

LOCAL GOVERNMENT.

9° Elizabeth II., No. LXXXIV.

No. 84 of 1960.

AN ACT to Consolidate Certain Acts relating to Local Government by repealing those Acts and re-enacting them with Amendments in order to provide for the Good Rule and Government, Convenience, Comfort, and Safety of Persons in Municipal Districts.

Cf. No. 18 of 1939, ss. 15 and 16; and N.S.W. L.G. Act, long title.

[Assented to 20th December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

Part I.

1. This Act may be cited as the *Local Government Act, 1960*.

Short title.

MARGINAL REFERENCES.

The abbreviations—

"M.C. Act" refers to the Municipal Corporations Act, 1906, as amended;
 "R.D. Act" refers to the Road Districts Act, 1919, as amended; and
 "N.S.W. L.G. Act"; "S.A. L.G. Act"; "Vic. L.G. Act"; "Q. L.G. Act," and
 "Tas. L.G. Act" refer respectively to the Local Government Acts of
 the respective States indicated.

Part I.

Ss. 2, 3.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by Proclamation, being a date not later than the first day of July next following the passing of the Act.

Arrange-
ment.

3. The arrangement of this Act is as follows:—

PART I.—PRELIMINARY, ss. 1 to 8.

PART II.—CONSTITUTION OF MUNICIPALITIES, ss. 9 to 11.

PART III.—CONSTITUTING AND ALTERING THE CONSTITUTION OF MUNICIPALITIES, ss. 12 to 34.

Division 1.—Powers of the Governor, s. 12.

Division 2.—New Municipalities, s. 13.

Division 3.—Union of Municipalities, ss. 14 to 16.

Division 4.—Dissolution of Municipalities, s. 17.

Division 5.—Severance from Municipal Districts, s. 18.

Division 6.—Annexation to Municipal Districts, s. 19.

Division 7.—Division of Municipal Districts and Alteration in the Council, ss. 20 to 22.

Division 8.—Petitions, ss. 23 to 30.

Division 9.—Appointment of Commissioner where no Council, ss. 31 to 34.

PART IV.—THE MUNICIPAL COUNCIL, ss. 35 to 154.

Division 1.—Qualification of Mayor, or President, and Councillors, ss. 35 to 40.

Division 2.—Terms of Office of Mayors, Presidents and Councillors, ss. 41 to 43.

Division 3.—The Electoral Roll, ss. 44-68.

Subdivision A.—Persons Eligible to be Enrolled, ss. 44 to 45.

Subdivision B.—Preparation of Electoral Lists, ss. 46 to 48.

Subdivision C.—Revision of Electoral Lists, ss. 49 to 57.

Subdivision D.—Electoral Roll, ss. 58 to 60.

Subdivision E.—Supplemental, ss. 61 to 68.

Division 4.—Election of Council, ss. 69 to 137.

Subdivision A.—Times Appointed for Elections, ss. 69 to 79.

Subdivision B.—Number of Votes an Elector May Cast, ss. 80 to 84.

Subdivision C.—Preparing for, Conducting, and Ascertaining the Result of Elections and Polls, ss. 85 to 88.

Subdivision D.—Nomination of Candidates, ss. 89 to 98.

Subdivision E.—The Polling, ss. 99 to 118.

Subdivision F.—System of Voting, ss. 119 to 127.

Subdivision G.—Declaration of Result of Election and Miscellaneous Matters Relating to Elections, ss. 128 to 136

Subdivision H.—Disputed Returns, s. 137.

Division 5.—Electoral Offences, ss. 138 to 154.

PART V.—OUSTER FROM OFFICE, ss. 155 to 156.

PART VI.—OFFICERS OF THE MUNICIPALITY, ss. 157 to 170.

PART VII.—PROCEEDINGS OF COUNCILS, ss. 171 to 189.

PART VIII.—BY-LAWS, ss. 190 to 264.

Division 1.—Power of Councils to Make By-laws, ss. 190 to 256.

Division 2.—Power of Councils to Adopt Draft Model By-laws, ss. 257 to 258.

Division 3.—Power of the Governor to Make By-laws, s. 259.

Division 4.—Effect on By-laws of Severance, Annexation, Union, Etc., ss. 260 to 262.

Division 5.—General, ss. 263 to 264.

PART IX.—LANDS AND PROPERTY OF MUNICIPALITIES OR OF WHICH THE COUNCIL IS TRUSTEE, ss. 265 to 271.

PART X.—CONTRACTS, ss. 272 to 277.

PART XI.—POWER TO PURCHASE, TAKE ON LEASE OR TAKE LAND FOR WORKS AND UNDERTAKINGS, ss. 278 to 284.

PART XII.—STREETS, WAYS, BRIDGES, FERRIES, CULVERTS, WATERCOURSES, JETTIES, WORKS, SERVICES AND CONJOINT FUNCTIONS, ss. 285 to 297.

Division 1.—General, ss. 285 to 295.

Division 2.—Private Streets, ss. 296 to 297.

Division 3.—Appointment of Control of Bridges and Ferries, ss. 298 to 299.

Division 4.—Making, Maintenance, and Management of Streets, Ways, Bridges, Ferries, Culverts, Water Courses, and Jetties, ss. 300 to 315.

Division 5.—Making, Maintenance, and Management of Streets, Ways, Bridges, Ferries and Culverts on the Boundaries of Districts; Works, Services, Conjoint Functions, and County and Regional Groups, ss. 316 to 329.

Division 6.—Obstruction of Streets, Ways, Watercourses, Etc., ss. 330 to 345.

Division 7.—Levels of Streets, ss. 346 to 353.

Division 8.—Footpaths and Crossing Places, ss. 354 to 360.

Division 9.—New Building Lines, ss. 361 to 364.

PART XIII.—SURPLUS WATER AND OTHER DRAINS, ss. 365 to 370.

PART XIV.—PROTECTION OF WORKS IN PROGRESS, ss. 371 to 372.

PART XV.—BUILDINGS, ss. 373 to 434.

Division 1.—Application of this Part, s. 373.

Division 2.—Submission of Plans, Installation of Electricity for Lighting, Depositing of Materials, Protective Hoardings, ss. 374 to 377.

Division 3.—Removal of Hoardings and Filling of Excavations, ss. 378 to 379.

Division 4.—Protective Covering of Footpaths, s. 380.

Division 5.—Roofing and Ventilation, ss. 381 to 382.

Division 6.—Party Walls and Underpinning, ss. 383 to 398.

Division 7.—Prohibition, Except in Certain Circumstances, of Use of Inflammable Materials in Walls, Partitions, Ceilings, Verandahs and Balconies, s. 399.

Division 8.—Prohibition, Except in Certain Circumstances, of Encroachments, s. 400.

Division 9.—Notice of Required Alterations, s. 401.

