



rural development & land reform

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REGISTRAR'S CIRCULAR 17 of 2015 **TRANSITIONAL MEASURES IN TERMS OF SPLUMA**

1. Purpose

This circular is issued as a guideline to deal with transitional measures in terms of the Spatial Planning and Land Use Management Act, Act 16 of 2013 (hereafter referred to as SPLUMA).

2. Annexure A

SPLUMA does not provide sufficient detail and guidance on transitional arrangements with regard to the administrative actions required to be taken by municipalities to finalize all types of applications. Annexure "A" attached hereto was issued by the Department of Rural Development and Land Reform as a guideline to deal with all transitional measures.

This circular will come into operation on 01/07/2015 (in accordance with SPLUMA which will come into operation on 1/07/2015 as per gazette notice number 38828 published on 27/05/2015).

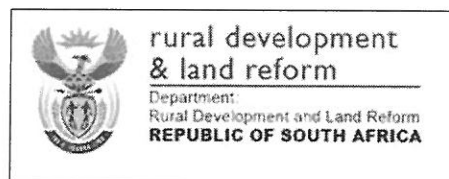
REGISTRAR OF DEEDS
PRETORIA

Date: 01/07/2015

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, ACT 16 of 2013

Guideline on Transitional Measures

A guide for Provinces / Municipalities



June 2015

USE OF THIS GUIDELINE

The Department of Rural Development and Land reform has developed this Guideline in conjunction with key stakeholders to provide guidance to Provinces and Municipalities to develop Provincial specific Transitional Arrangements. The principles as adopted in this document are administrative in nature and will assist in clarifying some of the uncertainties around transitional arrangements.

The Department is in the process of getting further legal clarity on a number of related issues and will provide further guidance on matters regarding Transitional Measures. This document does not deal with the matter of Appeals and further guidance in this regard will be provided shortly.

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1. BACKGROUND

The Spatial Planning and Land Use Management Bill was assented to by the President on 2 August 2013, and gazetted on 5 August 2013 as the Spatial Planning and Land Use Management Act No. 16 of 2013 (hereinafter referred to as "SPLUMA"). The SPLUMA will come into operation on the 1st of July 2015 as per gazette notice number 38828 published on 27 May 2015.

The introduction of the SPLUMA has heralded in a new dispensation for planning in South Africa. SPLUMA creates a coherent regulatory framework for spatial planning and land use management for the entire country that redresses the inefficiencies of the past planning and regulatory systems where spatial planning and land use management is concerned. The Act promotes consistency and uniformity in its approach to Spatial Planning and specifically in its approach to land use management through setting parameters for application procedures and decision-making by authorities responsible for land use decision and land development applications.

SPLUMA has brought fundamental changes in spatial planning and land use management. It calls for the re-engineering of municipal planning processes whereby the land use management system of a municipality is rebooted to enhance the manner in which municipalities have been performing spatial planning, land development and land use management duties. The Regulations to the SPLUMA have been approved and gazetted by the Minister on 23 March 2015 and will by the coming into operation of SPLUMA on 1 July 2015, simultaneously come into operation on the same date

2. PROBLEM STATEMENT

Based on legislative principles, SPLUMA contains transitional provisions which are captured in Section 60 which *inter alia* provides:

- A general statement of validity of actions taken in terms of any other National, Provincial and Local Government Legislation.
- For the finalization of applications that were submitted in terms of the Development Facilitation Act, 1996 (the "DFA") to be repealed by SPLUMA; and
- Substitution of functionaries contained in the DFA by officials within the employ of Municipalities.

However, in consultation with Provinces and Municipalities it was generally agreed that this section does not provide sufficient detail and guidance on transitional arrangements with regard to the administrative actions required to be taken by municipalities to finalise all types of applications.

SPLUMA and its Regulations also does not provide guidance on how to deal with the possible lacuna created by delays in the adoption of Spatial Planning and Land Use Management By-laws ("LUM By-laws") by municipalities and the status of provincial legislation that are not repealed by SPLUMA or to be repealed prior to the enactment of Municipal LUM By-laws

3. PURPOSE OF THESE GUIDELINES

The purpose of these guidelines is to provide guidance to municipalities and provinces on possible scenarios that relate to the transitional arrangements that may be used for the transitional period between when the SPLUMA comes into operation and the finalization and adoption of municipal LUM by-laws.

This document should be utilized as a guide by a municipality to deal with applications that fall into categories of applications as highlighted in Section 4 of this document

4. LEGISLATIVE OVERVIEW AND CATEGORIES OF APPLICATIONS

The following section highlights planning legislation that currently exists across the country and their status as well as identifying categories of applications that this guideline attempts to address.

