

REPUBLIC OF SOUTH AFRICA

SOCIAL HOUSING BILL

(As amended by the Select Committee on Public Services (National Council of Provinces))
(The English text is the official text of the Bill)

(MINISTER OF HOUSING)

[B 29D—2007]

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BILL

To establish and promote a sustainable social housing environment; to define the functions of national, provincial and local governments in respect of social housing; to provide for the establishment of the Social Housing Regulatory Authority in order to regulate all social housing institutions obtaining or having obtained public funds; to allow for the undertaking of approved projects by other delivery agents with the benefit of public money; to give statutory recognition to social housing institutions; and to provide for matters connected therewith.

PREAMBLE

WHEREAS in terms of section 26(1) of the Constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing;

AND WHEREAS in terms of section 26(2) of the Constitution, 1996, the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS in terms of section 2(1)(a) of the Housing Act, 1997 (Act No. 107 of 1997), national, provincial and local spheres of government must give priority to the needs of the poor in respect of housing development;

AND WHEREAS all three spheres of government must, in terms of section 2(1)(e)(iii) of the Housing Act, 1997, promote the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions;

AND WHEREAS all three spheres of government must, in terms of section 2(1)(e)(vii) of the Housing Act, 1997, promote higher density in respect of housing development to ensure the economical utilisation of land and services;

AND WHEREAS there is a need for social housing to be regulated;

AND WHEREAS there is a dire need for affordable rental housing for low to medium income households which cannot access rental housing in the open market,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS AND GENERAL PRINCIPLES APPLICABLE TO SOCIAL HOUSING

Definitions 30

1. In this Act, unless the context indicates otherwise—
 - “**accreditation**” means the screening, evaluation, provisional and final accreditation by the Regulatory Authority that will, amongst other things, allow a social housing institution access to grants available under the social housing programme;
 - “**approved project**” means a social housing project in a restructuring zone approved by a provincial government pursuant to an application for capital grant funding to undertake the acquisition, development, conversion or upgrading of buildings for social housing; 35
 - “**capital grant**” means the capital grant contemplated in the social housing policy;
 - “**Council**” means the Council appointed in terms of section 9; 40
 - “**Department**” means the National Department of Housing;
 - “**Director-General**” means the Director-General of the National Department of Housing;
 - “**house rules**” means the rules in relation to the control, management, administration, use and enjoyment of the property of a social housing institution; 45
 - “**Housing Act, 1997**” means the Housing Act 1997 (Act No. 107 of 1997);
 - “**institutional investment grant**” means one or more of the capacity-building grants contemplated in the social housing policy;

“institutional investment plan” means a training and skills development plan which is a component of the social housing investment plan intended to ensure that social housing institutions acquire the expertise, skills and operational capacity to manage such institutions on a sustainable basis and produce and manage approved projects; 5

“investment criteria” means the criteria against which the Regulatory Authority may make investments in social housing institutions;

“lease agreement” means the standard lease agreement utilised by a social housing institution, and includes the house rules;

“low to medium income households” means those households falling within the income categories as determined by the Minister from time to time; 10

“maladministration” means non-compliance with this Act or a situation or condition indicating substantial financial, governance or management failure;

“MEC” means the member of the Executive Council of a province responsible for housing; 15

“Minister” means the National Minister of Housing;

“Minmec” means a standing intergovernmental body consisting of at least the Minister and the MECs responsible for housing.

“National Housing Finance Corporation” means the National Housing Finance Corporation incorporated as a public company in terms of the Companies Act, 1973 (Act No. 61 of 1973); 20

“national housing programme” means a programme contemplated in section 3(4)(g) of the Housing Act, 1997;

“NHBRC” means the National Home Builders Registration Council, established under the Housing Consumer Protection Measures Act, 1998 (Act 95 of 1998); 25

“other delivery agent” means an entity other than a social housing institution which may undertake an approved project, but excludes a provincial government or a municipality;

“parliamentary committees” means the Portfolio and Select Committees of Parliament responsible for Housing. 30

“prescribe” means prescribe by the Minister by regulation or prescribe by the Regulatory Authority in its rules, as the case may be;

“provincial government” means a provincial government, acting through the MEC responsible for housing;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 35

“public funds” means the institutional subsidy or any other government subsidy utilised for creation of housing stock or any funding provided pursuant to this Act;

“qualifying criteria” means the criteria applied by the Regulatory Authority for purposes of the accreditation of a social housing institution as prescribed by the Minister; 40

“regulation” means a regulation under this Act;

“Regulatory Authority” means the Social Housing Regulatory Authority established by section 7;

“restructuring zone” means a geographic area which has been— 45

(a) identified by the municipality, with the concurrence of the provincial government, for purposes of social housing; and

(b) designated by the Minister in the *Gazette* for approved projects;