Division 10.—Chimneys of Factories, s. 402.

Division 11.—Dangerous Buildings, ss. 403 to 406.

Division 12.—Neglected Buildings and Dilapidated Buildings, ss. 407 to 409.

Division 13.—Recovery of Expenses Incurred by Council, ss. 410 to 412.

Division 14.—Fire Escapes, s. 413.

Division 15.—Public Buildings, ss. 414 to 415.

Division 16.—Removal of Inflammable Buildings, ss. 416 to 419.

Division 17.—Power of Entry and Inspection, s. 420.

Division 18.—Safety of Platforms and View-points on Public Occasions, s. 421.

Division 19.—Referees for the Determination of Appeals, Disputes and Other Matters, ss. 422 to 432.

Division 20.—By-laws relating to Building and Buildings, ss. 433 to 435.

PART XVI.—LIGHTING, s. 436.

PART XVII.—WATER SUPPLIES AND PREVENTION OF FIRES, ss. 437 to 440.

PART XVIII.—REST CENTRES, PUBLIC BATHS, PUBLIC WASH-HOUSES, PUBLIC CONVENIENCES AND PUBLIC SWIMMING POOLS, ss. 441 to 445.

PART XIX.—PLACES OF PUBLIC EDUCATION AND RECREATION AND INFANT HEALTH CENTRES, s. 446.

PART XX.—CATTLE TRESPASS, POUNDS, POUND-KEEPERS AND RANGERS, ss. 447 to 485.

PART XXI.—MARKETS AND WEIGHBRIDGES, ss. 486 to 501.

PART XXII.—TRADING UNDERTAKINGS, ss. 502 to 511.

Division 1.—Trading by Councils, ss. 502 to 508.

Division 2.—Powers of Councils in Relation to Certain Works Upon, Over and Under Streets, ss. 509 to 511.

PART XXIII.—OTHER POWERS OF COUNCILS, ss. 512 to 521.

PART XXIV.—FUNDS AND REVENUES OF MUNICIPALITIES, ss. 522 to 531.

S. 3.

PART XXV.—RATES, ss. 532 to 597.*Division 1.—Rateable Property, s. 532.**Division 2.—Valuations ss. 533 to 539.**Division 3.—The Rate Book, ss. 540 to 546.**Division 4.—General Rates, ss. 547 to 553.**Division 5.—Appeals, ss. 554 to 559.**Division 6.—Liability for and Recovery of Rates, ss. 560 to 597.**Subdivision A.—General, ss. 560 to 576.**Subdivision B.—Power to Lease, ss. 577 to 581.**Subdivision C.—Power of Sale, ss. 582 to 597.***PART XXVI.—BORROWING POWERS, ss. 598 to 624.***Division 1.—General, s. 598.**Division 2.—Power to Borrow Money on Overdraft, s. 599 to 600.**Division 3.—Power to Borrow Money Otherwise than on Overdraft, ss. 601 to 624.***PART XXVII.—ACCOUNTS AND AUDIT, ss. 625 to 641.***Division 1.—Keeping and Audit of Accounts, ss. 625 to 634.**Division 2.—Appointment of Government Inspectors of Municipalities as Auditors and Auditors other than Government Inspectors of Municipalities, ss. 635 to 638.**Division 3.—Powers of Auditors, ss. 639 to 641.***PART XXVIII.—MISCELLANEOUS, ss. 642 to 694.***Division 1.—Legal Proceedings by and against Municipalities, ss. 642 to 660.**Subdivision A.—General Provisions, ss. 642 to 649.**Subdivision B.—Evidence, ss. 650 to 656.**Subdivision C.—Service of Notices, ss. 657 to 659.**Subdivision D.—Actions Against Municipalities for Negligence in respect of Streets, Etc., s. 660.**Division 2.—Enforcement of Act, ss. 661 to 694.**Subdivision A.—General, ss. 661 to 669.**Subdivision B.—Penalties, Etc., ss. 670 to 675.**Subdivision C.—Disputes between Municipalities and Returns by Councils, ss. 676 to 677.**Division 3.—Power to Make Regulations and Prescribe Forms, s. 678.**Division 4.—General, ss. 679 to 694.*

Ss. 4, 5, 6.

4. (1) The Acts mentioned in the First Schedule are repealed.

Repeal First Schedule.

(2) The provisions of sections fifteen and sixteen of the Interpretation Act, 1918, apply in respect of the repeals effected by subsection (1) of this section, but this express inclusion of the application of the provisions of those sections does not exclude the application to this Act, of the other provisions of that Act.

Cf. No. 30 of 1918 as amended.

5. The coming into operation of this Act after the coming into operation of an Act mentioned in the Second Schedule does not imply a repeal by this Act of that Act or any of the provisions of that Act, and the effects of the operation of that Act in relation to Acts repealed and re-enacted by this Act are unless this Act provides otherwise preserved in relation to this Act.

Relationship of operation of this Act and Acts mentioned in the Second Schedule.
Cf. N.S.W. s. 5.
Cf. ss. 364 (4) (b), 440 (1) (a) and 547 (7) post.

6. (1) In this Act, unless the context requires otherwise—

Interpretation.
Cf. M.C. Act, s. 6; and R.D. Act, s. 5.
Cf. No. 30 of 1918 as amended s. 4, "This Act" and ss. 14 and 15.

"Act"—without prejudice to the provisions of sections fourteen and fifteen of the Interpretation Act, 1918, or to the other provisions of that Act, a reference to this or another Act extends to regulations, rules, by-laws, and other delegated legislation, if any, made under the Act to which the reference is made;

"absolute majority" where used in relation to the members of a council means a majority of the total number of the members for the time being of the council, whether present and voting or not;

"adjoining" means contiguous or separated only by a public reserve, common, or road, or by a river or stream or other like natural division;

“allowed to use” where used in relation to

public place;
street; or
way;

means a public place, a street, or a way respectively,

- (a) which having been dedicated to use as such by the public under an Act or at common law, the public has a right to use as such;

and includes

- (b) but only while it is being used as mentioned in this paragraph, a place, a street, or a way, which not having been so dedicated, is being used as such by the public as a public place, public street, or public way with the permission express or implied of the person entitled to grant or refuse the permission substantially as if it were so dedicated and notwithstanding the exercise by the person entitled to exercise it of a right which temporarily interrupts that use whether the right is exercised for the purpose of precluding dedication at common law to that use or for another purpose;

**Cf. s. 687
post.**

“building” means a structure erected or placed on land, unless in the circumstances of a particular case, a court required to decide the case declares otherwise, but in any case includes a fence erected in the district of a city or town or in a townsite;

“building surveyor” means the officer exercising the powers of building surveyor of the municipality;

“cattle” includes horses, mares, fillies, foals, geldings, colts, camels, bulls, bullocks, cows, heifers, steers, calves, asses, mules, sheep, lambs, goats, and swine;

“city” means a municipality which is a city;

“clerk” or “clerk of the council” means a town clerk, or a shire clerk, as the case requires;

“company” means a company according to the interpretation given to that expression in section three of the Companies Act, 1943;

Of. No. 36 of
1943, s.3 as to
“Company.”