4.1 Summary of Planning Legislation per Province

Below is a summary of Provincial Legislation and their current status and post 01 July 2015:

Table 1: Summary of Provincial Legislation

PROVINCE	LEGISLATION	CURRENT STATUS
Eastern Cape	Development Facilitation Act	Not in Use – Outstanding Applications to be finalised
	Land Use Planning Ordinance No. 15 of 1985	Applicable to white towns in EC
	Black Administrations Act	In Use
	Amended R188 and R 293	In Use

	Ciskei Land Regulations Act	In Use
	Less Formal Township Establishment Act No. 113 of 1991 (LeFTEA)	In Use- Decision making by Provincial housing
	Removal of Restrictions Act	Rezoning Applications
	Physical Planning Act	Used for using land use permits in Rural areas
Free State	Free State Townships Ordinance 9 of 1969	In Use
	Removal of Restrictions Act 84 of 1967	Rezoning Applications
	Black Communities Development Act (Annexure 'F')	In Use
Gauteng	1965 Ordinance	In Use
	1986 Ordinance	In Use
	Gauteng Removal of Restrictions Act	In Use Municipal Decision Making
	Gauteng Transport Infrastructure Act	In Use
	Division of Land Ordinance (former Transvaal)	In Use
	Black Communities Development Act	In Use
	Proclamation R293 and R188	In Use in former homeland areas
	DFA	Not in Use – Outstanding Applications to be finalised
Kwa Zulu Natal	Kwa Zulu Planning and Development Act	In Use
	LeFTea	Not In Use
	Remnants of Natal Ordinance	Not In Use
	Remnants of DFA	Not In Use
Limpopo	1994 Provincial Ordinance	In Use
	LeFTEA	In Use - Assigned to Province
	Removal of Restrictions	In Use - Assigned to Province
	Proclamation R293 and R188	In Use

	DFA	Not in Use – Outstanding Applications to be finalised
Mpumalanga	DFA	Not in Use – Outstanding Applications to be finalised
	1994 Provincial Ordinance	In Use
	Proclamation R293 and R188	In Use – Former Homelands
	LeFTEA	In Use in certain areas
	Physical Planning Act	Used for issuing land use permits in Rural areas
North West	Town Planning and Townships Ordinance (Traansvaal), 15 of 1986	In Use
	Land Use Planning Ordinance, 15 of 1985	In Use
	Division of Land Ordinance, 20 of 1986	In Use
	Removal of Restrictions	In Use – Assigned to Province
	Amended R188 and R 293	Suspended NW Local Government Law Amendment Act
	Physical Planning Act	Used for using land use permits in Rural areas
Northern Cape	Northern Cape Planning and Development Act	In Use
Western Cape	LUPO	In Use
	LUPA	To be introduced incrementally

Over and above the legislation that is applicable to each province, there are national pieces of legislation that will not be covered by these guidelines since they are not repealed through SPLUMA, but which may affect the land use management processes within the Municipalities. These however cannot be dealt with without due consideration of the National and Provincial Departmental impacts and shall be dealt with in due course.

4.2 Categories of Applications

The table below identifies possible categories of applications that need to be addressed in terms of these guidelines:

Table 2: Categories of Applications

LEGISLATION	PROVINCIAL APPLICABILITY	COMMENTS
Development Facilitation Act, Act 67 of 1995	GP, NW, LIMPOPO, EC, MPM	See Sec 60(2) and (3) of SPLUMA
Township Ordinance (All variations as highlighted in Table 1)	GP, NW, LIMPOPO, EC, FS, MPM	Applications submitted before 01 July 2015
Land Use Planning Ordinance	WC, EC, NW	See provincial specific transitional measures (WC)
NC Planning and Development Act	NC	In use
KZN Planning and Development Act	KZN	Sections of PDA on Appeals found unconstitutional
Land Use Planning Act	WC	-
Removal of Restrictions Act, Act 84 of 1967	National	Delegated/Assigned to certain provinces. Provinces to verify whether this power has been assigned or delegated (This has an impact in law).
Physical Planning Act, Act 88 of 1967	National	Still in use in some provinces for rural areas
Less Formal Township Establishment Act, Act 113 of 1991	National	Still in Use in certain parts of the country – Administered by Provinces (Assigned/Delegated)

Municipal Bylaws adopted and gazette prior to 01 July 2015	National	Where Municipal Bylaws are adopted and Gazetted prior to 01 July 2015 all applications must be processed in terms of the Bylaw
Municipal Bylaws not adopted and gazette by 01 July 2015	National	Where Municipal Bylaws are not adopted and Gazetted prior to 01 July 2015 all applications must be processed in terms of guideline contained in Table 3 below.

5. FRAMEWORK FOR TRANSITIONAL MEASURES

The table below provides a guiding framework on how to deal with the categories of applications as detailed above as transitional measures once the SPLUMA comes into operation.

