



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

**BRIEFING TO THE NATIONAL COUNCIL OF PROVINCES
TO BE PRESENTED ON 12 AUGUST 2015**

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BRIEFING NOTE TO THE NATIONAL COUNCIL OF PROVINCES IN RESPECT OF THE RULES MADE UNDER THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000 (ACT NO. 3 OF 2000)

A. BACKGROUND

1. The Constitution of the Republic of South Africa, 1996 guarantees everyone the right, under section 33(1), to administrative action that is lawful, reasonable and procedurally fair. Section 33(3) of the Constitution requires that National Legislation be enacted to give effect to the rights under sub-sections 33(1) and (2).
2. The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA") has ultimately been enacted to give effect to the rights under sub-section 33(1) and (2).
3. In terms of section 7(3) of PAJA, the Rules Board for Courts of Law ("Rules Board") is authorised to make rules of procedure for judicial review, subject to approval thereof by the Minister. Section 7(5) of PAJA provides that any rule made under section 7(3) must, before publication in the *Gazette*, be approved by Parliament. Section 7 is attached as Annexure "A" – page 8.
4. In addition, the Rules Board is mandated by section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985) ("Rules Board Act") to, amongst other things, review the existing rules of court from time to time on a regular basis, and subject to approval by the Minister make, amend or repeal the rules of courts with regards to various aspects. Section 6 of the Rules Board Act is attached as Annexure "B" – pages 9 to 12.
5. The on-going review of the rules by the Rules Board emanates from various sources such as judicial pronouncements, submissions from role-players

and internal discussions or observations from members as well as the Secretariat of the Rules Board.

6. Pursuant to its mandate, the Rules Board made and subsequently approved the rules of procedure for judicial review under PAJA in February 2009, which were published in the Government Notice No. R. 966 of 9 October 2009, Government Gazette No. 32622 (the “first PAJA Rules”) – Annexure “C” – pages 13 to 45 hereto. Before coming into operation, some of these rules were set aside by the North Gauteng High Court on 11 April 2012 in the case of *Lawyers for Human Rights v Rules Board for Courts of Law and the Minister of Justice and Constitutional Development* (2012) BCLR 754 (GNP), [2012] 3 All SA 153 (GNP).

7. In that judgment, the North Gauteng High Court (Pretoria) declared certain provisions of the first PAJA Rules to be inconsistent with the Constitution and therefore unlawful and invalid. The specific provisions found to be unconstitutional were:

(a) Rule 4, read with the definition of “relevant document” to the extent that it deprives a person intending to institute an application for judicial review access to all documents and information which were before an administrator at the time the decision which may be sought to be reviewed was taken;

(b) Rules 3(5)(e), 4(4) and (7), 7(3)(e) and (f) in that they are inconsistent with the Constitution.

8. The Court also stated that the first PAJA Rules were objectionable in other respects, and generally that the rules fail to provide for a mechanism whereby a private respondent in an application for judicial review can obtain access to the record and reasons for a decision which is sought to be reviewed and set aside.

9. The first PAJA Rules were adopted by Parliament in 2009, but not yet brought into operation by the Minister of Justice and Constitutional Development pending the review application, amongst others.

10. Although the first PAJA Rules never commenced and some of those rules were found to be unconstitutional, the fact remains that they were promulgated and technically they should be repealed. A specially-constituted subcommittee of the Rules Board ("PAJA Rules Committee") suggested that the first PAJA Rules be repealed and substituted with the revised PAJA Rules.

B. REVIEW OF THE FIRST PAJA RULES

11. As a starting point, the PAJA Rules Committee examined the first PAJA Rules and considered whether the provisions found to be unconstitutional and other aspects which were criticized by the High Court could, and should, be remedied; or whether the first PAJA Rules should instead be revisited and revised in their entirety. For various reasons, it was concluded that the first PAJA Rules should be jettisoned and fresh rules drafted.

12. With approval of the Rules Board, the Committee drafted the new rules of procedure for judicial review under PAJA ("the 2013 draft") and sent those rules out to role-players for consideration and comments. The 2013 draft is **Annexure "D"** – pages 46 - 50 hereto.

13. The Committee met on 21 June 2013 to consider comments subsequently received. Comments received by then were from: (a) Mr Justice BM Griesel, of the Western Cape High Court; (b) Mr Justice AA Landman, of the North-West High Court; and (c) the Department of Justice and Constitutional Development's Legislative Development Unit.

14. By way of a high level overview, Judge Griesel thought that the 2013 draft PAJA Rules should be truncated, as the repetition contained therein was contrary to accepted drafting principles. Judge Landman proposed a reworking of the 2013 draft PAJA Rules to separate out the two different scenarios for which the rules catered: namely, (i) a situation where no record or an incomplete record had been furnished; and (ii) a situation where an adequate record had already been provided.

15. The PAJA Rules Committee considered that the comments of both Judges Griesel and Landman had some merit, even though at first sight they might appear to be mutually incompatible. Revised rules, taking account of both perspectives, were accordingly prepared. Certain other changes suggested by the Judges with regard to particular definitions or phrases were also, where appropriate, adopted.

16. The revised 2013 draft PAJA Rules were subsequently considered by the PAJA Rules Committee at a meeting held on 7 August 2013. At that meeting, the revised rules were accepted, subject to a few further proposed modifications. Those further amendments were subsequently effected by the Committee Chairperson.

17. Attached as Annexure "E" – pages 51 to 56 hereto is the further revised 2013 draft PAJA Rules, containing the changes which the PAJA Rules Committee considered appropriate in the light of:

(a) the comments received from interested persons; and

(b) their various deliberations.

18. There are now separate rules catering for situations in which:

(a) a record has been furnished, and

(b) no record or an incomplete record has been provided.

There are also now cross-references within the rules to avoid duplication (as opposed to verbatim or virtually verbatim repetitions of rules).

19. The Committee then resolved that the draft amendments be prepared for submission to the Rules Board at its next meeting, for approval. The revised rules were subsequently approved by the Rules Board on 13 September 2013.

20. Thereafter, the draft amendments were sent to the Office of the Chief State Law Adviser ("OCSLA") for scrutiny. Comments and further recommendations were then received from OCSLA on 21 January 2014, and these were deliberated upon by the PAJA Rules Committee on 19 February 2014.

21. OCSLA's view is that "*the draft Rules are authorized under PAJA and are not in conflict with that Act or the Constitution*". OCSLA only proposed amendments related to drafting form and style. In addition, it was suggested that the original draft PAJA Rules, although never promulgated, should be specifically repealed. The PAJA Rules Committee concurred with that suggestion.

22. On 19 February 2014 certain refinements, mainly concerning the structure and format, were then effected on the draft amendments. These were prepared to be sent to the Minister under cover of a memorandum for approval. Due to a change in government the memorandum had to be revised and dispatched for the attention of the new Minister in the fifth Parliament for approval.

23. On 22 January 2015, the Minister approved the Rules Board's draft amendments to the PAJA Rules, which in essence repeal and substitute the old PAJA Rules which were published on 9 October 2009.

24. Subsequent to Ministerial approval, a further memorandum was dispatched to the Ministry with a request for the tabling of the revised PAJA Rules in Parliament.

25. The revised PAJA Rules are attached hereto as Annexure "F" – pages 57 to 62.

C. UNDERLYING PRINCIPLES

26. The principle underlying the revised PAJA Rules is that the rules formulated in terms of section 7(3) of PAJA should by and large make provision for the existing procedure, and High Court Rule 53 in particular, to continue to apply to applications for judicial review under PAJA.

27. A major advantage of not adopting a special procedure for PAJA reviews is that there is a uniform approach irrespective of whether an applicant relies both on PAJA grounds of review and a legality challenge, simply on PAJA grounds, or merely a breach of the rule of law.

28. Of great importance is that the shortcomings of the rules as identified by the judgment have now been successfully and appropriately dealt with in the revised draft which has now been approved by the Minister.

D. RECOMMENDATION

29. It is therefore recommended that the National Council of Provinces deliberates on and approves the revised PAJA Rules.