“council” means the executive body of a municipality;

“councillor” means a member of a council other than a mayor or president;

“Crown lands” means lands of the Crown,

(a) not granted or contracted to be granted in fee simple; or

(b) not held or occupied—

(i) under conditional terms of purchase; or

(ii) with a right to acquire the fee simple;

“Crown lease” means a lease from the Crown of Crown lands, or a license or concession from the Crown for taking a profit of Crown lands, but does not include—

(a) an instrument executed or issued pursuant to a contract or arrangement with the Crown by virtue of which land is held or occupied with a right, whether subject to compliance with conditions or otherwise, to acquire the fee simple;

(b) a miner’s homestead lease;

(c) a lease under the State Housing Act, 1946; and

(d) an instrument by virtue of which lands are held or occupied subject to the payment of a peppercorn or nominal rental;

“Crown lessee” means a person entitled under a Crown lease to an interest or a right in or over Crown lands;

“district” means an area of the State, the inhabitants of which area are a municipality under this Act, and includes for certain purposes provided for in this Act, other areas, which although not being within the boundaries of a district are regarded for those purposes as being part of the district;

“elector” means a person whose name is registered as an elector on the electoral roll of the municipal district or ward of the district;

Cf. Pt. IV.,
Div. 5 post.

“electoral officer” means a returning officer, deputy returning officer, presiding officer, substitute presiding officer, poll clerk and person authorised to witness applications for absent voting certificates and absent voting papers;

“financial year” means a period commencing on the first day of July and ending on the next following thirtieth day of June;

“in or adjoining the district of a municipality” where used in relation to a street or other public place, or to land, or to a bridge, jetty, river, creek, watercourse, foreshore, sea shore, or other place or thing, whether the other place or thing is of the same kind as, or a different kind from, those here specified, means that the place or thing is in the district of the municipality, or, if not in the district, is either not in the district of another municipality, or being in the district of another municipality is wholly or partly under the care, control, or management of the council of the firstmentioned municipality;

- "land" includes messuages, tenements, and hereditaments and any estate in the land, and houses, buildings, works, and structures, in or upon the land; Cf. No. 30 of 1918, s.4, "Estate" and "Land".
- "licensed surveyor" means a surveyor licensed and registered under the Licensed Surveyors Act, 1909;
- "local government" means government under this Act;
- "member" means a mayor, president, or councillor of a municipal council;
- "Minister" means the Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor, and includes any Minister of the Crown for the time being discharging the duties of the office of the Minister;
- "motor traffic pass" means a contrivance designed to permit the passage of motor vehicles but to prevent the passage of live stock over or through it;
- "municipal district" has the same meaning as district;
- "naturalised British subject" means a person who is a naturalised British subject according to the Nationality and Citizenship Act, 1948, as amended from time to time, of the Commonwealth; Cf. No. 83 of 1948, C'th.
- "occupier" where used in relation to land, means the person by whom or on whose behalf the land is actually occupied or, if there is no occupier, the person entitled to possession of the land, and includes a person in unauthorised occupation of Crown land and where under a license or concession there is a right to take profit of Crown land specified in the license or concession, means the person having that right;
- "officer" means a person appointed for a municipality by its council to a non-elective office including those of clerk, treasurer, engineer,

building surveyor, librarian, collector, poundkeeper, inspector, ranger, health inspector, vermin inspector, noxious weeds inspector, traffic inspector, foreman and such other offices as are necessary to the proper carrying out of the local government of the municipality and the powers conferred and duties imposed upon the municipality and the council by this Act and other Acts;

Cf. s. 691
post, and
No. 30 of
1918 as
amended
s. 23.

“Order” means an Order made by the Governor with the advice and consent of the Executive Council;

“outlying land” means land which is not included in a municipal district;

“owner”—where used in relation to land—

(a) means a person who is in possession as—

(i) the holder of a legal or equitable estate in fee simple in possession in the land, including an estate or interest under a contract or an arrangement with the Crown or a person, by virtue of which contract or arrangement the land is held or occupied with a right to acquire by purchase or otherwise the fee simple;

Cf. s. 532
post as to
rateable
property.

(ii) a Crown lessee or a lessee or tenant under a lease or tenancy agreement of the land which in the hands of the lessor is not rateable property under this Act, but which in the hands of the lessee or tenant is by reason of the lease or tenancy rateable property under this or another Act for the purposes of this Act;

(iii) a mortgagee of the land; or

- (iv) a trustee, executor, administrator, attorney, or agent of a holder, lessee, tenant, or mortgagee, mentioned in this paragraph;
- (b) where there is not a person in possession, means the person who is entitled to possession of the land in any of the capacities mentioned in paragraph (a) of this interpretation, except that of mortgagee;
- (c) where, under a license or concession there is a right to take profit of Crown land specified in the license or concession, means the person having that right;
- (d) where a person is lawfully entitled to occupy land which is vested in the Crown, and which has no other owner according to paragraph (a), (b), or (c) of this interpretation, means the person so entitled;
- (e) where a person is in the actual occupation, with or without title, of the surface of any portion of a mining tenement according to the interpretation given to that expression by section four of the Mining Act, 1904, means the person so in occupation;
- (f) where a person has, without title, a tent, camp, or other habitation on land belonging to another person, means the person having the tent, camp, or other habitation on the land; or
- (g) where a person is in the unauthorised occupation of Crown land, means the person so in occupation; but
- (h) without affecting subsection (2) of section eighty-nine of the Rural and Industries Bank Act, 1944, does not

include the Bank or the Commissioners under that Act, as mortgagee in possession or otherwise;

“Part” means Part of this Act;

“person in possession,” where used in the interpretation of owner and of occupier, includes a person who receives the rents and profits of the land in relation to which the interpretation owner or occupier, as the case may be, is used;

“powers” includes rights, jurisdiction, capacities, privileges, discretions, authorities and immunities;

“public holiday” means a day, which—

(a) is a public service holiday under the Public Service Act, 1904;

(b) is declared by the Governor to be a public holiday throughout the State; or

(c) in a particular district is declared by the Governor to be a public holiday in the district;

“public notice” means a notice published in the *Gazette*;

“public place” includes a street, way, and place which the public are allowed to use, whether the street, way or place is or is not on private property;

“public reserve” includes park lands, squares, reserves, beaches, and other lands, included in or adjoining a district, and set apart for the use and enjoyment of the inhabitants of the district and includes parks and other lands acquired for public purposes, and vested in or under the care, control, or management of the municipality of the district;