The following must be noted:

- The SPLUMA only repeals the legislation as listed in Schedule 3 and cannot repeal any provincial legislation i.e. Ordinances or those National pieces of legislation administered by provinces, e.g. The Removal of Restrictions Act, 1967, Less Formal Township Establishment Act and the Physical Planning Act that have been assigned to Provinces.
- Section 60 of SPLUMA does not specifically deal with “applications” but it states that anything “validly done” in terms of other National, Provincial or Local Government legislation remains “valid”, which on agreed interpretation means that applications submitted in terms of existing legislation prior to the commencement of SPLUMA can be completed in terms of that specific legislation including those institutions that are established in terms of the legislation e.g applications lodged prior to 1 July 2015 to the Townships Boards.
- Applications submitted in terms of any legislation that are repealed by SPLUMA in terms of Section 59 read with Schedule 3 prior to 01 July 2015 (except the DFA applications) can be finalized in terms of the repealed legislation as contemplated in Section 12 of the Interpretation Act, No 33 of 1957

- Sec 2(2) of SPLUMA restricts the applicability of alternate or parallel mechanism, institutions or system that are inconsistent with the Act and comes into effect on the 1st of July 2015. What is important is the interpretation of the term consistency. It is possible that certain sections of existing legislation are inconsistent e.g. decision making bodies at provincial level whilst some sections may be consistent e.g. sections dealing with receipt of applications, processing and the decision making by the Municipality
- SPLUMA and its Regulations does not provide sufficient guidance to submit a land development application to a municipality and specifically in terms of Regulation 14 ,15 and 16 Municipalities must at least determine the form and manner of the submission of land development applications.
- Provincial variations will exist and this document must be utilized as a guide until provincial specific transitional measures are available

Table 3: Guideline Framework for Transitional Measures

LEGISLATION	TIMEFRAME	ADMINISTRATIVE ACTION	NOTES
1. Development Facilitation Act Applications	DFA Applications submitted prior to June 2012	<ul style="list-style-type: none"> Provinces to catalogue all existing applications and their current status (this should include identifying is the current stage of the application, the municipality under which jurisdiction the application falls, provide a summary of outstanding actions where an application was approved prior to June 2012). 	<ul style="list-style-type: none"> As per Sec 60 (2) (a) (b) (c) of SPLUMA Matters of Extension of timeframes, amendments to conditions etc. to be determined by Municipality Applications can be finalized by Municipalities in terms of relevant DFA regulations where necessary with specific reference to the substitution of functionaries in the DFA as contemplated in section 60(2) and 60(3) of SPLUMA
		<ul style="list-style-type: none"> Provinces to write to Municipalities and provide a report on the applications in terms of the following: status and validity of each application. 	
		<ul style="list-style-type: none"> Provinces to hand over these applications and all relevant documentation pertaining to these applications (files) to the Municipalities under whose jurisdiction the application falls. 	
		<ul style="list-style-type: none"> Provinces must retain duplicate copies of all files handed to municipalities 	
		<ul style="list-style-type: none"> Provinces to inform applicants in writing of the handing over of application to Municipality X 	
		<ul style="list-style-type: none"> Provinces to hand over these applications within 2 months of the 1st of July 2015 	
		<ul style="list-style-type: none"> The Minister will gazette timeframes for completion of DFA applications as soon as possible which period should not exceed a 	

LEGISLATION	TIMEFRAME	ADMINISTRATIVE ACTION	NOTES
2. Ordinance Applications (All Variations)		period of 24 months for the finalisation of these applications, failing which new applications in terms of current legislation should be submitted.	
		<ul style="list-style-type: none"> Provinces to submit all applications to the Municipal Managers of the identified Municipalities. 	
		<ul style="list-style-type: none"> Municipalities to acknowledge receipt of these applications 	
		<ul style="list-style-type: none"> Municipalities to dispose of these applications in terms of Sec 60 (2) and (3) of SPLUMA 	
	Pre 01 July 2015	<ul style="list-style-type: none"> All "valid" applications submitted prior to 1 July 2015 to be finalized in terms of Ordinance and decision made by the "decision making authority" as contemplated in section 60 read with Section 12 of the Interpretation Act, 33 of 1957 	<ul style="list-style-type: none"> The SPLUMA will come into effect on the 1st of July 2015 and section 2(2) of SPLUMA will become applicable on this date. The coming into operation of a legal statute cannot be applied retrospectively.
	Post 01 July 2015	<ul style="list-style-type: none"> No law or sections of a law that is inconsistent with the provisions of SPLUMA may be utilized to process an application Provinces and Municipalities should jointly and severally do an analysis of the legislation which they administer that are not consistent in terms of section 2(2) with the understanding that local government in terms of its constitutional mandate must be 	<ul style="list-style-type: none"> Sec 2(2) of SPLUMA allows for a parallel mechanism provided it is not inconsistent with SPLUMA. When LUM By-laws have been enacted, provincial legislation that prescribes a parallel system will in