PAJA RULES COMMITTEE, and

RULES BOARD SECRETARIAT

JULY 2015

ANNEXURE A

7 Procedure for judicial review

(1) Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

(2) (a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

(c) A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must, before 28 February 2009, subject to the approval of the Minister, make rules of procedure for judicial review.

[Sub-s. (3) substituted by s. 27 (a) of Act 55 of 2003 and by s. 29 of Act 66 of 2008.]

(4) Until the rules of procedure referred to in subsection (3) come into operation, all proceedings for judicial review under this Act must be instituted in a High Court or another court having jurisdiction.

[Sub-s. (4) substituted by s. 27 (b) of Act 55 of 2003.]

(5) Any rule made under subsection (3) must, before publication in the Gazette, be approved by Parliament.

ANNEXURE B

6 Powers of Board

(1) The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the High Court of South Africa and the Lower Courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the Supreme Court of Appeal, the High Court of South Africa and the Lower Courts regulating-

(a) the practice and procedure in connection with litigation, including the time within which and the manner in which appeal shall be noted;

[Para. (a) substituted by s. 4 of Act 77 of 1989.]

(b) the form, contents and use of process;

(c) the practice and procedure in connection with the service of process or other documents, including the issue of interrogatories;

(d) the practice and procedure in connection with the execution of process, including writs and warrants;

(e) the practice and procedure in connection with the reference of any matter to a referee under section 38 of the Superior Courts Act, 2013, and the remuneration payable to any such referee;

[Para. (e) substituted by s. 55 (1) (b) of Act 10 of 2013.]

(f) the compulsory examination by one or more registered medical practitioners of any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed and whose state of health is relevant for the determination of such damages or compensation, as well as the manner, time, place and responsibility for the cost of the examination, and the making available to the opposing party of any documentary report on the examination;

(g) the procedure at or in connection with any enquiry as to the mental state of any person, and the findings or orders which may be made or issued at any such enquiry;

(h) the appointment and admission of commissioners to take evidence and examine witnesses;

(i) the manner in which documents executed outside the Republic may be authenticated to permit of their being produced or used in any court or produced or lodged in any public office in the Republic;

(j) the appointment and admission of sworn translators;

(k) the duties of sheriffs and other officers of court;

(l) fees and costs, including the fees payable in respect of the service or execution of process (except subpoenas or warrants issued at the request of the State in criminal matters) or in respect of the summoning of persons to answer interrogatories;

(m) the manner of determining the amount of security in any case where it is required that security shall be given, and the form and manner in which such security may be given;

(n) the hours during which the offices of registrars and clerks of the court shall be open for official purposes;

(o) the manner or recording or noting evidence and proceedings;

(p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the High Court of South Africa;

[Para. (p) substituted by s. 23 (b) of Act 62 of 2000 and by s. 55 (1) (b) of Act 10 of 2013.]

(q) the appointment of assessors in proceedings in lower courts;

(r) the tariff of fees chargeable by advocates, attorneys and notaries;

(s) the taxation of bills of costs and the recovery of costs;

(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Supreme Court of Appeal, the High Court of South Africa and the Lower Courts in civil as well as in criminal proceedings.

[Para. (t) substituted by s. 23 (c) of Act 62 of 2000 and by s. 55 (1) (b) of Act 10 of 2013.]

[Sub-s. (1) amended by s. 23 (a) of Act 62 of 2000 and by s. 55 (1) (b) of Act 10 of 2013.]

(2) (a) Different rules may be made in respect of the Supreme Court of Appeal, High Court of South Africa and the Lower Courts and in respect of different kinds of proceedings.

[Para. (a) substituted by s. 55 (1) (b) of Act 10 of 2013.]

(b) The Board may, with the approval of the Minister, make different rules in respect of-

(i)

[Sub-para. (i) deleted by s. 55 (1) (b) of Act 10 of 2013.]

(ii) the different Divisions of the High Court of South Africa; or

[Sub-para. (ii) substituted by s. 55 (1) (b) of Act 10 of 2013.]

(iii) the lower courts in different magisterial districts,

which shall be of force for the period or periods determined by the Board.

[Sub-s. (2) substituted by s. 24 of Act 139 of 1992 and by s. 23 (d) of Act 62 of 2000.]

(3) Rules made under any provision of a law repealed by this Act and in force at the commencement of this Act, shall, subject to the provisions of this Act and notwithstanding the repeal of that provision by section 10 or 11 of this Act, remain in force until amended or repealed under this section.

(4) No new rule or amendment or repeal of a rule shall commence unless it was published in the Gazette at least one month before the day upon which such rule, amendment or repeal is determined to commence.

(5) Every rule and every amendment or repeal thereof shall within 14 days after it commenced be laid upon the Table in Parliament if Parliament is then in session, or if it is not then in session, within 14 days after the commencement of its next ensuing session.

(6) The Board may advise the Minister on the monetary jurisdiction limits of lower courts, the limitation of the costs of litigation and any other matter referred to the Board by the Minister.

[NB: A sub-s. (6A) has been inserted by s. 62 of the General Law Third Amendment Act 129 of 1993, a provision which will be put into operation by proclamation. See PENDLEX.]

(7) The power to make, amend or repeal rules under subsection (1) shall include the power to make, amend or repeal rules in order to give effect to the provisions of sections 2 and 3 of the Foreign Courts Evidence Act, 1962 (Act 80 of 1962).

(8) The power to make, amend or repeal rules under subsection (1) shall include the power to make, amend or repeal rules in relation to the application of the Admiralty Jurisdiction Regulation Act, 1983 (Act 105 of 1983), prescribing the following:

(a) The appointment of any person or body for the assessment of fees and costs, and the manner in which such fees and costs are to be assessed;

(b) measures aimed at avoiding circuity or multiplicity of actions;

(c) the practice and procedure for referring to arbitration any matter arising out of proceedings relating to a maritime claim, and the appointment, remuneration and powers of an arbitrator.

ANNEXURE C**PROMOTION OF ADMINISTRATIVE JUSTICE ACT 3 OF 2000****RULES OF PROCEDURE FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTION**

Published under Government Notice R966 in *Government Gazette* 32622 of 9 October 2009.

In accordance with section 7(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) the Rules Board has made the rules in the schedule and the Minister and Parliament have approved them.

SCHEDULE**Preamble**

Section 33(1) of the Constitution guarantees everyone the right to administrative action that is lawful, reasonable and procedurally fair. The Promotion of Administrative Justice Act, 3 of 2000 gives effect to that right and section 7 of the Act requires the Rules Board for Courts of Law to make rules of procedure for judicial review subject to the approval of the Minister and Parliament. The Rules Board has made the rules and the Minister and Parliament have approved them. These rules provide a procedure to facilitate proceedings for judicial review.

Arrangement of rules**Part A: Application of rules and definitions**

1. Application of rules

2. Definitions

Part B: Request for reasons and disclosure

3. Request for reasons

4. Request for disclosure

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8. Application for judicial review

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11. Conference

12. Discovery of documents during proceedings

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FORMS

PART A: APPLICATION OF RULES AND DEFINITIONS

1. Application of Rules

(1) These rules apply to proceedings for judicial review in the High Court, the Labour Court or the Magistrates' Courts.

(2) In an application for judicial review in a court other than one referred to in sub-rule (1), the court may adapt these rules to suit its particular requirements and procedures.

(3) If in any legal proceedings other than an application for judicial review, a party raises an issue concerning the validity of an administrative action, the court may -

(a) give directions as to the process to be followed for the determination of the validity of the administrative action taking these rules into account; or

(b) suspend the proceedings pending the outcome of the proceedings for judicial review under these rules.

(4) To the extent that these rules do not provide for any matter regulated by the rules of the court in which the proceedings are instituted, those rules apply insofar as they do not conflict with these rules, provided that-

- (a) the rules relating to applications and discovery apply subject to the provisions of rules 8(2) and 12 respectively; and
- (b) Rule 53 of the Uniform Rules of the High Court and Rule 7A of the Rules for the Conduct of Proceedings in the Labour Court no longer apply in proceedings for judicial review.