“ratepayer” means a person from whom rates, imposed under this Act in respect of rateable property, are recoverable;

“repealed Act” means an Act repealed by this Act;

“returning officer” includes deputy returning officer;

“road” has the same meaning as street;

“Schedule” means a Schedule to this Act;

“section” means a section of this Act;

“shire” means a municipality which is a shire under this Act;

“shire clerk” means the clerk of the council of a shire;

“simple majority” where used in relation to proceedings of a council, means a majority of the members of the Council present at the proceedings and voting;

“street” includes—

a highway; and

a thoroughfare;

which—

the public are allowed to use;

and includes every part of the highway or thoroughfare, and other things including bridges and culverts, appurtenant to it;

“surplus water” means storm water, surface water, and ground water, which unless removed by drainage would accumulate to the detriment or disadvantage of persons in a district;

Cf. No. 33 of
1955, s. 3 (c).
Cf. Part XIII
and ss. 277
and 521 post.

“town” means a municipality which is a town under this Act;

“town clerk” means the clerk of a city or of a town;

“townsite” means—

(a) land constituted, defined, or reserved as the site of a town or village under the Land Act, 1933;

(b) land subdivided or laid out as the site for a townsite, township, or village, in accordance with a subdivisional plan, registered in the Office of Titles or the Department of Lands and Surveys; and

(c) land, including privately owned subdivided land, declared by Order to be a townsite for the purposes of this Act, or declared to be a townsite under any repealed Act;

but does not include the district of a municipality which is a town;

“ward” means an administrative division of a district;

“way” includes—

(a) an alley; and

(b) a court;

which the public are allowed to use.

(2) Interpretation of expressions by this Act extend to primitives, derivatives, inflexions and variants of the respective expressions.

Sundays,
holidays,
etc.
Cf. M.C. Act,
s. 7 and
R.D. Act, s. 6,
and No. 30
of 1918,
s. 27 (2).

7. Where, but for this section, an election or poll would be required to be held on a public holiday, the day for holding the election or poll is the first Saturday that follows the public holiday and which is not a public holiday.

Misnomer
in Act,
Order in
Council,
etc., not to
prejudice.
Cf. M.C. Act,
s. 8; and
R.D. Act, s. 7.

8. A misnomer or inaccurate description of anything in this Act or in an Order, proclamation, by-law, regulation, notice, requisition or other document made or issued under this Act does not affect the operation of this Act with respect to the thing, if it is so named or described as to be capable of being understood by persons concerned.

PART II.—CONSTITUTION OF
MUNICIPALITIES.

Part II.

9. (1) The inhabitants for the time being of a municipal district constitute a municipality.

Municipal-
ties.
Cf. M.C. Act,
s. 10; and
R.D. Act,
s. 21.

(2) A municipality is a body corporate having perpetual succession, a common seal and the powers conferred and the obligations imposed upon a municipality by law.

Muni-
cipality,
a body
corporate.

(3) (a) The Governor may approve the name and common seal of a municipality and the name and seal so approved are those of the municipality.

Name and
seal.

(b) From time to time the Governor may approve an alteration of either or both the name and common seal of a municipality and the name and seal altered as so approved are those of the municipality.

Alteration
of name
and seal.

(c) The common seal of a municipality may be affixed and broken in accordance with the by-laws of the municipality.

Affixing
and breaking
of seal.

(4) A municipality is—

Cities,
towns and
shires.

(a) a city;

(b) a town; or

(c) a shire.

(5) (a) The executive body of a municipality is the council of the municipality.

Council,
executive
body of
muni-
cipality.

(b) The council of—

(i) a city and a town consists of the mayor and councillors;

(ii) a shire consists of the president and councillors.

(c) The chief elective executive office of the council—

(i) of a city or a town, is that of mayor; and

(ii) of a shire, is that of president;

and the functions of the respective offices are those prescribed by this Act.

S. 9.

(d) The chief non-elective executive office of a council—

- (i) of a city, is that of town clerk;
- (ii) of a town is that of town clerk; and
- (iii) of a shire, is that of shire clerk;

and the functions of the respective offices are those prescribed by this Act.

(e) The council on behalf, and, in the name, of the municipality, may exercise the powers conferred, and shall discharge the obligations imposed, by law upon the municipality or the council.

Districts,
bodies
corporate
and
executive
bodies under
repealed Acts
preserved
under this
Act.

(6) (a) In this subsection—

“former municipal district” means a municipal district constituted under the Municipal Corporations Act, 1906, as the district existed immediately prior to the coming into operation of this Act;

“former road district” means a road district constituted under the Road Districts Act, 1919, as the district existed immediately prior to the coming into operation of this Act.

(b) On the coming into operation of this Act—

(i) a former municipal district of a city remains the municipal district of the city under this Act;

(ii) a former municipal district of a municipality other than a city becomes the municipal district of a town under this Act; and

(iii) a former road district becomes the municipal district of a shire under this Act.

(c) (i) On the coming into operation of this Act; the first mayor and councillors under this Act of a city or town, the district of which was a former municipal district, are the persons in office

S. 9.

immediately prior to the coming into operation of this Act as mayor and councillors respectively of the municipality of that former municipal district, and the term of office of the first mayor and councillors, unless sooner terminated under this Act, continues and is extended until the Fourth Saturday in May next succeeding the day on which, but for this paragraph, the term of office for which they were respectively elected under the Municipal Corporations Act, 1906, would have expired had that Act continued in operation and not been repealed by this Act.

(ii) On the coming into operation of this Act, the first president and councillors under this Act of a shire, the district of which was a former road district, are the persons in office immediately prior to the coming into operation of this Act as chairman and members respectively of the road board of that former road district, and the term of office of the first president and councillors unless sooner terminated under this Act, continues until the fourth Saturday in May next succeeding the day on which but for this sub-paragraph, the term of office for which they were respectively elected under the Road Districts Act, 1919, would have expired had that Act continued in operation and not been repealed by this Act.

(iii) Where immediately prior to the coming into operation of this Act there is a vacancy in an office mentioned in subparagraph (i) or subparagraph (ii) of this paragraph, the provisions of this Act apply in respect of the filling of the vacancy, unless proceedings have already been commenced to fill the vacancy under a repealed Act, in which case those proceedings may be completed and the vacancy filled accordingly.

(iv) The provisions of this paragraph do not prejudice or affect the application of those of sections fifteen and sixteen of the Interpretation Act, 1918, to this Act generally or in particular to officers appointed under a repealed Act.

Cf. No. 30 of
1918, ss. 15
and 16.

Part II.

S. 10.

Number of
offices of
member of
the council
of a city or
a town,
or a shire.
Cf. M.C. Act,
s. 11; and
R.D. Act,
s. 20.