“social housing” means a rental or co-operative housing option for low to medium income households at a level of scale and built form which requires institutionalised management and which is provided by social housing institutions or other delivery agents in approved projects in designated restructuring zones with the benefit of public funding as contemplated in this Act; 50

“social housing institution” means an institution accredited or provisionally accredited under this Act which carries or intends to carry on the business of providing rental or co-operative housing options for low to medium income households (excluding immediate individual ownership and a contract as defined under the Alienation of Land Act, 1981 (Act No. 68 of 1981)), on an affordable basis, ensuring quality and maximum benefits for residents, and managing its housing stock over the long term; 55

“social housing investment plan” means a corporate plan and budget as required by the Public Finance Management Act, comprising a capital investment plan and 60

an institutional investment plan for the capital institutional and investment activity of the Regulatory Authority for purposes of the social housing programme;

“social housing policy” means the official social housing policy as determined by the Minister in terms of section 3(2)(a) of the Housing Act, 1997;

“social housing programme” means the national housing programme for social housing, instituted by the Minister in terms of section 3(4)(g) of the Housing Act, 1997; 5

“social housing regulatory plan” means a corporate plan and budget as required under section 52 of Public Finance Management Act; and

“this Act” includes the regulations, any rules, directives or instructions made under it. 10

General principles applicable to social housing

2. (1) In giving priority to the needs of low and medium income households in respect of social housing development, the national, provincial and local spheres of government and social housing institutions must— 15

- (a) ensure their respective housing programmes are responsive to local housing demands, and special priority must be given to the needs of women, children, child-headed households, persons with disabilities and the elderly;
- (b) support the economic development of low to medium income communities by providing housing close to jobs, markets and transport and by stimulating job opportunities to emerging entrepreneurs in the housing services and construction industries; 20
- (c) afford residents the necessary dignity and privacy by providing the residents with a clean, healthy and safe environment;
- (d) not discriminate against residents on any of the grounds set out in section 9 of the Constitution, including individuals affected by HIV and AIDS; 25
- (e) consult with interested individuals, communities and financial institutions in all phases of social housing development;
- (f) ensure the sustainable and viable growth of affordable social housing as an objective of housing policy; 30
- (g) facilitate the involvement of residents and key stakeholders through consultation, information sharing, education, training and skills transfer, thereby empowering residents;
- (h) ensure secure tenure for residents in social housing institutions, on the basis of the general provisions governing the relationship between tenants and landlords as set out in the Rental Housing Act, 1999 (Act No. 50 of 1999), and between primary housing co-operatives and its members as set out in the Co-operatives Act, 2005 (Act No. 14 of 2005); 35
- (i) promote—
 - (i) an environment which is conducive to the realisation of the roles, responsibilities and obligations by all role-players entering the social housing market; 40
 - (ii) training opportunities for stakeholders and interested parties who wish to enter the social housing market;
 - (iii) the establishment, development and maintenance of socially and economically viable communities to ensure the elimination and prevention of slums and slum conditions; 45
 - (iv) social, physical and economic integration of housing development into existing urban and inner-city areas through the creation of quality living environments; 50
 - (v) medium to higher density in respect of social housing development to ensure the economical utilisation of land and services;
 - (vi) the provision of social, community and recreational facilities close to social housing development;
 - (vii) the expression of cultural identity and diversity in social housing development; 55
 - (viii) the suitable location of social housing stock in respect of employment opportunities;
 - (ix) the conversion or upgrading of suitable residential and non-residential buildings for social housing use; 60

- (x) incentives to social housing institutions and other delivery agents to enter the social housing market;
 - (xi) an understanding and awareness of social housing processes;
 - (xii) transparency, accountability and efficiency in the administration and management of social housing stock; 5
 - (xiii) best practices and minimum norms and standards in relation to the delivery and management of social housing;
 - (xiv) the provision of institutional capacity to support social housing initiatives;
 - (xv) the creation of sustainable, viable and independent housing institutions responsible for providing, developing, holding or managing social housing stock; and 10
 - (xvi) the use of public funds in a manner that stimulates or facilitates private sector investment and participation in the social housing sector.
- (2) (a) The Minister may, by notice in the *Gazette*, prescribe any principle for social housing development in addition to, and consistent with, the principles set out in subsection (1). 15
- (b) The Minister must, before prescribing any principle contemplated in paragraph (a)—
- (i) cause a draft of such principle to be published by notice in the *Gazette* and invite the public to comment within 30 days after such publication; 20
 - (ii) after the period contemplated in subparagraph (i) has lapsed, submit a list of notices published in terms of subparagraph (i) to Parliament for approval.
- (c) The list of notices contemplated in paragraph (b)(i) must in respect of each notice state the number and title of the notice and the number and date of the *Gazette* in which it was published. 25
- (d) The Minister may only prescribe a principle contemplated in paragraph (b) if all comments have been considered and Parliament has approved the prescribing of the principle.

