel
2	Ordonnansie op Begraafplase in Onbruik, 1920 (Ordonnansie 23 van 1920)	Geheel
3	Verassingsordonnansie, 1926 (Ordonnansie 6 van 1926)	Geheel
4	Skutordonnansie, 1938 (Ordonnansie 18 van 1938)	Geheel
5	Ordonnansie op Vervreemding van Dryfe House en The Deanery, 1964 (Ordonnansie 21 van 1964)	Geheel
6	Ordonnansie op Burgerlike Beskerming, 1977 (Ordonnansie 8 van 1977)	Geheel
7	Ordonnansie op Hondelasting, 1978 (Ordonnansie 19 van 1978)	Geheel
8	Ordonnansie op Opgrawings, 1980 (Ordonnansie 12 van 1980)	Geheel

MEMORANDUM OOR OOGMERKE VAN DIE WETSONTWERP OP DIE RASIONALISASIE VAN WES-KAAPSE PLAASLIKEREGERINGSWETTE, 2017

1. AGTERGROND

Die provinsiale wetboek bevat 'n aantal stukke wetgewing van voor 1994 (ou ordonnansies) wat aan die Provinsie van die Wes-Kaap toegewys is, maar wat vervang is deur wetgewing wat sedert 1994 aangeneem is. In 2010 het die Departement van Plaaslike Regering (die Departement) die meeste van die oortollige provinsiale ordonnansies wat op plaaslikeregeringsaangeleenthede betrekking het, kragtens die Wet op Rasionalisasie van Wes-Kaapse Plaaslike Regeringswette, 2010 (Wet 4 van 2010), herroep. Sekere bepalings in sommige provinsiale ordonnansies en ander ordonnansies is egter behou. Die rede vir die behoud van daardie ordonnansies was dat munisipaliteite hulle nog steeds bly toepas het. Die munisipaliteite is versoek om verordeninge op te stel oor die funksionele gebiede wat deur die ou ordonnansies gedek is.

Die Departement het ondersoek ingestel om vas te stel of munisipaliteite nog steeds hierdie ordonnansies toepas of dat hulle gevolglik wel verordeninge oor die funksionele gebiede wat deur hierdie ordonnansies gedek is, opgestel het. Die Departement het ook munisipaliteite besoek en hulle geraadpleeg ten einde verdere navorsing oor die status van die ou ordonnansies te doen. Die Departement het bevind dat die meeste munisipaliteite wel verordeninge opgestel het in gebiede wat deur hierdie ordonnansies gedek word.

Wanneer die Wetsontwerp van krag word, sal dit die munisipaliteite wat nog verordeninge moet opstel op die gebiede wat gedek word deur die ordonnansies wat herroep word, genoeg tyd gee om dit te doen.

2. OOGMERKE VAN DIE WETSONTWERP

Die doel van die Wetsontwerp is om oorbodige provinsiale wetgewing wat op plaaslike regering betrekking het, te herroep.

3. INHOUD VAN DIE WETSONTWERP

- 3.1 **Klousule 1** vermeld watter wetgewing vervat in die bygaande Bylae (lys van ordonnansies) herroep word, asook die omvang van sodanige herroeping.
- 3.2 **Klousule 2** maak voorsiening vir die kort titel en die inwerkingtreding van die Wetsontwerp.

4. OORLEGPLEGING

Die volgende belanghebbendes is geraadpleeg:

Suid-Afrikaanse Vereniging van Plaaslike Regering (Wes-Kaap)
 Tak: Regsdienste, Departement van die Premier
 Wes-Kaapse munisipaliteite
 Wetgewende en Grondwetlike Taakspan
 Sektorale provinsiale departemente

5. FINANSIËLE IMPLIKASIES

Geen

6. WETGEWENDE BEVOEGDHEID

Die Provinsiale Minister verantwoordelik vir plaaslike regering in die Provinsie is tevrede dat al die bepalings van die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

UMTHETHO OSAYILWAYO

Ukubhangisa imithetho ethile engasasebenziyo enento yokwenza noorhulumente bemimandla abakwiPhondo leNtshona Koloni; nokubonelela ngemiba ehambelana nayo.