10. (1) (a) Subject to the provisions of subsection (2) of this section the number of offices of member of the council of a city and of a town is determined according to the provisions of this subsection.

(b) Where the number of inhabitants of the district of the city or town is declared by Order to be—

- (i) under one thousand, the offices are those of mayor and six councillors;
- (ii) over one thousand and not exceeding five thousand, the offices are those of mayor and nine councillors;
- (iii) over five thousand, the offices are those of mayor and twelve councillors, if the district is not divided into wards, but if the district is divided into wards the offices are those of mayor and such number of councillors as is equal to three councillors for each ward, whether that number is greater or less than twelve.

Cf. s. 12 (4)
(d) and s. 18
(4) post.

(c) Where the district of a city or town is divided into wards, the number of offices of councillor for each ward is equal, but on the petition of the council, the Governor may, if he thinks the circumstances referred to in the petition warrant it, determine that

- (i) the number of councillors for any ward may be more or less than three; and
- (ii) the number of councillors for each ward need not be equal.

(d) Subject to the provisions of subsection (7) of this section the mode of election to the office of mayor of a municipality that is a city or town is by the electors of the municipality.

(2) Where the mode of election to the office of mayor is by the council as hereinafter provided in this section, the number of offices of member of the council of a city or of a town shall in each case be reduced by one.

Mode of election of mayor.

(3) (a) The number of offices of member of the council of a shire is determined according to the provisions of this subsection.

Number of offices of member of the council of a shire.

(b) Where the mode of election to the office of president is by the council, the number of offices of member including the president and councillors is such number, being not less than five nor more than thirteen, as is from time to time declared by Order.

(c) Where the mode of election to the office of president is by the electors of the municipality, the number of councillors excluding the president is such, being not less than four nor more than twelve, as is from time to time declared by Order.

(d) Where the district of a shire is divided into wards the number of offices of member for each ward is such as is from time to time declared by Order, excluding the president where the mode of this election is by the electors, but including the president where the mode of his election is by the council.

(4) Subject to the provisions of subsections (5) and (7) of this section the mode of election to the office of president of a shire is by the council except where the mode is changed pursuant to subsections (5) and (7) of this section to election by the electors of the municipality.

Mode of election of president.

(5) The council of a shire may in accordance with the provisions of subsection (7) of this section request the Governor to make an Order changing the mode of election to the office of president of the shire from election by the council to election by the electors and the Governor may make the Order accordingly.

Change in mode of election.

Part II.

S. 10.

Election of
president.

(6) At the first meeting of the council of a municipality that is a shire held after the fourth Saturday in May of each year, or in the case of a newly constituted council of such a municipality at its first meeting, the council shall elect one of its councillors to the office of president.

Application
for change of
mode of
election of
mayor or
president.

(7) Where a written copy of a majority decision of the councillors or a petition signed by one-tenth of the electors enrolled on the municipal roll or signed by fifty electors so enrolled, whichever is the greater, is delivered to the mayor or president, as the case may be, demanding that

- (a) the mode of election of the mayor be by the council instead of by the electors of the municipality; or
- (b) the mode of election of the president be by the electors of the municipality instead of by the council; and
- (c) the question, whether or not the proposed alteration in the mode of election be effected, be submitted to a poll of the electors of the municipality,

the mayor or president, as the case may be, shall cause the question to be so submitted and the poll shall be held on a day appointed by him, being a day not less than forty-two days nor more than seventy days after the day on which the demand was delivered.

Method of
taking poll.

(8) The returning officer shall—

- (a) cause sufficient voting papers in, or substantially in, the form of the twenty-sixth schedule to be provided for the taking of the poll; and
- (b) for the purposes of taking the poll, use the roll of electors of the municipality as last settled before the taking of the poll.

(9) The provisions of this Act relating to the taking of the poll for the election of persons to the offices of member of a council, including an elector voting in absence, that are appropriate and can be made applicable apply *mutatis mutandis* for the taking of the poll.

Provisions relating to taking of poll.

(10) If a majority of the valid votes cast at the poll are in favour of the proposed alteration, the Governor shall by Order declare that the new mode of election of a mayor or president, as the case may be, of the municipality in respect of which the poll was held, shall apply as from the date upon which the office next becomes vacant and on each subsequent vacancy, subject to the provisions of this section.

Power to Governor to change mode of election.

(11) Where an alteration in the mode of election is duly made, no further alteration shall be made within a period of five years from the date on which the last alteration became effective.

Alteration in mode of election to be made only at five year intervals.

(12) At any time after a period of five years after such an alteration has been made the councillors or electors may deliver a demand for a further alteration of the then existing mode of election of mayor or president and the provisions of subsections (7), (8), (9) and (10) of this section apply *mutatis mutandis* to the demand.

Power to make further alteration in mode of election.

(13) When the majority of valid votes taken at a poll held under this section are not in favour of an alteration in the mode of election of mayor or president, no further demand for a poll on the question of altering the mode of election shall be made for a period of five years from the holding of that poll.

Poll for change of mode of election only at five year intervals.

11. In respect of outlying land the Minister may exercise the powers conferred and discharge the obligations imposed by this Act upon a council as if the land were a district and may delegate the exercise of those powers and the discharge of those obligations in respect of the outlying land to such person or persons as he thinks fit.

Minister may act as council for places outside municipal districts.
Cf. R. D. Act, s. 22.

Part III.,
Div. 1.

S. 12.

Part III.
Div. 1.

PART III.—CONSTITUTING AND ALTERING THE CONSTITUTION OF MUNICIPALITIES.

Division 1.—Powers of the Governor.

Power of
Governor
to constitute
municipal-
ties.
Cr. M.C. Act,
s. 12; and
R.D. Act,
s. 8.

Cr. Div. 8 of
this Part.

12. (1) Where a petition praying for the exercise of a power mentioned in a paragraph of this subsection has been signed as required by the paragraph, and has been prepared, verified, and effectively presented in accordance with the appropriate provisions of Division 8 of this Part, the Governor may, subject to the provisions of section (6) of this section, make an Order exercising the power.