CHAPTER 2

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ROLES AND RESPONSIBILITIES

Roles and responsibilities of national government

3. (1) National government, acting through the Minister, must—
- (a) create and uphold an enabling environment for social housing, by providing the legislative, regulatory, financial and policy framework for the delivery of social housing; 35
 - (b) ensure compliance with its constitutional responsibilities;
 - (c) address issues that affect the growth, development or sustainability of the social housing sector;
 - (d) establish with provinces and municipalities institutional capacity to support social housing initiatives; 40
 - (e) institute and fund the social housing programme as a national housing programme to promote the development and supply of social housing stock for low to medium income persons;
 - (f) designate restructuring zones submitted by provinces and identified by municipalities and specifically provided for in a municipality's integrated development plan contemplated in section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and may, where appropriate, after due notice in the *Gazette*, withdraw such designation; 45
 - (g) establish capital and institutional investment grants; 50
 - (h) review annually and approve the social housing investment plan and the social housing regulatory plan;
 - (i) allocate funds from the Department's budget for the operational costs and commitments of the Regulatory Authority in accordance with the approved social housing investment plan and the social housing regulatory plan, respectively; 55
 - (j) determine norms and standards to be adhered to by provinces and municipalities; and
 - (k) monitor the Regulatory Authority.

(2) The costs and expenses connected with the implementation of this Act must be defrayed from money appropriated by Parliament to the Department for that purpose.

Roles and responsibilities of provincial government

4. (1) Every provincial government, through its MEC, must—
- (a) ensure fairness, equity and compliance with national and provincial social housing norms and standards; 5
 - (b) ensure the protection of consumers by creating awareness of consumers' rights and obligations;
 - (c) facilitate sustainability and growth in the social housing sector;
 - (d) mediate in cases of conflict between a social housing institution or other delivery agent and a municipality, if required; 10
 - (e) submit proposed restructuring zones to the Minister;
 - (f) monitor social housing projects to ascertain that relevant prescripts, norms and standards are being complied with;
 - (g) approve, allocate and administer capital grants, in the manner contemplated in the social housing investment plan, in approved projects; 15
 - (h) ensure that the process contemplated in paragraph (g) is conducted efficiently;
 - (i) administer the social housing programme, and may for this purpose approve—
 - (i) any projects in respect thereof; and 20
 - (ii) the financing thereof out of money paid into the accredited bank account of the province as contemplated in section 18(3); and
 - (j) develop the capacity of municipalities to fulfil the roles and responsibilities contemplated in section 5.
- (2) A provincial government may not interfere with the governance or management of social housing institutions. 25
- (3) Subject to section 11(3)(k), the Regulatory Authority may not interfere with the monitoring of social housing projects.

Roles and responsibilities of municipalities

5. A municipality must, where there is a demand for social housing within its municipal area, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps, within the national and provincial legislative, regulatory and policy framework— 30
- (a) to facilitate social housing delivery in its area of jurisdiction;
 - (b) to encourage the development of new social housing stock and the upgrading of existing stock or the conversion of existing non-residential stock; 35
 - (c) to provide access—
 - (i) to land and buildings for social housing development in designated restructuring zones;
 - (ii) for social housing institutions to acquire municipal rental stock; 40
 - (iii) to municipal infrastructure and services for approved projects in designated restructuring zones; and
 - (d) to the extent permitted under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), to— 45
 - (i) initiate and motivate the identification of restructuring zones; and
 - (ii) enter into performance agreements with social housing institutions.

Roles and responsibilities of other role-players

6. (1) Subject to such directives as the Minister may issue by notice in the *Gazette*, the National Housing Finance Corporation must, in respect of social housing— 50
- (a) provide access to loan funding;
 - (b) make available to the Regulatory Authority when requested thereto any financial information to enable it to assess the institutional health and financial sustainability of social housing institutions;
 - (c) facilitate or, where possible, provide access to guarantees for loan funding from financial institutions; 55

- (d) explore and support mechanisms aimed at facilitating public funding for social housing; and
 - (e) conclude an agreement with the Regulatory Authority aimed at avoiding the duplication of functions and overregulation of social housing institutions.
- (2) Other delivery agents may undertake approved projects in designated restructuring zones with the benefit of public funding to the extent determined in the social housing programme pursuant to agreements concluded with the Regulatory Authority as contemplated in sections 11(3)(d) and 19(1)(b)(i). 5

CHAPTER 3

SOCIAL HOUSING REGULATORY AUTHORITY 10

Establishment of Social Housing Regulatory Authority

7. (1) There is hereby established a juristic person to be known as the Social Housing Regulatory Authority.
- (2) The Public Finance Management Act applies to the Social Housing Regulatory Authority. 15
- (3) The Social Housing Regulatory Authority is accountable to the Minister and Parliament.