MAWUPHUNYEZWE KE NGOKO yiPalamente yePhondo leNtshona Koloni ngolu hlobo lulandelayo:—

Ukutshitshiswa kwemithetho

1. Imithetho ekhankanywe kwikholamu yesibini yeShedyuli, esebenza okanye eyabelwe iPhondo leNtshona Koloni, kungokunje iyabhangiswa ngolu hlobo kuchazwe ngalo kwikholamu yesithathu yeShedyuli. 5

Isihloko esifutshane nokuqala ukusebenza

2. Lo mthetho ubizwa ngokuba nguMthetho woLungelelaniso lweMithetho kaRhulumente woMmandla weNtshona Koloni, 2017, yaye uya kuqala ukusebenza ngomhla oya kubekwa yiNkulumbuso ngokuthi yenze umpoposho *kwiGazethi* yePhondo. 10

ISHEDYULI**IMITHETHO YEPHONDO LENTSHONA KOLONI NEPHONDO LAKUDALA
LECAPE OF GOOD HOPE**

	Isihloko, iNombolo nonyaka womthetho	Okutshitshiswayo
1	Municipal Ordinance, 1974 (i-Odinensi 20 ka-1974)	Amacandelo 2, 65, 122, 126 ukuya ku-128, 137 ukuya ku-145, 148 ukuya ku-151, 153, 154, 163 ukuya ku-170, 176, 180 ukuya ku-82, 184, 196, 202, 207, 210, 213, 216 no-217
2	Divisional Councils Ordinance, 1976 (i-Odinensi 18 ka-1976)	Amacandelo 2, 65, 121, 126 ukuya ku-128, 138 ukuya ku-146, 149 ukuya ku-152, 154, 155, 164 ukuya ku-171, 177, 182 ukuya ku-186, 198, 204, 209, 212, 215, 218 kunye no 219
3	Municipal Second Amendment Ordinance, 1977 (i-Odinensi 16 ka-1977)	Amacandelo 1 ukuya ku-13
4	Divisional Councils Second Amendment Ordinance, 1977 (i-Odinensi 17 ka-1977)	Icandelo 1
5	Municipal Second Amendment Ordinance, 1978 (i-Odinensi 12 ka-1978)	Amacandelo 1,8 ukuya ku-13
6	Divisional Councils Amendment Ordinance, 1978 (i-Odinensi 18 ka-1978)	Icandelo 12
7	Municipal Amendment Ordinance, 1979 (i-Odinensi 7 ka-1979)	Amacandelo 25 ukuya ku-28
8	Divisional Councils Second Amendment Ordinance, 1979 (i-Odinensi 14 ka-1979)	Amacandelo 29 ukuya ku-31
9	Divisional Councils Second Amendment Ordinance, 1980 (i-Odinensi 19 ka-1980)	Icandelo 1
10	Changing of the Financial Year of Local Authorities Ordinance, 1983 (i-Odinensi 4 ka-1983)	Icandelo 6
11	Divisional Councils Amendment Ordinance, 1985 (i-Odinensi 10 ka-1985)	Icandelo 2
12	Divisional Councils Second Amendment Ordinance, 1986 (i-Odinensi 15 ka-1986)	Amacandelo 3 no-5

IMITHETHO YESIZWE ENIKELWE KWIPHONDO LENTSHONA KOLONI

	Isihloko, iNombolo nonyaka womthetho	Okutshitshiswayo
1	Cape Local Authorities Gas Ordinance, 1912 (i-Odinensi 7 ka-1912)	Yonke i-odinensi
2	Disused Cemeteries Ordinance, 1920 (i-Odinensi 23 ka-1920)	Yonke i-odinensi
3	Cremation Ordinance, 1926 (i-Odinensi 6 ka-1926)	Yonke i-odinensi
4	Pounds Ordinance, 1938 (i-Odinensi 18 ka-1938)	Yonke i-odinensi
5	Dryfe House and the Dearnly Alienation Ordinance, 1964 (i-Odinensi 21 ka-1964)	Yonke i-odinensi
6	Civil Protection Ordinance, 1977 (i-Odinensi 8 ka-1977)	Yonke i-odinensi
7	Dog Tax Ordinance, 1978 (i-Odinensi 19 ka-1978)	Yonke i-odinensi
8	Exhumations Ordinance, 1980 (i-Odinensi 12 ka-1980)	Yonke i-odinensi