	<i>Power of the Governor</i>	<i>Person Authorised to Petition for the Exercise of the Power.</i>
Constitution of towns.	(a) The constitution as a town of portion of the State.	At least fifty persons who, if the prayer of the petition were granted immediately when served on the Minister, would be ratepayers in respect of rateable property in the town.
Constitution of shires.	(b) The constitution as a shire of an area of outlying land.	At least twenty persons who, if the prayer of the petition were granted immediately when served on the Minister, would be ratepayers in respect of rateable property in the shire.
Constitution of parts of existing shires as a new shire.	(c) The constitution as a new shire of part or parts of an existing shire or existing shires.	At least twenty persons who, if the prayer of the petition were granted immediately when served on the Minister, would be ratepayers in respect of rateable property in the new shire.
Division of shires.	(d) The division of a shire into two or more shires.	At least twenty persons who, if the prayer of the petition were granted immediately when served on the Minister, would be ratepayers in respect of rateable property in any part of the area comprising the districts of the several shires which would result from the division.
Severance.	(e) The severance from a district of a portion of the district, and either the constitution of the portion as the district of a new town or of a new shire, or the annexation of the portion to a district which the portion adjoins.	A majority of the ratepayers who occupy rateable land in the portion, or if the rateable land in the portion is not so occupied, at least twenty ratepayers of the district to which it is sought to annex the portion.

- | | | |
|--|---|----------------------|
| (f) The annexation to a district of an area of outlying land adjoining the district. | The council of the municipality of the district and at least twenty or a majority, whichever is the lesser number, of the owners of land which is within the outlying portion and which would on annexation be rateable land. | Annexation. |
| (g) The division of a district into wards and the fixing of the boundaries of the wards. | At least one-third of the persons whose names appear on the municipal roll of the municipality of the district. | Division into wards. |
| (h) The abolition of a district and the dissolution of the municipality of the district. | At least ten per centum of the number of the persons whose names appear on the municipal roll of the municipality of the district, or fifty of them, whichever is the lesser number. | Abolition. |

(2) The Governor, by Order made after effective presentation to him of a petition bearing the common seal of each municipality which will be directly affected by the Order may—

- (a) declare to be a city a municipality which—
- Power to declare a municipality a city.
- (i) has maintained a population, during each of the three years last preceding the declaration, of not less than twenty thousand inhabitants in the case of a municipality outside the metropolitan area as declared by order for the purposes of this Act and thirty thousand persons in the case of a municipality within that area;
 - (ii) has maintained a gross revenue from all sources of one hundred thousand pounds for each year during that period; and
 - (iii) is, in the opinion of the Governor, clearly distinguishable as a centre of population and contains a distinct and sufficient civic centre with adequate halls and cultural facilities

and has sufficient residential, commercial and industrial centres to justify it being so declared a separate city.

Power to declare a shire to be a town or vice versa.

- (b) declare a shire to be a town; and a town to be a shire;

Power to dissolve a municipality and include its district in an adjoining district.

- (c) dissolve a municipality and annex its district to that of an adjoining municipality;

Power to unite municipalities.

- (d) unite two or more municipalities whose districts are adjoining and their districts so as to form one municipality and one district;

Power to alter names of municipalities.

- (e) alter the name of a municipality;

Power to alter and adjust boundaries.

- (f) alter and adjust the boundaries of adjoining districts;

Power to alter boundaries of wards or to abolish wards.

- (g) alter the boundaries of, or abolish wholly or in part, wards existing in a district;

Power to create new wards.

- (h) create new wards in a district;

Power to describe boundaries.

- (i) describe the boundaries of a district as existing for the time being or the wards of the district;

Power to determine the number of offices of councillor for a municipality.

- (j) within the limits prescribed by this Act, determine and alter the number of offices of councillor assigned to a municipality but in the case of a city or a town so that the number is a multiple of three.

(3) The Governor, by Order made after effective presentation to him of a petition bearing the common seal of one only of the municipalities which will be directly affected by the Order, may—

sever from a district a portion of the district and annex the portion to another district which the portion adjoins.

(4) The Governor by Order which may be made without a petition may—

- (a) declare the number of inhabitants of a district to be that established under section sixteen;
Power to declare the number of inhabitants. Cf. s. 16 post.
- (b) where an area is added to a district under this section, constitute the added area as a ward or portion of a ward of the district, or constitute respective portions of the added area as portion of all or any of the wards of the district;
Power to constitute added area, a ward or part of a ward.
- (c) abolish a municipality
where a Government Inspector of Municipalities reports that for two consecutive years the revenue from general rates only of the municipality has been less than one thousand pounds,
Power to abolish municipalities having a rate revenue of less than £1,000. Cf. s. 636 post as to Government Inspectors of Municipalities.

unless the municipality has during those years been exempted under the provisions of this Act from imposing a general rate;
Cf. s. 553 post as to exemption from rating.

- (d) give such directions as the Governor thinks necessary in order—
Power to make consequential adjustments.
 - (i) to give effect to an alteration in the number of the members of a council;
 - (ii) to give effect to an alteration in the number of wards; or in the description of the boundaries of the wards, of a district;
 - (iii) to make the number of offices of member of a council conform to the limits imposed by this Act; or
Cf. s. 10 (1) and (2) ante as to limits.
 - (iv) to give effect otherwise to this Part or an Order made under this Part;
- (e) unite two or more municipalities whose districts are adjoining, and their districts so as to form one municipality and one district if union of those municipalities has been recommended by the Local Government Boundaries Commission appointed under subsection (6) of this section.
Power to unite municipalities and districts.

Power of the
Minister to
adjust
boundaries
in relation
to a particu-
lar parcel
of land.

(5) (a) Where portions of the one parcel of land are within the boundaries of the districts of two or more municipalities, the councils of those municipalities or any of them may apply in writing to the Minister to decide the question whether the boundaries should be altered so as to include the whole of the parcel within one of the districts.

(b) If the Minister is of the opinion that it is necessary or desirable for the purposes of local government that the decision should be made he shall—

appoint a day, time and place at which he intends to commence consideration of the application; and

cause written notice of his intention and of the appointed day, time and place to be served at least twenty-eight days before the appointed day on each applicant and on the councils of such other municipalities and on such persons as in his opinion are directly interested in the decision of the question.

(c) At the day, time and place appointed, the Minister shall commence consideration of the application and may from time to time adjourn the consideration to such time and place as he thinks fit.

(d) At the consideration of the question the councils of the municipalities and persons served with the notice and the councils of such other municipalities and persons as the Minister thinks fit may make to the Minister representation of their views on the question orally, in writing, personally, or through a representative authorised in writing to do so.

(e) In arriving at his decision the Minister shall take into consideration representations so made.

(f) The decision of the Minister is final and takes effect when promulgated by public notice.

(g) The power conferred upon the Minister by this subsection may be exercised notwithstanding any other provisions of this section conferring powers which relate to boundaries of districts or which may be exercised by Order.

(h) Where there is conflict between a decision of the Minister made under the provisions of this subsection and an Order already made under those of another subsection of this section, the former prevails.

(i) That the Minister has made a decision under this subsection does not affect the exercise subsequently to the making of the decision of a power which relates to boundaries of districts and which may be exercised by Order under another subsection of this section.

(6) (a) For the purposes of this Act the Governor may appoint three persons to constitute a Local Government Boundaries Commission.

Local
Government
Boundaries
Commission.