LEGISLATION	TIMEFRAME	ADMINISTRATIVE ACTION	NOTES
		developmental in nature	<p>view of Regulation 14, 15 and 16 not be consistent and the by-laws will then prevail</p> <ul style="list-style-type: none"> Nothing in these guidelines should be interpreted as implying the continued use of provincial legislation once by-laws are enacted.
3. Applications in terms of Legislation repealed by SPLUMA (LeFTEA, Removals of Restrictions and Physical Planning Act)	Pre 01 July 2015	<ul style="list-style-type: none"> Application to be finalized in terms of LeFTEA / Removals of Restrictions / Physical Planning Act and decision made by relevant Land Use Regulator (to be determined by each province) 	<ul style="list-style-type: none"> In terms of Sec 12 of the Interpretation Act, 33 of 1957
	Post 1 July 2015	<ul style="list-style-type: none"> No Application can be submitted in terms of any Act that has been repealed by SPLUMA, with the exception of laws that were assigned to the provincial sphere of government. 	<ul style="list-style-type: none"> Provinces to note that where certain National legislation has been assigned to Provinces they remain in effect until repealed by the affected Province.
4. Legislation not Repealed By SPLUMA	Pre 01 July 2015	<ul style="list-style-type: none"> Applications that have been submitted in terms of old order legislation must be finalized in term of that legislation (Black Communities Development Act; Proclamation R293 and R188 etc) 	<ul style="list-style-type: none"> Provinces to further detail provincial specific transitional measures to deal with these applications since there are too many variables to be addressed
	Post 01 July 2015	<ul style="list-style-type: none"> Applications that have been submitted in terms of old order legislation can be finalized in term of that legislation (Black 	

LEGISLATION	TIMEFRAME	ADMINISTRATIVE ACTION	NOTES
		Communities Development Act; Proclamation R293 and R188 etc) only in instances where those provision are not inconsistent with SPLUMA.	through National Guidelines.
6. Municipal Bylaws	Adopted and Gazetted by 01 July 2015	<ul style="list-style-type: none"> Applications to be finalized in terms of Municipal By Laws 	
	Adopted and Gazetted after 01 July 2015 (where a possible lacuna may exist between the 01 July and the adoption and gazetting of a municipal bylaw)	<ul style="list-style-type: none"> Applications to be received in terms of Ordinance, KZN PDA, NC PDA, LUPO etc. Designated Municipal official to check application and ensure all requirements have been received as contemplated in section 60(2) and (3). Designated Municipal Official to submit and process applications through the systems of the Municipality as may be required or established. Section 60(2) and (3) does not substitute the Tribunal with an MPT, however if the authorized official or MPT in terms of SPLUMA have been appointed or constituted they can be used for consideration in line with the categorization of applications and delegations as approved by municipal councils. 	<ul style="list-style-type: none"> Application must be received and dealt with by Municipalities in a manner that is not inconsistent to SPLUMA This will require an analysis by Provinces and Municipalities on the provisions relating to land development applications within the relevant legislation.

7. CONCLUSIONS

It should be noted that although this document has attempted to provide guidance to Municipalities and Provinces on how to deal with the Transition into a new planning system, the complexities in each Province needs to be addressed at Provincial level. This guide should further inform Provincial specific transitional measures that should be develop by Provinces.

Whilst the legality of some of these guiding provisions may be contested, the Department is of the view that these guidelines will assist with the practical facilitation of a smoother transition given the delays in the adoption of Bylaws at municipal level. A transitional measure remains in place for a period of time until the requirements for the new system is in place. This implies that once a municipality has a bylaw in place the issue of transitional measures will not be required in that specific area.

It is reiterated that this document is not intended as a legal opinion or prepared in anticipation of litigation, but to provide a practical guidance to municipalities for purposes of implementation of SPLUMA. Implementation and interpretation should not lead to absurdity in crafting transitional guidelines but it should resonate the obligations of municipalities to promote development and provide service delivery.

The Minister in terms of Section 9 of the SPLUMA will also in the near future finalise work on addressing issues of non-compliance by municipalities to provisions of the Act. Municipalities must however note that non-compliance to provisions of the SPLUMA will lead to legal challenges and, the validity of decisions taken by any established institution that is inconsistent with provisions of the Act, can be legally challenged. This will lead to unnecessary expenditure and in certain cases legal action that will cost the municipality large sums of money to defend in a court of Law.