2. Definitions

- (1) Any word or expression defined in the Act or in any rules of court that may apply to proceedings in terms of these rules bears the same meaning unless provided otherwise in sub-rule (2).
- (2) In these Rules, unless the context indicates otherwise-

‘Act’ means the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000);

‘affidavit’ means a written statement contemplated in rule 10;

‘day’ means any day other than a Saturday, Sunday or a public holiday;

‘document’ includes any recorded information regardless of form or medium;

‘judicial review’ means judicial review of an administrative action based on a ground in section 6 of the Act for an order contemplated in section 8 of the Act;

‘mediation’ means a voluntary process in which a neutral third party assists litigants or prospective litigants to avoid or end litigation and resolve or find a process for resolving the litigation;

‘registrar’ means a registrar or clerk of court appointed in terms of any legislation governing the administration of courts;

‘relevant document’ means a document that directly relates to a ground of judicial review upon which a requester or applicant relies or intends to rely in proceedings for judicial review.

‘Rules’ includes the Forms.

PART B: REQUEST FOR REASONS AND DISCLOSURE

3. Request for reasons

(1) Any person whose rights are materially and adversely affected by an administrative action may request the administrator to-

(a) furnish written reasons for the action;

(b) agree to a variation of the time periods for the request for, or giving of, reasons in section 5(1) and (2) of the Act in terms of section 9(1) of that Act.

- (2) The request must be made in accordance with Form A and sent and delivered in the manner provided in the Form to the administrator within the time period referred to in section 5(1) of the Act, or such period as may be varied in terms of section 9.
- (3) The administrator must within 10 days of receipt of the request respond to it in accordance with Form B stating whether the request is acceded to or declined.
- (4) If the administrator accedes to the request, the administrator must furnish the reasons within the period permitted in section 5(2) of the Act unless that period has been varied by agreement or by a court in terms of section 9.
- (5) The administrator may refuse a request for reasons if-
- (a) written reasons have already been furnished to the requester;
 - (b) written reasons are publicly available and the requester is informed of where and how they are available;
 - (c) the requester is not a person whose rights are materially and adversely affected by the administrative action;
 - (d) it is reasonable or justifiable to depart from the requirement to give reasons in terms of section 5(4) of the Act; or
 - (e) on any other valid ground.

(6) An administrator who declines to furnish reasons in response to a request under this rule must give reasons for refusing to do so.

4. Request for disclosure

(1) A person intending to institute an application for judicial review under Part C may request the administrator to-

(a) furnish a list of relevant documents;

(b) agree to vary the time periods set out in section 7(1) in terms of section 9(1) of the Act;

(c) agree to mediation; or

(d) agree to an address for and manner of service or delivery for any application made in terms of these Rules.

(2) The request must be made in accordance with Form C and delivered to the administrator in the manner provided in the Form.

(3) The request may be made at any time after the administrative action was taken but no later than 30 days from the date on which reasons are furnished under section 5 of the Act or rule 3.

(4) The administrator may refuse to furnish a list of relevant documents if there are valid grounds for the refusal.

(5) The administrator must within 30 days of receipt of a request furnish the list in accordance with Form D or notify the requester of the refusal to do so together with reasons in accordance with Form E.

(6) The administrator must allow the requester to inspect the documents in Part 1 of schedule A to Form D at a place, time and manner determined by the administrator in Form D and to make copies at the fee prescribed under the Promotion of Access to Information Act 2000 (Act No. 2 of 2000).

(7) The administrator may refuse to allow the requester to inspect and copy the documents in Part 2 of schedule A to Form D.

5. Application for variation of time

(1) If an administrator fails to respond or refuses to agree to a variation of a time period, the requester may apply to court for a variation of the time periods in sections 5(1) and (2) and 7(1) of the Act or the Rules under this Part.

(2) The application must be made on notice of motion supported by affidavit.

6. Application for reasons

(1) If an administrator fails to respond to a request for reasons or refuses to give reasons, the requester may apply to court for an order compelling the administrator to give reasons.

(2) The application for reasons must be made on notice of motion supported by affidavit.

7. Application to compel disclosure and access

(1) The requester may apply to court for an order compelling the administrator to furnish a list of relevant documents or grant access to a document on the list in Part I of Schedule A to Form D if the administrator-

- (a) fails to respond to a request to furnish a list within the time period referred to in rule 4;
- (b) refuses to furnish a list; or
- (c) refuses to grant access to a document listed in Part I of Schedule A to Form D.

(2) Any such application must be made-

- (a) on notice of motion;
- (b) supported by affidavit; and
- (c) within 15 days of the failure or notification of the refusal in question.

(3) A court may grant an application for furnishing a list or access to a document in Part I of Schedule A to Form D if it is satisfied that-

- (a) the applicant has legal standing to bring an application for judicial review of the administrative action;
- (b) any internal remedy contemplated in section 7(2)(a) of the Act in respect of the administrative action to be reviewed has been exhausted, or if not, that there are exceptional circumstances for an exemption from this requirement;
- (c) the applicant has made a request under rule 4(1);
- (d) the application is made within 15 days of the notification of refusal of a request;
- (e) there are *prima facie* grounds for the intended review of the administrative action; and
- (f) the documents are necessary for the intended review of the administrative action.

PART C: APPLICATION FOR JUDICIAL REVIEW

8. Application for judicial review

- (1) A person who has not made a request or application in terms of Part B of these rules is not precluded from instituting an application for judicial review in terms of this Part.
- (2) The rules concerning applications in the court in which the proceedings are instituted apply to the proceedings under this rule subject to the specific changes effected by it.

- (3) An application for judicial review of an administrative action must be brought on notice of motion substantially in accordance with Form F supported by affidavit.
- (4) The notice of motion must be addressed to -
- (a) the registrar of the court in which proceedings are instituted;
 - (b) the administrator;
 - (c) any person against whom relief is sought; and
 - (d) any other person necessary or proper to join in the proceedings.
- (5) The supporting affidavit must set out -
- (a) the grounds of review referring in each case to the relevant provision in section 6(2) of the Act;
 - (b) the remedy which the applicant seeks referring in each case to the relevant provision of section 8 of the Act;
 - (c) whether there is any internal remedy, and if so, whether the remedy has been exhausted, and if not the exceptional circumstances justifying an exemption from this requirement;

- (d) whether the application was brought within the time period stipulated in section 7 or varied in terms of section 9 of the Act; and
- (e) whether the applicant acts in a representative capacity, and if so, particulars thereof,
- (6) The application comprising the notice of motion, affidavits and annexures must be served upon every party referred to in sub-rule (4).
- (7) The application must state-
- (a) an address and method for delivery on the applicant of all documents in the proceedings provided that if the address is a physical address and the method of delivery is by hand, that address must be within 25 kilometres of the office of the registrar of the court in which the proceedings are instituted;
- (b) that, if the respondent intends to oppose the application, the respondent must deliver a notice of intention to defend within 15 days of receipt of the notice of motion; and
- (c) that if the respondent does not deliver such a notice, the registrar will be requested to set the matter down for hearing without further notice.
- (8) The administrator responsible for the administrative action must be cited as a respondent.
- (9) If the administrator is a functionary, the functionary need not be cited as a respondent if the functionary's department of state, administration or institution has been cited.

9. Opposition and reply

(1) Any person opposing the granting of an order sought in the notice of motion must-

(a) within the period stated in the application deliver a notice of an intention to oppose the application;

(b) state in that notice an address and method of delivery on the respondent of all documents in the proceedings provided that if the address is a physical address and the method of service is by hand, that address must be within 25 kilometres of the office of the registrar of the court in which the proceedings are instituted; and

(c) within 15 days of the notice of the intention to oppose, deliver an answering affidavit, if any.

(2) The applicant may deliver a replying affidavit within 10 days of delivery of the respondent's answering affidavit.

PART D: GENERAL**10. Form of affidavit**

(1) For the purpose of these rules, an affidavit may be in the form of a written statement made under oath or under a declaration of truth.

(2) A declaration of truth must-

- (a) take the following form:

‘I have read this affidavit and declare under pain of perjury that its contents are true and correct’; and

- (b) be followed by the signature of the person making the affidavit and the date and place of signature.

- (3) A declaration of truth need not be attested to before a commissioner of oath in order to be admitted into evidence in proceedings for judicial review.