Composition of Regulatory Authority

8. (1) The Regulatory Authority consists of a—
- (a) Council, appointed in accordance with section 9; 20
 - (b) Chief Executive Officer, appointed by the Council with the approval of the Minister, responsible for the day to day management of the affairs of the Regulatory Authority;
 - (c) Corporate Services Manager, appointed by the Chief Executive Officer, responsible for financial management, including corporate management services. 25
- (2) The Chief Executive Officer and the Corporate Services Manager serve as executive members of the Council.
- (3) The Regulatory Authority acts through the Council and all acts of the Council are regarded as acts of the Regulatory Authority. 30

Appointment of Council

9. (1) The Council consists of at least seven and not more than 12 fit and proper persons who have knowledge, experience or qualifications in the field of social and rental housing or other applicable competencies for the proper governance of the Regulatory Authority. 35
- (2) (a) The Minister must, by notice in the *Gazette* as well as in the national news media, including at least two newspapers circulating throughout the Republic, call for the nomination of persons who comply with the criteria referred to in subsection (1).
- (b) The Minister must establish a selection committee consisting of not more than seven members, two of whom must be the chairpersons of the parliamentary committees or their delegates, to advise the Minister on the appointments. 40
- (3) The members contemplated in subsection (1) must be appointed by the Minister and serve in a non-executive capacity.
- (4) A member of the Council is appointed for the period determined by the Minister but not exceeding three years at a time, and may, subject to subsection (2), be 45 reappointed on the termination of that period.
- (5) The Minister may at any time terminate the membership of a member of the Council for reasons which are just and fair.
- (6) A member of the Council other than a person who is in the full-time employment of the State, is paid an allowance determined by the Minister with the approval of the 50 Minister of Finance.
- (7) A member of the Council ceases to be a member if—
- (a) he or she resigns;
 - (b) his or her estate is sequestrated;
 - (c) he or she becomes of unsound mind; 55

- (d) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (e) he or she becomes an employee or director of a social housing institution, a member of Parliament, of a provincial legislature, of a municipal council, of the Cabinet or of the Executive Council of a Province; or 5
- (f) he or she has failed to attend three consecutive meetings, without an apology or justified excuse.

(8) The Council must adopt standing instructions to ensure compliance with this Act, the Public Finance Management Act and any other legislation applicable to the Regulatory Authority. 10

(9) The Council may appoint such committees as it may consider appropriate for fulfilling its responsibilities under the Act and to ensure proper governance of the Regulatory Authority and may delegate such power or assign such functions as it may consider appropriate, including any power or function under section 12, to such committee. 15

(10) The Council must establish the necessary matters and procedures relating to meetings of the Council.

(11) The quorum for any meeting of the Council is at least 50 plus 1% of the members.

Staff of Regulatory Authority

10. (1) The staff of the Regulatory Authority consists of— 20

- (a) senior managers responsible for the necessary activities of the Regulatory Authority such as accreditation, compliance, institutional investment, capital investment of the Regulatory Authority; and
- (b) such other persons as are necessary to perform the functions incidental to the functions of the Regulatory Authority. 25

(2) The staff of the Regulatory Authority must be appointed by the Chief Executive Officer on the salary, terms and other conditions determined by the Chief Executive Officer in consultation with the Council.

Functions of Regulatory Authority

11. (1) The Regulatory Authority must, subject to the provisions of this Act— 30

- (a) promote the development and awareness of social housing;
- (b) provide advice and support to the Department in its development of policy for the social housing sector and facilitate national social housing programmes;
- (c) advise the Minister on developments in the social housing sector;
- (d) promote an enabling environment for the growth and development of the social housing sector; 35
- (e) provide best practice information and research on the status of the social housing sector;
- (f) support provincial governments with the approval of project applications by social housing institutions; 40
- (g) assist, where requested, in the process of the designation of restructuring zones;
- (h) enter into agreements with provincial governments and the National Housing Finance Corporation to ensure the co-ordinated exercise of powers; and
- (i) perform any other function or exercise any other power that the Minister may prescribe. 45

(2) The Regulatory Authority must—

- (a) annually, in accordance with the Public Finance Management Act, prepare and submit the social housing investment plan and the social housing regulatory plan to the Minister; 50
- (b) annually, in accordance with the Public Finance Management Act, prepare and submit annual financial statements and an annual report to the Minister on its performance in respect of the social housing investment plan and the social housing regulatory plan, respectively, during the preceding year; and
- (c) comply with the provisions of the Public Finance Management Act and regulations applicable to public entities. 55