(b) The three persons constituting the Commission shall be—

(i) a person who is an officer of the State department known as the Local Government Department, who shall be chairman of the Commission and

(ii) two persons having experience in local government, chosen from a panel of names submitted conjointly to the Minister by the association or associations representing the municipalities.

(c) If the body or bodies referred to in subparagraph (ii) of paragraph (b) of this subsection, fail within fourteen days to submit a panel of names of persons suitable for appointment to the Commission after the receipt of a written request from the Minister so to do, the Governor on behalf of the body or bodies may without the panel appoint two persons having the necessary qualifications, to be members.

(d) The Minister shall cause notice of appointments to the respective offices of members of the Commission to be published in the *Gazette* and when the notice is so published the Commission is constituted.

(e) Each member of the Commission holds office during the Governor's pleasure.

(f) Where a vacancy occurs in the office of member the Governor may appoint a qualified person to fill the vacancy.

(g) The Commission shall conduct its proceedings in such manner as the Minister directs and until so directed as the Commission determines.

(h) The members of the Commission shall receive such remuneration and allowances as the Governor determines and any cost incurred by the Commission in carrying out its functions shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

(i) The Minister may refer to the Commission for its consideration any question concerning the constitution or alteration of the constitution of municipalities and in every case where a municipality seeks to be united with another or seeks the severance of portion of another district and the annexation of the portion to its district, if the municipalities directly affected are unable to agree on the terms of the amalgamation or severance he shall refer the question to the Commission for its consideration and report.

(j) The commission shall meet at such times and in such places as the Minister directs and shall afford each municipality and other persons directly affected by the matter before the Commission for consideration, the opportunity of being heard thereon.

(k) The Commission shall as soon as practicable report to the Minister on any matter referred to it by him and the Minister shall give due consideration

to the report before recommending the exercise by the Governor of any power conferred by this section that is relative to the matter.

(1) The term of tenure of office of a member of the Commission terminates *ipso facto*—

- (i) if the occupant of the office is absent from three consecutive meetings of the Commission without permission granted to him by the Minister;
- (ii) if the occupant tenders his resignation from office in writing signed by him sent to the Governor;
- (iii) if the occupant dies; or
- (iv) if the Governor terminates the occupant's term of tenure of the office.

Division 2.—New Municipalities.

Part III.
Div. 2.

13. (1) Where a new municipality is constituted having as its district or included in its district the whole of the district of a previously-existing municipality—

Effect of
constituting
new muni-
cipality as
to assets
and
liabilities.
Cf. M.C. Act,
s. 13.

- (a) the rights and liabilities of the previously-existing municipality become those of the newly-constituted municipality;
- (b) actions and other proceedings already commenced by or against the previously-existing municipality when the new municipality is constituted may be continued by and against the newly-constituted municipality; and
- (c) actions and other proceedings which could have been brought by or against the previously-constituted municipality may be brought by and against the newly-constituted municipality.

(2) Where a new municipality is so constituted as to have as its district or included in its district a portion severed from the district of another municipality—

- (a) actions and other proceedings by or against that other municipality are not affected; and
- (b) as between both municipalities, the newly-constituted municipality assumes—
 - (i) such proportion of the liabilities, whether ascertained or contingent; and
 - (ii) so much of the property;

of the other municipality, as the Governor by Order directs, and if the municipalities agree upon the division of liabilities and property the Governor shall give effect to the agreement in the Order.

14. Where two or more municipalities are united by an Order, the name of the municipality formed by the union is that assigned to it by the Order.

15. Where municipalities are united—

- (a) the municipality formed by the union has as its district the aggregate of the districts of the municipalities united;
- (b) the rights of each municipality so united against each of the others so united are extinguished, but this paragraph does not affect the rights of any of them under a policy of insurance or other contract of indemnity, or against other parties;

- (c) the rights and liabilities except to the extent to which they are so extinguished, of each of the municipalities so united, become those of the municipality formed by the union;
- (d) actions and other proceedings already commenced by or against any of the municipalities so united may be continued by or against the municipality formed by the union;
- (e) actions and other proceedings which could have been brought by or against any of the municipalities so united may be brought against the municipality formed by the union;
- (f) the mayor or president of the municipality which is included in the union and whose district has at the time of the union the greater or greatest number of inhabitants, as the case may be becomes the mayor or president and the mayor or president of the other municipality included in the union where only two municipalities are united, or the mayor or president of the municipality included in the union which has the next number to the highest number of inhabitants where more than two municipalities are united, becomes the deputy mayor or deputy president, as the case may be, of the first council of the municipality formed by the union, other mayors and presidents and deputy-mayors or deputy-presidents and the councillors of municipalities so united become the councillors of that first council notwithstanding that for the time being the number of councillors exceeds the maximum number provided by this Act.
- (g) where either of the persons referred to in paragraph (f) of this section as being entitled to the office of mayor or president or

Of s. 12 (4)
(d) ante and
s. 20 post.

deputy mayor or deputy president declines to act as such the council of which the person so declining is a member has the power to appoint from among its members some other person or persons to hold those offices.

Number of
inhabitants
of district.
Cf. s. 12 (4)
(a) ante.

16. The number of inhabitants of a district at a particular time is to be taken as that established according to the information then available to the Government Statistician and declared under paragraph (a) of subsection (4) of section twelve.

Part III.,
Div. 4.

Division 4.—Dissolution of Municipalities.

Effect of
dissolution
of munici-
palities.
Cf. M.C. Act,
s. 17; and
R.D. Act,
s. 11.

17. (1) Where a municipality is dissolved by an Order—

- (a) if by the Order its district is included in that of another municipality—
 - (i) the rights and liabilities of the municipality so dissolved become those of the other municipality;
 - (ii) actions and other proceedings already commenced at the time of the dissolution, by or against either municipality may be continued by or against that other municipality; and
 - (iii) actions and other proceedings which could have been brought by or against the municipality dissolved may be brought by or against that other municipality; but
- (b) if the Order is for its dissolution and the abolition of its district only, the Minister may administer the winding up of its affairs by exercising its rights and meeting its liabilities for which purpose—
 - (i) the Minister in his name, or style, of office may collect, get in, sue for and recover, sell, convey, transfer, and assign, its assets and apply the

balance of the money realised by doing so after deducting the expense of doing so, in or towards the discharge of its liabilities;

- (ii) actions and other proceedings by or against the municipality are not affected and may be continued or commenced by or against the Minister;

and

- (c) if by Order made subsequently to that mentioned in paragraph (b) of this section, the district so abolished is included in that of another municipality, the rights and liabilities of the dissolved municipality become those of that other municipality, as the rights and liabilities are affected by a winding up or an administration, if any, by the Minister; and actions and other proceedings by or against the dissolved municipality, the Minister, or that other municipality are not affected and may be continued or commenced against that other municipality.