11. Conference

- (1) A judicial officer may at any time after an application for judicial review has been instituted require the parties to attend a conference in chambers for purposes of-

- (a) the limitation of issues;
- (b) considering settlement or mediation;
- (c) directions as to applications to strike out and other interlocutory applications;
- (d) directions to expedite proceedings; or

- (e) any other matter considered necessary.
- (2) All agreements reached and directions given must be recorded in writing.

12. Discovery of documents during proceedings

The rules of the court in which proceedings for judicial review are instituted, relating to the discovery of documents in motion proceedings apply to applications for judicial review to the extent that those rules permit.

13. Bundle of documents

(1) Documents other than affidavits must be identified and placed in a separate bundle divided into parts with each party's documents paginated as follows:

(a) The applicant's documents will be marked A, with the pagination commencing at A1. If there is more than one applicant, the first applicant must mark his or her documents 1A and the second applicant as 2A and so on.

(b) The same applies to the documents of the respondents except that they should mark their documents as R, 1R or 2R as the case may be.

(2) Unless there is good reason for doing so, no document may be included in the application papers more than once.

- (3) Documents must be referred to in affidavits and heads of argument as prescribed under sub-rule (1).

14. Power of court to give directions

Unless the Act precludes the court from doing so, the court may-

- (a) give directions for the proper conduct of proceedings under these rules;
- (b) shorten any period prescribed in these rules or the rules of the court in which the proceedings are instituted; and
- (c) extend any period prescribed in these rules or the rules of the court in which the proceedings are instituted notwithstanding that that period may have elapsed.

15. Title and Commencement

1. These rules are called the Rules of Procedure for Judicial Review of Administrative Action.
2. These rules will come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

FORM A
REQUEST FOR REASONS

Legal context of this form: Section 5(1) of the Promotion of Administrative Justice Act (PAJA) permits any person who is materially and adversely affected by an administrative action to request reasons within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action. Section 5(2) of PAJA requires the person who made the decision (the administrator) to give reasons for the administrative action within 30 days of the request. These time limits may be reduced or extended by consent.

The request for reasons and variation of time must be done in accordance with rule 3 which prescribes that the request must be made in accordance with this Form.

The relevant provisions of PAJA are reproduced.

What this form is about: You need to fill in this Form if you have been materially and adversely affected by an administrative action and:

- the administrator has not given reasons and you want the reasons for the administrative action;
- you need to shorten or extend the periods contained in PAJA for reasons.

You do not have to make both requests in this form.

How do you send or deliver this request? Delivery of this Form shall be effected in one or other of the following ways: hand delivery, registered post, fax or electronic mail.

PART A: DETAILS OF REQUESTER

How to fill this part of the Form:

1. Provide full details:

Item 3. The requester must state the address for delivery of the reasons and state the manner in which the reasons must be delivered.

The requester may choose one of the following methods of delivery:

- registered post
- facsimile
- electronic mail

Item 4. You must explain why you are materially and adversely affected by the administrative action. The administrator may refuse to provide you with reasons or documents if you have not been so affected.

Item 5. It is important to state when and how you became aware of the administrative action because the administrator may refuse to give you reasons if you request them later than 90 days after you became aware of the action or might reasonably be expected to have become aware of the action.

1. If an individual-
 - Full name
 - Date of birth
 - Identity or Passport number
2. If a company, closed corporation, partnership etc-
 - Name and description
 - Registration details, if any.....
 - Persons authorised to act on its behalf
3. Contact details:
 - Telephone number
 - Email address
 - Details of legal representative (if represented)
 - Postal address
 - Manner of delivery.....

4. Explain why you are materially and adversely affected by the administrative action.

5. When and how did you become aware of the administrative action?

PART B: NAME AND DETAILS OF ADMINISTRATOR

How to fill this part of the Form:

1. These details are important because they identify who must respond to your request.

2. If you do not know the name of the person responsible for the action, then it is sufficient to give the details of the body responsible for the decision. This body may be one of the following:

- a national department
- a provincial department
- a national institution
- a government agency or institution like the CCMA, SASSA or a national council.

1. Details of administrator who took the action (if known):
 - Full name
 - Official designation
 - Work address
 - Contact details including facsimile, telephone number and email address.
2. Details of department or institution responsible for the action:
 - Name of department or institution
 - Address
 - Contact details including facsimile, telephone number and email address
 - Head of the office

PART C: DETAILS OF THE ADMINISTRATIVE ACTION

How to fill this part of the Form:

Part C of the Form must be as detailed as possible. This will assist the administrator in identifying the administrative action and will accordingly eliminate unnecessary delays.

1. Have you been informed of the administrative action? If "yes" provide:
 - The date of the administrative action
 - Any file or reference number used by the administrator
 - Any other details that will assist in identifying the administrative action
 - In terms of which law was the administrative action taken (if known)?
2. If you have not been informed of the administrative action, then provide:
 - A description of the administrative action
 - Any details that will assist in identifying the administrative action
 - Any file or reference number used in any documentation concerning the administrative action
3. Have you been provided with reasons for the administrative action referred to in this section? yes/no

PART D: REQUEST TO REDUCE OR EXTEND TIME PERIODS

How to fill in this form:

You must set out in sufficient detail the reasons why the administrator should vary the time periods stipulated in the rules of the Act.

The administrator may grant a request for the variation of the time periods taking into account the particular facts of each request.

1. Do you want to extend the time period of 90 days to make a request for reasons? Yes/No
- If yes, give the reasons for the extension

2. Do you want to reduce the time period of 90 days for the administrator to submit written reasons? Yes/No
 If yes, give the reasons for reducing the period.

Meaning of terms: Definition of important terms from the Act:

- "administrator" means an organ of state or any natural or juristic person taking administrative action
- "administrative action" means any decision taken, or any failure to take a decision, by—
 - (a) an organ of state, when—
 - (i) exercising a power in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation; or
 - (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct external legal effect, but does not include—
 - (aa) the executive powers or functions of the National Executive, including the powers or functions referred to in sections 79(1) and (4), 84(2)(a), (b), (c), (d), (f), (g), (h), (i) and (k), 85(2)(b), (c), (d) and (e), 91(2), (3), (4) and (5), 92(3), 93, 97, 98, 99 and 100 of the Constitution;
 - (ab) the executive powers or functions of the Provincial Executive, including the powers or functions referred to in sections 121(1) and (2), 125(2)(d), (e) and (f), 126, 127(2), 132(2), 133(3)(b), 137, 138, 139 and 145(1) of the Constitution;
 - (ac) the executive powers or functions of a municipal council;
 - (ad) the legislative functions of Parliament, a provincial legislature or a municipal council;
 - (ae) the judicial functions of a judicial officer of a court referred to in section 166 of the Constitution or of a Special Tribunal established under section 2 of the Special Investigating Units and Special 15 Tribunals Act, 1996 (Act No. 74 of 1996), and the judicial functions of a traditional leader under customary law or any other law;
 - (af) a decision to institute or continue a prosecution;
 - (ag) a decision relating to any aspect regarding the appointment of a judicial officer, by the Judicial Service Commission;
 - (ah) any decision taken, or failure to take a decision, in terms of any provision of the Promotion of Access to Information Act, 2000; or
 - (ai) any decision taken, or failure to take a decision, in terms of section 4(j);
- "decision" means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to—
 - (a) making, suspending, revoking or refusing to make an order, award or determination;
 - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
 - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
 - (d) imposing a condition or restriction;
 - (e) making a declaration, demand or requirement;
 - (f) retaining, or refusing to deliver up, an article; or
 - (g) doing or refusing to do any other act or thing of an administrative nature,
 and a reference to a failure to take a decision must be construed accordingly.

**FORM B
RESPONSE TO REQUEST FOR REASONS**

Legal content of this form: Section 5(1) of the Promotion of Administrative Justice Act (PAJA) permits any person who is materially and adversely affected by an administrative action to request reasons within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action. Section 5(2) of PAJA requires the person who made the decision (the administrator) to give reasons for the administrative action within 90 days of the request. These time limits may be reduced or extended by consent.

The request for reasons and variation of time must be done in accordance with Rule 3 which prescribes that the request must be made in accordance with Form A of the rules. Once the administrator receives the request in accordance with Form A, the administrator must within 10 days notify the requester whether the administrator accedes to or declines the request.