(3) The Regulatory Authority must, subject to the provisions of this Act—

- (a) provide financial assistance to social housing institutions through grants to service providers accredited by the Regulatory Authority to enable them to

- develop institutional capacity, gain accreditation as social housing institutions, and to submit viable project applications;
- (b) accredit institutions meeting accreditation criteria as social housing institutions;
- (c) maintain a register of social housing institutions with the prescribed details— 5
- (i) which is open for inspection by the public at the premises of the Regulatory Authority during normal business hours against payment of the prescribed fee; and
- (ii) annually provide a copy thereof to the National Treasury and the Department; 10
- (d) enter into suitable agreements with social housing institutions and other delivery agents for the protection of the government's investment in social housing;
- (e) conduct compliance monitoring through regular inspections and enforce compliance, where necessary through the exercise of its powers set out in section 12; 15
- (f) intervene in the affairs of a social housing institution in cases of maladministration, and take the necessary steps to rectify such maladministration as contemplated in section 12;
- (g) approve, administer and disburse institutional investment grants and capital grants and obtain applications for such grants through engagement with provincial governments and municipalities; 20
- (h) consider applications from social housing institutions to dispose of properties developed, refurbished or purchased with the assistance of public funding and approve or refuse applications on the basis of compliance with the investment criteria forming part of the regulations; 25
- (i) consider applications from social housing institutions to relinquish their accreditation and be removed from the public register of social housing institutions and approve or refuse applications in accordance with the prescribed regulations and rules; 30
- (j) consider applications from social housing institutions to amend their lease agreements and approve or refuse such applications on the basis of the regulations;
- (k) instruct a social housing institution not to accept a social housing project allocated to it if— 35
- (i) the social housing institution will not be able to complete the project successfully; or
- (ii) it will undermine the social housing institution's viability; and
- (l) do all things necessary to ensure good governance and sustainability of social housing institutions. 40
- (4) The Regulatory Authority may, subject to the provisions of this Act and by notice in the *Gazette*—
- (a) make rules, not in conflict with the regulations—
- (i) giving effect and detailed content to the regulations;
- (ii) prescribing necessary standards, ratios, procedures, requirements, forms and returns; 45
- (iii) further regulating the conduct of social housing institutions;
- (iv) prescribing procedures for compliance monitoring and the enforcement of compliance, including intervention in the affairs of social housing institutions; or 50
- (v) specifically authorised or required by regulation;
- (b) prescribe, after consultation with the Minister, any other rules for the proper functioning of the Regulatory Authority; and
- (c) issue such directives, instructions and circulars as may be necessary for the exercise of its functions under this Act. 55
- (5) The Regulatory Authority may, subject to the provisions of this Act—
- (a) establish such committees as may be necessary to meet its objectives;
- (b) delegate its powers to committees and officers, on such terms and conditions as it may deem necessary, but may not divest itself of such powers;
- (c) conclude such contracts and institute such proceedings as may be necessary for the exercise of its powers and fulfilment of its functions under this Act. 60

Powers of intervention of Regulatory Authority

12. (1) If the Regulatory Authority is satisfied on reasonable grounds that there has been maladministration by a social housing institution, the Regulatory Authority must—
- (a) prepare a report to that effect;
 - (b) provide the social housing institution with a written notice of the Regulatory Authority's intention to intervene, and must specify in that notice what remedial action must be taken by the social housing institution; 5
 - (c) instruct the social housing institution to take the remedial action specified in the notice, and may request the institution to obtain specified support in order to rectify such maladministration. 10
- (2) The Regulatory Authority may make available funds through the social housing investment plan to assist in meeting the costs of any such support.
- (3) Should the social housing institution continue to resist the intervention of the Regulatory Authority or if there is no improvement in performance in respect of the matters which necessitated the intervention, the Regulatory Authority may authorise a forensic investigation into the institution's affairs and appoint a public accountant and auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), to undertake such investigation. 15
- (4) The Regulatory Authority may, after consultation with the providers of any debt finance to the institution and upon notice to affected parties, including the providers of finance to the institution— 20
- (a) apply to the High Court for the suspension of the chairperson, members of the board, manager or executive or senior staff of the institution for the period of the investigation; and
 - (b) appoint suitably qualified persons to manage the institution's affairs in their place pending the findings of the forensic audit report. 25
- (5) The forensic audit report must make a finding on whether the social housing institution has been managed in a manner which constitutes maladministration.
- (6) If the forensic audit report does not make a finding of maladministration, the suspended persons are automatically re-instated as from the date of such report and the Regulatory Authority must review its previous instructions to the institution. 30
- (7) If the forensic audit finds maladministration, the Regulatory Authority must request the members of the social housing institution to replace any suspended person or person associated with the maladministration with a person acceptable to or recommended by the Regulatory Authority. 35
- (8) If the Regulatory Authority, based on the forensic audit report, does not believe that the institution is sustainable in its current form, or if the social housing institution refuses to take the steps required under subsection (8), the Regulatory Authority may, after consultation with the providers of debt finance to the institution and upon notice to affected parties, including the providers of finance to the institution, apply to the High Court for an order placing the institution under the administration of the Regulatory Authority. 40
- (9) If the High Court grants an order placing the institution under the administration of the Regulatory Authority, the Regulatory Authority—
- (a) must manage the institution effectively and efficiently; 45
 - (b) may remove the accreditation of the social housing institution;
 - (c) may transfer the housing stock or rights of the social housing institution to another social housing institution prepared to accept such transfer on such terms and conditions as may be agreed at the time; or
 - (d) where appropriate, institute legal proceedings for the winding up of the institution. 50
- (10) Where the Regulatory Authority succeeds in restoring the viability of the institution or any part thereof, it may apply to High Court for—
- (a) the administration order to be lifted; and
 - (b) for an order authorising the Regulatory Authority to appoint suitable persons as directors and office bearers of the institution. 55
- (11) A social housing institution or any person directly affected by a decision of the Regulatory Authority, may exercise—
- (a) any rights to internal review to the Regulatory Authority in accordance with the prescribed procedures; 60
 - (b) any other rights according to law.