**IMEMORANDAM YEENJONGO ZOMTHETHO OSAYILWAYO
WOLUNGELELANISO LWEMITHETHO KARHULUMENTE
WEMIMANDLA WENTSHONA KOLONI, 2017**

1. INTSUKAPHI

Incwadi yemithetho yephondo inemithetho eliqela eyayiphunyezwe phambi ko-1994 (ii-odinensi zakudala) eyayinikezwe iPhondo leNtshona Koloni, kodwa ngoku loo mithetho sele ingenelelwe yimithetho ephunyezwe ukususela ngowe-1994. Ngowama-2010, iSebe looRhulumente boMmandla (iSebe) labhangisa imimiselo emininzi yephondo engasasebenziyo nengasenandawo enento yokwenza noorhulumente bemimandla ngokomthetho iWestern Cape Local Government Laws Rationalisation Act, 2010 (uMthetho 4 ka-2010). Kambe ke, imiqathango ethile kwezinye ii-odinensi zephondo yaye yagcinwa. Izizathu zokugcina ezo odinensi kukuba oomasipala bebesazisebenzisa njengemithetho yabo. Oomasipala baye bacelwa ukuba benze imithetho kamasipala yabo ejongene nemiba abasebenza ngayo nebilawulwa zii-odinensi zakudala.

ISebe lenze uphando olungephi lokuba ingaba oomasipala basanyanzelisa ezo odinensi na kwanokuba bayenzile na imithetho yoomasipala yabo ejongene nemiba abasebenza ngayo nebilawulwa zezi odinensi. Ngaphezu koko, iSebe liye latyelela oomasipala labonisana nabo ngenjongo yokuba lenze olunye uphando ngobume bee-odinensi zakudala. Iziphumo zophando zifumanise ukuba oomasipala abaninzi banayo imithetho yoomasipala ebandakanyiweyo zezi odinensi.

Wakube wamkelwe uMthetho oSayilwayo, abo masipala kusafuneka bequlunqe, bamisele imithetho kamasipala kwezo ndawo zichatshazelwa zezi odinensi zitshitshiswayo, baza kunikwa ixesha elaneleyo lokwenza oko.

2. INJONGO YOMTHETHO OSAYILWAYO

Injongo yoMthetho oSayilwayo kukutshitshisa imithetho yephondo engasasebenziyo emalunga noorhulumente bemimandla.

3. OKUQULETHWE NGUMTHETHO OSAYILWAYO

3.1 **IGatya 1** lichaza ukuba yeyiphi imithetho ekwishedyuli eqhotyoshelweyo (uludwe lwee-Odinensi) eza kutshitshiswa kwanokuba iza kutshitshiswa kangakanani na.

3.2 **IGatya 2** lichaza isihloko esifutshane kunye nomhla wokuqalisa ukusebenza kwalo Mthetho uSayilwayo.

4. UKUBONISANA

Kuye kwaboniswa nala maqela achaphazelekayo alandelayo:

INDibano kaRhulumente woMmandla yaseMzantsi Afrika (eNtshona Koloni)
ISebe: IiNkonzo zoMthetho kwiSebe leNkulumbuso
Oomasipala baseNtshona Koloni
Intlanganiso yeQela eliJongene neMithetho kunye noMgaqo-siseko
Amasebe ephondo ecandelo

5. UCHAPHAZELEKO LWEZIMALI

Alukho

6. ISAKHONO SOWISO-MITHETHO

UMphathiswa wePhondo ojongene noorhulumente bommandla wanelisekile kukuba onke amalungiselelo oMthetho oSayilwayo aphantsi kwesakhono sowiso-mithetho sePhondo.