What this form is about: The administrator must fill in this Form if there has been a request in accordance with Form A.

How to send or deliver this notification: Delivery of this Form must be effected in the manner and at the delivery address provided for by the requester in Form A.

PART A: NAME AND DETAILS OF ADMINISTRATOR

How to fill this part of the Form:

1. The administrator must confirm, supplement or rectify the details of the administrator set out by the requester in Form A to the extent that the information in Form A is not correct.

Details of administrator responsible for the administrative action

Name:

Official designation:

Department or institution:

Address of the administrator or institution

Telephone numbers:

Fax number:

Email address:

PART B: RESPONSE TO REQUEST FOR REASONS

How to fill this part of the Form:

1. If the administrator accedes to the request, the administrator must:

- Furnish reasons within the period permitted in section 5(2) of PAJA; or
- Within the period varied by agreement or by a court in terms of section 9 of PAJA.

2. If the request is refused, the administrator must state which one of the following grounds for refusal is applicable:

- Written reasons already furnished to requester
- Written reasons are publicly available and the requester is informed of where and how they are available (give details as to how and where the reasons are available)
- The requester is not a person whose rights are materially and adversely affected by the administrative action
- It is reasonable and justifiable to depart from the requirement to give reasons in terms of section 5(4)

of the fact
 /Another valid ground, please give detail of the ground on which you rely

Will reasons be provided? Yes/No

If no, reasons for refusal:

If the reasons are publicly available, please give details of how and where they are available:

PART C: REQUEST TO REDUCE OR EXTEND TIME PERIODS

How to complete this part of the Form:
 The administrator may grant a request for the variation of the time periods taking into account the particular facts of each request. Such request may not be unreasonably refused.

Will the request for variation of time be agreed to?: Yes/No

If no, reasons for refusal:

FORM C
REQUEST FOR DISCLOSURE OF DOCUMENTS

Legal context of this form: The Rules that govern judicial review of administrative action allows a person intending to institute an application for judicial review to request a list and access to relevant documents that that person needs in order to apply to court for the judicial review of an administrative action. The request shall be made in accordance with this Form.

Meaning of terms: An explanation of important legal terms referred to is given at the end of this Form. The relevant provisions of PAIA are also reproduced.

What this form is about: You need to fill in this Form if you want to institute proceedings for the review of the administrative action and -

- you need disclosure and access to the documents relevant to your grounds of review in order to assist you in formulating your intended application to court.
- you need to shorten or extend the periods provided in the Rules for disclosure.

How do you send or deliver this request? Delivery of this form shall be effected in one or other of the following ways:
Delivery by hand delivery, registered post, fax or electronic mail.

PART A: DETAILS OF REQUESTER

How to fill this part of the Form:
The requester must state the address for delivery of the reasons and state the manner in which the documents must be delivered.

The requester may choose one of the following methods of delivery:

- registered post
- facsimile
- electronic mail.

You must make this request no later than 30 days from the date on which reasons are furnished under section 64 of the Act or Rule 5.

1. If a natural person-
Full name
Date of birth
Identity or Passport number
2. If a company, closed corporation, partnership etc -
Name and description
Registration details (if any)
Persons authorised to act on its behalf
3. Are you applying in your individual capacity? Yes/no

If yes, did the administrative action materially and adversely affect your rights?
.....
.....
If yes, give details of the rights affected and how they have been materially and adversely affected.
.....
.....
4. Are you applying in another capacity? Yes/No
If so, in what capacity?
5. Contact details:
Telephone number and email address
Details of legal representative (if represented)
Postal address
Manner in which the reasons should be delivered

6. Have reasons been furnished under section 5 of the Act or Rule 3? Yes/No
 If yes, when and how were reasons furnished to you

.....

.....

PART B: NAME AND DETAILS OF ADMINISTRATOR

How to fill this part of the Form:
 1. These details are important because they identify who must respond to your request.
 2. If you do not know the name of the person responsible for the action, then it is sufficient to give the details of the body responsible for the decision. That body may be one of the following:

- a national department
- a provincial department,
- a municipality

a government agency or institution like the CCMA, SASSA or a bargaining council.

1. Details of person administrator who took the decision (if known):
 - Full name
 - Official designation
 - Work address
 - Contact details including facsimile, telephone number and email address.
2. Details of department or institution responsible for action:
 - Name of department or institution
 - Address
 - Contact details including facsimile, telephone number and email address
 - Head of the office

PART C: DETAILS OF THE ADMINISTRATIVE ACTION

How to fill this part of the Form:
 Part C of the Form must be as detailed as possible. This will assist the administrator in identifying the administrative action and will accordingly eliminate unnecessary delays.

1. Have you been informed of the administrative action? If "yes" provide the:
 - Date of the administrative action
 - Any file or reference number used by the administrator
 - Any other details that will assist in identifying the administrative action
 - In terms of which law was the administrative action taken (if known)?
2. If you have not been informed of the administrative action, then provide:
 - Description of the administrative action
 - Any details that will assist in identifying the administrative action
 - Any file or reference number used in any documentation concerning the administrative action

PART D: REQUEST FOR DOCUMENTS

How to fill in this form:

The purpose of this request is to assist you in the formulation of your grounds for judicial review of administrative action and accordingly should be filled in only if you intend to institute proceedings for judicial review.

You must explain why you would have legal standing to institute proceedings for judicial review. You must also explain why you would have standing in a judicial review application.

The administrator may refuse to disclose documents if you have not exhausted an internal remedy.

For more information regarding the grounds for judicial review of administrative action, see section 6 of the Act. The grounds in section 6 are set out at the end of this form.

1. Do you intend to institute an application for judicial review? Yes/No
2. Explain why you would have standing in a judicial review application.
3. Have you exhausted any internal remedy in respect of the administrative action to be reviewed? Yes/No
If not, why has the internal remedy not been exhausted?
4. What are the grounds of the intended application for judicial review?

PART E: REQUEST TO REDUCE OR EXTEND TIME PERIODS

How to fill in this form:

You must set out in particular the reasons why the administrator should vary the time periods stipulated in the rules of the Act.

The administrator may grant a request for the variation of the time periods taking into account the particular facts of each request.

- Notes:** 180 days are calendar days.
1. Do you want to extend the period of 180 days in section 7(1) to institute proceedings for judicial review? Yes/No
If Yes, set out reasons

Part F: Request to agree to an address and manner of delivery of documents in any court application made in terms of these rules

1. Do you want the administrator to agree to an address for and mode of delivery of all documents in any court application made in terms of these rules? Yes/No.
- If any party to an application for judicial review under these Rules has consented to service or delivery of documents by fax or e-mail and any dispute arises as to the proper or timeous service or delivery of any document, the onus of proof is on the delivering party.

Part G: Request for mediation

Do you request the administrator to consent to mediation regarding your intended judicial review of the administrative action? Yes/No

Comment:
Mediation offers an alternative to litigation. You may request the administrator to consent to mediation with the help of a

	<p>neutral third party (the mediator) in order to clarify potential issues in dispute, and possibly negotiate a settlement of the case for the purpose of avoiding litigation and facilitating the speedy resolution of the grievance.</p> <p>The mediator does not decide the dispute or tell the parties what to do, but helps the parties to reach an agreement. If the matter is not resolved through mediation, the parties are entitled to proceed with their application for judicial review.</p> <p>Mediation is entirely voluntary and the party will be prejudiced for refusing to consent to mediation.</p>
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EXCERPTS FROM STATUTE

GROUNDS FOR REVIEW OF ADMINISTRATIVE ACTION:

The administrative action is reviewable if—

1. the administrator who took it—
 - was not authorised to do so by the empowering provision;
 - acted under a delegation of power which was not authorised by the empowering provision; or
 - was biased or reasonably suspected of bias;
2. a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
3. the action was procedurally unfair;
4. the action was materially influenced by an error of law;
5. the action was taken—
 - for a reason not authorised by the empowering provision;
 - for an ulterior purpose or motive;
 - because irrelevant considerations were taken into account or relevant considerations were not considered;
 - because of the bias or prejudice of another person or body;
 - in bad faith; or
 - arbitrarily or capriciously;
6. the action itself contravenes a law or is not authorised by the empowering provision; or
7. the action itself is not rationally connected to—
 - the purpose for which it was taken;
 - the purpose of the empowering provision;
 - the information before the administrator; or
 - the reasons given for it by the administrator;
8. unreasonable delay in taking the decision where—
 - an administrator has a duty to take a decision;
 - there is no law that prescribes a period within which the administrator is required to take that decision; and
 - the administrator has failed to take that decision;
9. unreasonable delay in taking the decision where—
 - an administrator has a duty to take a decision;
 - the law prescribes a period within which the administrator is required to take that decision; and
 - the administrator failed to take that decision before the expiration of that period;
10. the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function, or the action is otherwise unconstitutional or unlawful.