(12) A social housing institution for purposes of any inspection under this Act must, subject to the provisions of any applicable law and subject to such limitations as may be prescribed by the Minister, allow the Regulatory Authority—

- (a) access to its premises or any property developed, constructed or managed by it;
- (b) access to its records and documentation; and
- (c) the seizure and photocopying of such records and documentation as may be required for investigation.

(13) This section, in accordance with the provisions of section 6(2), does not apply to other delivery agents.

CHAPTER 4

SOCIAL HOUSING INSTITUTIONS

Accreditation of social housing institutions

13. (1) As from the commencement of this Act, all institutions having undertaken housing developments with the benefit of an institutional subsidy are provisionally accredited social housing institutions for purposes of this Act, subject to the provisions of this Act and the powers of the Regulatory Authority.

(2) Provisional accreditation pursuant to subsection (1) lapses on the date prescribed by the Minister which date may not exceed 12 months after the commencement of this Act.

(3) An institution wishing to carry on the business of social housing must in the prescribed format apply to the Regulatory Authority for accreditation.

(4) A municipality wishing to participate in social housing may establish an institution, which must be accredited.

(5) Subject to any conditions prescribed by the Minister, a social housing institution must be a company registered under the Companies Act, 1973 (Act No. 61 of 1973), or a co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other form of institution acceptable to the Regulatory Authority.

(6) Should a social housing institution comply with all the qualifying criteria, it shall be accredited as a social housing institution in terms of this Act and its details must be entered in a register kept for this purpose by the Regulatory Authority.

(7) Should a social housing institution at any stage fail to comply with the qualifying criteria, the Regulatory Authority may—

- (a) exercise the powers referred to in section 12; and
- (b) in its discretion and as determined in the regulations and upon notice to affected parties—
 - (i) recover any monies granted to the social housing institution in terms of the social housing programme;
 - (ii) withhold any further grants;
 - (iii) stipulate conditions relating to reforms to be undertaken by the social housing institution or improvements to be effected by it for the payment of any grants; and
 - (iv) where necessary, intervene in accordance with the provisions of section 12.

(8) A social housing institution must comply with all the provisions of the Act in terms of which it was established and any other applicable law, and any contravention of the said provisions may result in its accreditation being withdrawn by the Regulatory Authority.

(9) The lapsing of provisional accreditation, or the withdrawal of accreditation in terms of this Act, does not preclude the Regulatory Authority from exercising any of its powers under this Act.

Functions of social housing institutions

14. (1) Social housing institutions must—

- (a) comply on an ongoing basis with the criteria which qualify them for accreditation;
- (b) acquire, develop, manage, or both develop and manage, approved projects primarily for low income residents with the joint support of local authorities;

- (c) promote the creation of quality living environments for low income residents;
- (d) re-invest operational surpluses generated as a result of funding provided in terms of the social housing programme, in further approved projects;
- (e) consult with municipalities with a view to developing social housing stock;
- (f) enter into and comply with annual performance agreements with municipalities on approved projects in their areas of jurisdiction; 5
- (g) inform residents on consumer rights and obligations in respect of social housing;
- (h) observe and operate within government policy on social housing;
- (i) seek permission from the Regulatory Authority for the sale of any properties in their ownership on the basis that such sale will not endanger the security of tenure of existing residents meeting the conditions of their tenancy and that the grant component of the proceeds receipts from such sale will be used to provide social housing; 10
- (j) seek permission from the Regulatory Authority for any merger or separation of social housing institutions; 15
- (k) seek permission from the Regulatory Authority for any changes to lease agreements or other prescribed documentation; and
- (l) seek permission from the Regulatory Authority for any prescribed matter.
- (2) Social housing institutions must at all times function in compliance with— 20
 - (a) the provisions of this Act;
 - (b) the provisions of the social housing programme and guidelines of the government;
 - (c) the ministerial national norms and standards in respect of permanent residential structures; 25
 - (d) the national building regulations under the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);
 - (e) the technical standards imposed by the National Home Builders Registration Council established under the Housing Consumer Protection Measures Act, 1998 (Act No. 95 of 1998); 30
 - (f) any agreement entered into between the Regulatory Authority and the social housing institution;
 - (g) the provisions of the Rental Housing Act, 1999 (Act No. 50 of 1999); and
 - (h) any other law.
- (3) A social housing institution must— 35
 - (a) on an annual basis submit its draft lease agreement as well as any prescribed documents and changes thereto for approval to the Regulatory Authority; and
 - (b) ensure that the content of its lease agreement and proposed changes are communicated to residents and are strictly adhered to by all parties.

Management of social housing institutions 40

- 15. (1) Each accredited social housing institution must—**
- (a) within 90 days of it having attained accreditation, prepare and submit to the Regulatory Authority for approval a corporate governance policy which must address at least—
 - (i) risk management and risk strategy policies with regard to, amongst other things, development, operational, financial, property management, human resource, market, institutional and compliance risks; 45
 - (ii) internal control and audit models;
 - (iii) all the requirements of the regulations; and
 - (iv) any other aspect that may be prescribed; 50
 - (b) appoint a competent manager who, through the assistance and support of competent personnel and systems—
 - (i) is responsible for the day to day management of the social housing institution and the housing stock developed through funding obtained in terms of the social housing programme; 55
 - (ii) is responsible for reporting to the Regulatory Authority in terms of this Act;
 - (iii) is the designated link between the Regulatory Authority and the social housing institution in respect of compliance with this Act or any regulations promulgated in terms of this Act; and 60
 - (iv) must ensure accreditation compliance; and

- (c) submit to the Regulatory Authority a copy of its performance agreement with the municipality.
- (2) The appointment of the manager referred to in subsection (1)(b) must be in writing and a copy of the letter of appointment must be sent to the Regulatory Authority within 21 days of such appointment. 5
- (3) (a) Any vacancy in the office of a manager must, within three months of such vacancy occurring, be filled, or all reasonable steps must have been taken to fill such vacancy, and a copy of the letter of appointment must be sent to the Regulatory Authority in terms of subsection (2). 10
- (b) During the period of such vacancy the social housing institution must ensure that a competent person acts as manager.
- (4) The social housing institutions must consult with the tenants and keep them informed of any rules and prescriptions regarding the management of the social housing units.

Reporting by social housing institutions 15

- 16. (1) A social housing institution must report to the Regulatory Authority—
 - (a) at such intervals and in such detail as may be prescribed by regulation; and
 - (b) annually, within three months of the financial year-end.
- (2) The documentation to be provided in terms of subsection (1)(b) must include the social housing institution's annual report and audited financial statements. 20
- (3) A social housing institution must make available to the Regulatory Authority any information reasonably requested of it in the carrying out of its regulatory and investment functions.
- (4) The Regulatory Authority must, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), maintain the confidentiality of business sensitive 25 information passed to it under regulatory confidence.

CHAPTER 5

GENERAL PROVISIONS

Just administrative action

- 17. Any decision taken under this Act must comply with the principles of just administrative action. 30

Financing of social housing

- 18. (1) Funds for the social housing programme and for financing the implementation of the social housing programme and any relevant provincial housing programme consistent with national housing policy must be made available from— 35
 - (a) money earmarked for that purpose from the Department's annual budget; and
 - (b) money allocated to a province for that purpose in terms of the annual Division of Revenue Act.
- (2) Criteria for—
 - (a) the earmarking of money in terms of subsection (1)(a) must be determined by the Minister after consultation with Minmec; 40
 - (b) the allocation of money in terms of subsection (1)(b) must be determined by the Minister in consultation with Minmec.
- (3) Monies made available as contemplated in subsection (1) may be utilised only for the purposes set out in this Act and the annual Division of Revenue Act, as the case may 45 be.