REMEDIES IN PROCEEDINGS FOR JUDICIAL REVIEW

(1) The court or tribunal, in proceedings for judicial review in terms of section 6 (1), may grant any order that is just and equitable, including orders:

- (A) directing the administrator:
 - (i) to give reasons; or
 - (ii) to act in the manner the court or tribunal requires;
- (B) prohibiting the administrator from acting as a particular member;
- (C) setting aside the administrative action and:
 - (i) remitting the matter for reconsideration by the administrator, with or without directions; or
 - (ii) in exceptional cases:
 - (aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or
 - (ab) directing the administrator or any other party to the proceedings to pay compensation;
 - (ac) declaring the rights of the parties in respect of any matter to which the administrative action relates;
 - (ad) granting a temporary interdict or other temporary relief; or
 - (ae) as to costs.

(2) The court or tribunal, in proceedings for judicial review in terms of section 6 (3), may grant any order that is just and equitable, including orders:

- (a) directing the taking of the depositions;
- (b) declaring the rights of the parties in relation to the taking of the depositions;
- (c) directing any of the parties to do, or to refrain from doing, any act or thing the doing or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties; or
- (d) as to costs.

FORM D

AFFIDAVIT - LIST OF DOCUMENTS DISCLOSED

Details of Administrator:

- Name:
- Official designation
- Department or institution
- Address of the administrator or institution
- Contact details of administrator including a telephone number, facsimile and electronic mail address
- Name and designation of person authorised by the administrator to depose to this affidavit

Details of the Requester

- Name:
- Address for delivery of list

I, (the person authorised by the administrator),
declare:

- (1) I have in my possession documents relevant to the grounds of the intended judicial review of the administrative action set out in Form C.
- (2) The requester will be allowed to inspect and make copies of the documents listed in Part 1 of Schedule A.
- (3) The requester may inspect and make copies (at the fees determined under the Promotion of Access to Information Act 2 of 2000) of the documents listed in Schedule A, Part 1 at the time, place and manner set out below:

.....

- (4) I object to produce the documents listed in Part 2 of Schedule A, for the following reasons:

.....

(5) I had, but no longer have in my possession, the documents listed in Schedule B hereto. These documents were last in my possession on:

.....
.....

The documents were given to:

.....
.....
.....

(6) According to the best of my knowledge and belief, I have not now, and never had in my possession, any documents relevant to the review grounds set out in Form C other than the documents listed in Schedule A and Schedule B.

(7) I have read this affidavit and declare under pain of perjury that its contents are both true and correct. (this affidavit must be attested under oath or affirmation before a commissioner of oaths)

DATED atthisday of20.....

Administrator:

FORM E
NOTIFICATION OF REFUSAL TO DISCLOSE DOCUMENTS

Legal context of this form: The Rules that govern judicial review of administrative action allows a person intending to institute an application for judicial review to request a list and access to documents that that person needs in order to apply to court for the judicial review of an administrative action. The request must be made in accordance with Form C. Once the administrator receives the request in accordance with Form C, the administrator must within 15 days furnish the list of documents or notify the requester of his or her refusal to furnish the list.

What this form is about: The administrator must complete this form if there has been a request in accordance with Form C and the administrator is refusing to provide:

- A list of documents relevant to the grounds of review of the administrative action;
- An extension of the 180 day period in section 7(1) of the Act to institute proceedings for judicial review.

How to deliver this notification: Delivery of this Form must be effected in the manner and at the delivery address provided for by the requester in Form C.

PART A: NAME AND DETAILS OF ADMINISTRATOR
How to fill this part of the Form:

1. The administrator must confirm, supplement or rectify the details of the administrator set out by the requester in Form C to the extent that the information in Form C is not correct.
2. The administrator must provide the details for accepting service of documents in any court application.

1. Details of administrator responsible for the administrative action:

- Administrator
- Official designation
- Department or institution
- Address of the administrator or institution
- Contact details of administrator including a telephone number, facsimile and electronic mail address

2. Details of address and method for accepting all documents in any court litigation regarding the administrative action.

PART B: REASONS FOR REFUSAL
How to fill this part of the Form:
 The administrator must identify the grounds for the refusal to provide a list of documents.

.....

PART C: REQUEST TO REDUCE OR EXTEND TIME PERIODS
How to fill this part of the Form:
 The administrator may grant a request for the variation of the time periods taking into account the particular facts of each request. Such request may not be unreasonably refused.
 Will the request for variation of time be agreed to?: Yes/No

<p>PART D: REQUEST FOR MEDIATION</p> <p>Do you consent to mediation? Yes/No</p>	<p>Comment:</p> <p>Mediation is entirely voluntary and no party will be prejudiced for refusing to consent to mediation.</p>
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FORM F

NOTICE OF MOTION: APPLICATION FOR JUDICIAL REVIEW

IN THE COURT

HELD AT

CASE NO. _____

IN THE MATTER BETWEEN:

_____ Applicant

And

_____ Respondent

TAKE NOTICE that the applicant intends to make application to this Court for the review of the following administrative action:

.....
.....
.....
.....
.....

and claims an order in the following terms:

.....
.....
.....
.....
.....

and take notice that the accompanying affidavit(s)

of..... will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed the following address at which delivery of all process in these proceedings will be accepted and method of delivery for all procedures and documents in these proceedings.

.....
.....
.....
.....

TAKE NOTICE FURTHER that the applicant has elected the following manner in which he or she will accept delivery of documents:

.....

TAKE NOTICE FURTHER that if you intend opposing this application, notice of intention to oppose must be given within 15 days of receipt of the notice of motion. This notice must appoint an address for and manner of delivery of all process and documents. If you provide a physical address and require that the documents be served on you by hand, the address provided must be within 25km of a Court.

TAKE NOTICE FURTHER that within 15 days after giving notice of your intention to oppose, you must deliver an answering affidavit, if any.

If no such notice of intention to oppose is given, the registrar will be requested to set the matter down for hearing ondate at.....time.

DATED atthisday of20.....

.....
Applicant or his Attorney
(address)

- To:
- (1) The Registrar of the above Court;
 - (2) The Administrator;
 - (3) Any persons against whom relief is sought; and
 - (4) Any other person necessary to join in the proceedings.

ANNEXURE D**DRAFT ADMINISTRATIVE REVIEW RULES****GOVERNMENT NOTICE****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

No. R.....

.....2013

**PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000
ADMINISTRATIVE REVIEW RULES**

The Rules Board for Courts of Law has under section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), made the rules in the Schedule.

SCHEDULE**1. Definitions**

In these rules any word or expression which has been defined in the Act bears that meaning, and unless the context indicates otherwise:

“Access to Information Act” means the Promotion of Access to Information Act 2000 (Act No. 2 of 2000);

“Act” means the Promotion of Administrative Justice Act 2000 (Act No. 3 of 2000);

“applicant” means a person, whether natural or juristic, who institutes proceedings for judicial review in terms of these rules;

“days” means court days;

“High Court Rule 6” means Rule 6 of the Uniform Rules;

“High Court Rule 53” means Rule 53 of the Uniform Rules;

“Magistrates’ Court Rule 55” means Rule 55 of the Magistrates’ Court Rules;

“Magistrates’ Court Rules” means the Rules regulating the conduct of proceedings of the Magistrates’ Courts of South Africa;

“Uniform Rules” means the Uniform Rules of the High Court.