Regulations

- 19. (1) The Minister, by notice in the *Gazette* and after consultation with Parliament—
 - (a) must make regulations prescribing—
 - (i) any matter required to be prescribed by regulation under this Act; 50
 - (ii) a code of conduct, the investment criteria and the qualifying criteria for social housing institutions;
 - (b) may make regulations—

- (i) in respect of the required provisions of the agreements between the Regulatory Authority and other delivery agents;
- (ii) in respect of the required provisions of the agreements between the Regulatory Authority and provincial governments;
- (iii) in respect of the required provisions of the agreements between the Regulatory Authority and the National Housing Finance Corporation; or 5
- (iv) any other ancillary or administrative matter that is necessary to prescribe for the proper implementation or administration of this Act.

(2) The Regulations may provide for offences in cases of contravention thereof or non-compliance therewith, and for penalties not exceeding a fine or imprisonment for a 10 period not exceeding six months or to both a fine and such imprisonment.

Short title and commencement

20. This Act is called the Social Housing Act, 2007, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOCIAL HOUSING BILL, 2007

1. BACKGROUND

The Social Housing Bill, 2007, has been developed to provide a legal framework for the regulation of the social housing sector. The social housing sector is currently not being regulated by any dedicated legislation, and this has complicated and impaired growth in the sector. It is hoped that the legislative and regulatory framework will ensure a viable and sustainable social housing sector, which will also contribute to the overall functioning of the housing sector.

2. OBJECTS OF BILL

In order to achieve its aim, the Bill has been structured as follows:

2.1 Definitions and general principles applicable to social housing

In Chapter 1 of the Bill, the terminology used in the draft legislation is defined, and provision is also made for the general principles applicable to social housing. The general principles have to a large extent been gleaned from the approved national social housing policy as well as the principles contained in section 2 of the Housing Act, 1997 (Act No. 107 of 1997). These principles are binding on the national, provincial and local spheres of government.

2.2 Roles and responsibilities of government and other role-players

Chapter 2 deals with the roles and responsibilities of the three spheres of government, the National Housing Finance Corporation and other delivery agents.

Whilst national government is mostly responsible for creating and upholding a sustainable environment for social housing by inter alia instituting and financing a social housing programme, provincial government will be responsible for administering the national housing programme applicable to social housing, including the approval and administration of grant funding.

Municipalities are tasked with facilitating social housing delivery in their areas of jurisdiction, while the National Housing Finance Corporation will participate in social housing development by improving access to loan funding.

Entities who are not accredited social housing institutions may partake in approved projects based on the terms of agreement entered into by the entity and the Social Housing Regulatory Authority.

2.3 Social Housing Regulatory Authority

The Bill deals with the establishment and functioning of the Social Housing Regulatory Authority as a statutory body. The Regulatory Authority shall consist of a Council, a Chief Executive Officer, a Corporate Services Manager and such other staff as are necessary for the day to day functioning of the Regulatory Authority. The powers and functions of the Regulatory Authority are, inter alia—

- (a) to regulate the social housing sector;
- (b) to accredit social housing institutions;
- (c) to advise the Minister on matters pertaining to social housing;
- (d) to administer and disburse capital and institutional grants;
- (e) to conduct compliance monitoring via inspections etc; and
- (f) to intervene in the day to day management of social housing institutions in cases where regular inspections have identified maladministration.

2.4 Social Housing Institutions

Chapter 4 makes provision for the accreditation and functioning of social housing institutions. Only accredited social housing institutions may participate in the national housing programme for social housing and thus derive any benefits thereof. The Bill proposes strict criteria within which these institutions must operate, such as adherence

to all applicable or relevant legislation and the approval of a corporate governance policy by the Social Housing Regulatory Authority.

2.5 General provisions

Lastly, Chapter 5 of the Bill makes provision for the funding of the social housing programme by the Minister, and enables the Minister to make regulations on a variety of issues.

3. PERSONS CONSULTED

3.1 A task team consisting of provincial departments, metro's and other stakeholders participated in the preparation of the official policy and guidelines which culminated in this Bill.

3.2 Consultation also took place with—

- * the Social Housing Foundation;
- * National Treasury;
- * the Department of Public Service and Administration;
- * the National Housing Finance Corporation;
- * Dutch and United Kingdom social housing experts; and
- * the National Association of Social Housing Organisations.

3.3 Furthermore, the Bill was published for comment in the *Gazette* on 3 November 2006.

4. IMPLICATIONS FOR PROVINCES

MEC's and provincial housing departments will be responsible for administering the social housing programme to the extent set out in the programme and the provisions of this Bill.

5. FINANCIAL IMPLICATIONS FOR STATE

The 2006 Housing Vote has allocated the following medium-term expenditure estimates to the social housing programme:

- | | |
|-----------|--------------|
| – 2006/07 | R110 million |
| – 2007/08 | R160 million |
| – 2008/09 | R240 million |

These funds will be utilised for, inter alia, Regulatory Authority staff costs, grant funding and operational costs.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Housing are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within functional areas listed in Schedule 4 to the said Constitution, namely “Housing”.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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