2. Applications to the High Court

- (1) Subject to sub-rules (2) and (3) below, applications for judicial review in terms of the Act which are instituted in the High Court must be brought in terms of High Court Rule 6 or High Court Rule 53 at the election of the applicant.
- (2) Where the administrator has already provided the applicant with the record of the proceedings sought to be reviewed or set aside (whether in terms of Access to Information Act, or otherwise), an application for judicial review in terms of the Act which is instituted in the High Court shall be brought in terms of High Court Rule 6, unless there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator: in which case the applicant may proceed in terms of High Court Rule 53, at its election, but must indicate in its founding affidavit why there is reason to believe that the full record has not been provided.
- (3) Notwithstanding High Court Rule 53(1), it shall not be necessary, in any application for judicial review in terms of sub-rule (1) which is directed at a decision of a tribunal or board to cite the chairperson of such tribunal or board as a respondent.
- (4) When an application for judicial review is brought before the High Court in terms of this rule 2, the application shall, subject to what is set out in sub-rules (5) and (6) below, proceed in terms of High Court Rule 6 or High Court Rule 53, as the case may

be, and the Uniform Rules shall apply to the application to the same extent as in any application proceedings brought in terms of the relevant High Court Rule.

- (5) Where an application is brought in terms of Rule 53 the record to be produced in terms of Rule 53(1)(b) shall include all documents and reports, and any other material (in whatever form), which were before the administrator at the time of the making of the decision in question: provided that, where any documents, reports or other material have already been furnished by the administrator to the applicant (whether in terms of the Access to Information Act, or otherwise), it will be sufficient for any such documents, reports or material to be identified by the administrator in a schedule in such a way that they are readily identifiable.
- (6) Where an application is brought in terms of High Court Rule 6, the applicant shall make any record of proceedings with which it may previously have been furnished by the administrator available to every respondent which opposes the application within ten (10) days of receipt of a notice of opposition from such respondent, and the time allowed by High Court Rule 6 for a respondent to deliver an answering affidavit shall be reckoned from the date on which the record of proceedings is provided to such respondent.

3. Applications to the Magistrates' Court

- (1) Applications for judicial review brought in terms of the Act before a Magistrates' Court having jurisdiction in terms of the Act, must be brought in terms of the provisions of Magistrates' Court Rule 55 or in accordance with the procedure set out in High Court Rule 53, at the election of the applicant (High Court Rule 53 being for this purpose applicable *mutatis mutandis* to review proceedings in Magistrates' Courts).

- (2) Where the administrator has already provided the applicant with the record of the proceedings sought to be reviewed or set aside (whether in terms of Access to Information Act, or otherwise), an application for judicial review in terms of the Act which is instituted in the Magistrates' Court shall be brought in terms of Magistrates' Court Rule 55, unless there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator: in which case the applicant may proceed in terms of High Court Rule 53, at its election, but must indicate in its founding affidavit why there is reason to believe that the full record has not been provided.
- (3) Notwithstanding High Court Rule 53(1), it shall not be necessary, in any application for judicial review in terms of sub-rule (1) which is directed at a decision of a tribunal or board to cite the chairperson of such tribunal or board as a respondent.
- (4) When an application for judicial review is brought before the Magistrates' Court in terms of this rule 3, the application shall, subject to what is set out in sub-rules (5) and (6) below, proceed in terms of Magistrates' Court Rule 55 or High Court Rule 53, as the case may be, and the Magistrates' Court Rules shall apply to the application to the same extent as in any application proceedings brought in terms of the Magistrates' Court Rules.
- (5) Where an application is brought in terms of Rule 53 the record to be produced in terms of Rule 53(1)(b) shall include all documents and reports, and any other material (in whatever form), which were before the administrator at the time of the making of the decision in question: provided that, where any documents, reports or other material have already been furnished by the administrator to the applicant (whether in terms of the Access to Information Act, or otherwise), it will be sufficient for any such documents, reports or material to be identified by the administrator in a schedule in such a way that they are readily identifiable.

- (6) Where an application is brought in terms of Magistrates' Court Rule 55, the applicant shall make any record of proceedings with which it may previously have been furnished by the administrator available to every respondent which opposes the application within ten (10) days of receipt of a notice of opposition from such respondent, and the time allowed by Magistrates' Court Rule 55 for a respondent to deliver an answering affidavit shall be reckoned from the date on which the record of proceedings is provided to such respondent.

4. **Condonation**

Where an application for judicial review is brought in terms of rules 2 and 3 above, a judge or magistrate, as the case may be, has the same powers of condonation in respect of these rules as he or she would have under the Uniform Rules or the Magistrates' Court Rules.

5. **Commencement**

These rules will come into operation on ...

ANNEXURE E**DRAFT ADMINISTRATIVE REVIEW RULES****GOVERNMENT NOTICE****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

No. R.....

.....2013

**PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000
ADMINISTRATIVE REVIEW RULES**

The Rules Board for Courts of Law has under section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), made the rules in the Schedule.

SCHEDULE**1. Definitions**

In these rules any word or expression which has been defined in the Act bears that meaning, and unless the context indicates otherwise:

“Act” means the Promotion of Administrative Justice Act 2000 (Act No. 3 of 2000);

“applicant” means a person, whether natural or juristic, who institutes proceedings for judicial review in terms of these rules;

“days” means court days;

“High Court Rules” means the Uniform Rules of the High Court;

“Magistrates’ Court Rules” means the Rules regulating the conduct of proceedings of

the Magistrates' Courts of South Africa;

"Promotion of Access to Information Act" means the Promotion of Access to Information Act 2000 (Act No. 2 of 2000).

2. Applications to the High Court where no record, or an incomplete record, has been furnished

- (1) Applications for judicial review in terms of the Act which are instituted in the High Court in circumstances where no record or only part of the record has been furnished must be brought in terms of High Court Rule 6 or High Court Rule 53 at the election of the applicant.
- (2) Where an application is brought in terms of High Court Rule 53 –
 - (a) it shall not be necessary, when the application for judicial review is directed at a decision of a tribunal or board, to cite the chairperson of such tribunal or board as a respondent (notwithstanding High Court Rule 53(1));
 - (b) the record to be produced in terms of High Court Rule 53(1)(b) shall include all documents and reports, and any other material (in whatever form), which were before the administrator at the time of the making of the decision in question: Provided that, where any documents, reports or other material have already been furnished by the administrator to the applicant (whether in terms of the Promotion of Access to Information Act, or otherwise), it will be sufficient for any such documents, reports or material to be identified by the administrator in a schedule in such a way that they are readily identifiable;
 - (c) the application shall otherwise proceed in terms of High Court Rule 53, with the remaining High Court Rules applying to the application to the same extent as in any application proceedings brought in terms of that High Court Rule.

- (3) Where an application has been brought in terms of High Court Rule 6 –
- (a) the applicant shall make any portion of the record of proceedings with which it may previously have been furnished by the administrator available to every respondent which opposes the application within ten (10) days of receipt of a notice of opposition from such respondent, and the time allowed by High Court Rule 6 for a respondent to deliver an answering affidavit shall be reckoned from the date on which the record of proceedings is provided to such respondent; and
 - (b) the application shall otherwise proceed in terms of High Court Rule 6, with the remaining High Court Rules applying to the application to the same extent as in any application proceedings brought in terms of that High Court Rule.

3. Applications to the High Court where a record has been furnished

- (1) Applications for judicial review in terms of the Act which are instituted in the High Court in circumstances where the administrator has already provided the applicant with the record of the proceedings sought to be reviewed or set aside (whether in terms of the Promotion of Access to Information Act, or otherwise) shall be brought in terms of High Court Rule 6: Provided that, where there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator, the applicant may proceed in terms of High Court Rule 53, at its election, but must indicate in its founding affidavit why there is reason to believe that the full record has not been provided.
- (2) Where an application is brought in terms of High Court Rule 6 –

- (a) the applicant shall make the record of proceedings with which it was previously furnished by the administrator available to every respondent which opposes the application within ten (10) days of receipt of a notice of opposition from such respondent, and the time allowed by High Court Rule 6 for a respondent to deliver an answering affidavit shall be reckoned from the date on which the record of proceedings is provided to such respondent;
 - (b) the application shall otherwise proceed in terms of High Court Rule 6, with the remaining High Court Rules applying to the application to the same extent as in any application proceedings brought in terms of that High Court Rule.
- (3) Where an application is brought under High Court Rule 53 in terms of the proviso to rule 3(1), rule 2(2) provisions shall apply to that application.

4. Applications to the Magistrates' Court

- (1) Applications for judicial review brought in terms of the Act before a Magistrates' Court having jurisdiction in terms of the Act -
- (a) may be brought in accordance with the procedure set out in High Court Rule 53 or Magistrates' Court Rule 55 if no record or an incomplete record has been furnished by the administrator (High Court Rule 53 being for this purpose applicable *mutatis mutandis* to review proceedings in Magistrates' Courts); and
 - (b) must be brought in terms of the provisions of Magistrates' Court Rule 55, in the event of the record already having been furnished by the administrator:
Provided that, where there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator, the applicant may proceed in accordance with the procedure set out in High Court

Rule 53, at its election, but must indicate in its founding affidavit why there is reason to believe that the full record has not been provided.

- (2) When an application is brought in accordance with the procedure set out in High Court Rule 53 (whether in terms of rule 4(1)(a) or the proviso to rule 4(1)(b)) –
 - (a) the provisions of rules 2(2)(a) and (b) shall apply;
 - (b) the application shall otherwise proceed in accordance with the procedure set out in High Court Rule 53;
 - (c) except to the extent indicated in sub-rules (a) and (b) above, the Magistrates' Court Rules shall apply to the application to the same extent as in any application brought in the Magistrates' Court;
- (3) When the application is brought in terms of Magistrates' Court Rule 55 (whether in terms of rule 4(1)(a) or rule 4(1)(b)) –
 - (a) the provisions of rule 2(3)(a) shall apply, save that the reference in that rule to High Court Rule 6 should be replaced with a reference to Magistrates' Court Rule 55;
 - (b) the application shall otherwise proceed in terms of Magistrates' Court Rule 55, with the remaining Magistrates' Court Rules applying to the application to the same extent as in any application proceedings brought in terms of that Magistrates' Court Rule.

5. Condonation

Where an application for judicial review is brought in terms of rules 2, 3 or 4, a court

has the same powers of condonation in respect of these rules as a court would have under the High Court Rules or the Magistrates' Court Rules, whichever may be applicable.

6. Commencement

These rules will come into operation on **2014.**

**ANNEXURE F****GOVERNMENT NOTICE****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

No. R.....

.....2015

**PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000
ADMINISTRATIVE REVIEW RULES**

The Rules Board for Courts of Law has under section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE**Definitions**

1. In these rules any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates: -

“applicant” means a person, whether natural or juristic, who institutes proceedings for judicial review in terms of these rules;

“days” means court days;

“High Court Rules” means the Uniform Rules of the High Court;

“Magistrates’ Courts Rules” means the Rules Regulating the Conduct of Proceedings

of the Magistrates' Courts of South Africa;

"the Act" means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

"the Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Application to High Court where no record, or incomplete record, has been furnished

2. (1) An application for judicial review in terms of the Act that is instituted in the High Court, in circumstances where no record or only part of the record has been furnished, shall be brought in terms of rule 6 or 53 of the High Court Rules, at the election of the applicant, as the case may be.

(2) Where an application is brought in terms of rule 53 of the High Court Rules –

(a) it shall, despite rule 53(1) of the High Court Rules, not be necessary when the application for judicial review is directed at a decision of a tribunal or board, to cite the chairperson of such tribunal or board as a respondent;

(b) the record to be produced in terms of rule 53(1)(b) of the High Court Rules shall include all documents and reports, and any other material in whatever form, which were before the administrator at the time of the making of the decision in question: Provided that where any document, report or other material has already been furnished by the administrator to the applicant, whether in terms of the Promotion of Access to Information Act or otherwise, it will be sufficient for any such document, report or material to be identified by the administrator in a schedule in such a way that

it is readily identifiable; and

- (c) the application shall otherwise proceed in terms of rule 53 of the High Court Rules, with the relevant High Court Rules applying to the application to the same extent as in any application proceedings brought in terms of that rule.

(3) Where an application has been brought in terms of rule 6 of the High Court Rules –

- (a) the applicant shall make any portion of the record of proceedings with which it may previously have been furnished by the administrator available to every respondent who opposes the application within 10 days of receipt of a notice of opposition from such respondent, and the time allowed by rule 6 of the High Court Rules for a respondent to deliver an answering affidavit shall be reckoned from the date on which the record of proceedings is provided to such respondent; and
- (b) the application shall otherwise proceed in terms of rule 6 of the High Court Rules, with the relevant High Court Rules applying to the application to the same extent as in any application proceedings brought in terms of that rule.

Applications to High Court where record has been furnished

3. (1) An application for judicial review in terms of the Act which is instituted in the High Court, in circumstances where the administrator has already provided the applicant with the record of the proceedings sought to be reviewed or set aside, whether in terms of the Promotion of Access to Information Act or otherwise, shall be brought in terms of rule 6 of the High Court Rules: Provided

that where there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator, the applicant may proceed in terms of rule 53 of the High Court Rules, at its election, but shall indicate in its founding affidavit why there is reason to believe that the full record has not been provided.

- (2) Where an application is brought in terms of rule 6 of the High Court Rules –
 - (a) the applicant shall make the record of proceedings with which it was previously furnished by the administrator available to every respondent who opposes the application within 10 days of receipt of a notice of opposition from such respondent, and the time allowed by rule 6 of the High Court Rules for a respondent to deliver an answering affidavit shall be reckoned from the date on which the record of proceedings is provided to such respondent; and
 - (b) the application shall otherwise proceed in terms of rule 6 of the High Court Rules, with the relevant High Court Rules applying to the application to the same extent as in any application proceedings brought in terms of that rule.
- (3) Where an application is brought under rule 53 of the High Court Rules in terms of the proviso to sub-rule (1), rule 2(2) shall apply to that application.

Application to Magistrates' Court

4. (1) An application for judicial review brought in terms of the Act before a Magistrates' Court having jurisdiction in terms of the Act –

- (a) may be brought in accordance with the procedure set out in rule 53 of the High Court Rules or in terms of rule 55 of the Magistrates' Courts Rules if no record or an incomplete record has been furnished by the administrator; and
 - (b) shall be brought in terms of rule 55 of the Magistrates' Courts Rules, in the event of the record already having been furnished by the administrator: Provided that where there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator, the applicant may proceed in accordance with the procedure set out in rule 53 of the High Court Rules, at its election, but shall indicate in its founding affidavit why there is reason to believe that the full record has not been provided.
- (2) When an application is brought in accordance with the procedure set out in rule 53 of the High Court Rules, whether in terms of paragraph (a) of subrule (1) or the proviso to paragraph (b) of subrule (1) –
 - (a) rule 2(2)(a) and (b) shall apply;
 - (b) the application shall otherwise proceed in accordance with the procedure set out in rule 53 of the High Court Rules; and
 - (c) except to the extent indicated in paragraphs (a) and (b), the Magistrates' Courts Rules shall apply to the application to the same extent as in any application brought in the Magistrates' Court.
- (3) When an application is brought in terms of rule 55 of the Magistrates' Courts Rules, whether in terms of rule 4(1)(a) or (b) –

- (a) rule 2(3)(a) shall apply, but the reference in that rule to rule 6 of the High Court Rules shall be regarded as a reference to rule 55 of the Magistrates' Courts Rules; and
- (b) the application shall otherwise proceed in terms of rule 55 of the Magistrates' Courts Rules, with the relevant Magistrates' Courts Rules applying to the application to the same extent as in any application proceedings brought in terms of that rule.

Condonation

5. Where an application for judicial review is brought in terms of rule 2, 3 or 4, a court has the same powers of condonation in respect of those rules as a court would have under the High Court Rules or the Magistrates' Courts Rules, as the case may be.

Repeal

6. The Rules of Procedure for Judicial Review of Administrative Action, promulgated by Government Notice No. R. 966 of 9 October 2009, are hereby repealed.

Title and commencement

7. These Rules are called the Administrative Review Rules, 2015, and come into operation on a date to be fixed by the Minister by notice in the *Gazette*.