(2) Where by an Order mentioned in paragraph (a) or paragraph (b) of subsection (1) of this section each of respective parts of the district of the municipality so dissolved becomes a portion of the respective districts of each of two or more other municipalities—

Cf. subs. (1) of this s.

- (a) each of those other municipalities—

- (i) is entitled to so much of the property of the dissolved municipality; and
- (ii) assumes, as among themselves, such proportion of the liabilities, whether ascertained or contingent, of the dissolved municipality,

as the Governor determines is equitable and by Order directs, and if the municipalities concerned agree upon the distribution of

the property and liabilities, the Governor shall give effect to the agreement in the Order; and

(b) where actions and proceedings—

(i) have already been commenced by or against the municipality so dissolved when the respective parts of the district of the municipality so dissolved become portions of the respective districts of each of the other municipalities, whether the Minister is or is not then administering the affairs of the dissolved municipality in respect of any of the parts of its district, those actions and proceedings may be continued by or against all or any of those other municipalities; or

(ii) which but for the dissolution could have been brought by or against the municipality so dissolved or by or against the Minister, as the case may be, those actions and proceedings may be brought by or against all or any of those other municipalities of whose districts part of the district of the municipality so dissolved becomes a portion.

Division 5.—Severance from Municipal Districts.

18. (1) By an Order severing portion of a district of a municipality the Governor may abolish the wards in that district and may constitute the remainder of the district as one ward or re-divide it into two or more wards.

(2) Where the whole of a ward is within a portion severed from a district the ward is abolished.

(3) By an Order dividing a ward of a district by severing a portion of it, the Governor may either abolish the ward and annex the remaining portion to another ward or declare the portion remaining to be a ward.

(4) The powers conferred by this section are not exercisable so as to reduce the number of offices of councillor assigned to the municipality affected by the exercise of the power to less than six, in the case of a city or town, or less than four, in the case of a shire where the mode of election of the President is by the electors or less than five where the president is elected by the council.

Number of offices of councillor not to be reduced to less than six in a city or town or less than four in a shire.
Cf. M.C. Act, s. 19; and s. 10 (2) ante.

Division 6.—Annexation to Municipal Districts.

Part III.
Div. 6.

19. Where an Order annexing portion of the State to a municipal district divided into wards retains the existing divisions and constitutes a new ward—

How annexation of new ward affects the council.
Cr. M.C. Act, s. 20.

(a) the electors of the new ward are entitled to return such number of councillors—

(i) in the case of a city or town, as are returned for each of the previously existing wards where each ward has an equal number of members, but where the existing wards do not have an equal number of members, as the Governor determines; and

(ii) in the case of a shire, as the Governor determines;

(b) the number of offices of member of the Council is increased accordingly; and

(c) where the portion so annexed has been severed from another district, subsection (2) of section thirteen applies as if the district resulting from the annexation, were that of a new municipality.

Cf. s. 13 (2) ante.

Part III.,
Div. 7.

S. 20.

Part III.
Div. 7.

*Division 7.—Division of Municipal Districts and
Alteration in the Council.*

New election
on change of
number of
offices of
councillor or
boundaries.
Cf. M.C. Act,
s. 21 and R.D.
Act, s. 14;
and ss. 10
(2); 12 (2)
(1); 12 (3)
(d) and 19
ante.

20. (1) (a) Where under this Act—

the Governor exercises a power conferred
by section twelve,

the Governor having regard to the provisions of this
Act relating to the number of offices of member of
a council, by Order may—

- (i) direct who, if any, of the members whose district is affected by the exercise of the power shall go out of office, and when, except that this power shall not be exercised in a case to which the provisions of paragraph (f) of section fifteen apply;
- (ii) direct the holding on a day appointed by the Order, being a day within a period of six months from the date of the Order, of an election of such members so affected, as the case requires;
- (iii) order, settle, adjust and finally determine such rights, liabilities, questions and matters relating to the representation of electors on the council of a municipality so affected, the constitution of the council, the audit of the municipal accounts, and such other matters as he thinks necessary to be ordered, settled, adjusted or determined, and in such manner as he thinks fit.

(b) Where portion of a district has been severed under this Act, the electors of that portion are not entitled as such to vote at an election for the district from which it has been so severed.

Provision for
admission of
electors of
annexed
areas.
Cf. R.D. Act,
s. 15; and
s. 12 ante.

(2) Where an area is annexed under this Act to a ward or district after the thirtieth day of January in any year, persons who, at the time of the annexation, are electors for the area, and who but for the annexation, would have continued to be electors for the area, become on and from the day of the annexation, electors for the ward or district to which the area is annexed.

21. (1) Where a new municipality is constituted or the boundaries of a district are altered pursuant to section twelve, a person who, immediately before the day of such constitution or alteration was an officer or employee of the council of a municipality that is affected thereby, and who was wholly or principally employed on or in connection with any matter or thing that is transferred to, vested in, exercisable by, or conferred or imposed upon the council of the new municipality or another municipality by reason of the constitution or alteration shall be on that day, subject to any agreement that may be entered into between those councils and the person

Transfer of
officers.
Of. N.S.W.
L.G. Act,
s. 20C.

- (a) transferred to the service of and become the officer or employee of the council of the new or other municipality;
- (b) deemed to be appointed and employed by the council under the provisions of this Act, subject to any award or agreement in force under the Industrial Arbitration Act, 1912, on terms not less favourable to him than the terms on which he was employed immediately prior to that day and he shall, subject to such an award or agreement, for a period of one year from that day, whilst he continues to be so employed, be paid salary or wages at a rate not less than the rate at which he was employed at the date of the transfer of his services.

(2) The period of service of the person whether before or after the coming into operation of this Act with the council of one or more municipalities under this Act shall upon his transfer be counted as service with the council to which he is transferred, under or for the purposes of this or any other Act or any regulation or by-law or of the terms and conditions of any service agreement between the council and its officers or employees or of any award or agreement in force under the Industrial Arbitration Act, 1912.

(3) (a) The transfer of the services of the person under this section does not affect any right to leave of absence including long service leave accrued prior to the transfer and all other rights and accruing rights whether of the same kind as, or a different kind from those here specified, of the person remain unimpaired and continue for the purpose of his employment with the council to which his services are so transferred.

(b) The council to which the person's services are transferred shall undertake all matters necessary or incidental to the fulfilment of any obligation in connection therewith.

(4) (a) Where the services of the person are terminated by the council to which they are transferred, otherwise than for misconduct, within a period of two years from the date of the transfer or where his services are terminated by the person's resignation within a period commencing one year after, and ending two years from the date of the transfer, if the council has prior to the date on which the resignation was tendered failed to offer him in writing continuous employment at a salary or wage subject to any award or agreement in force under the Industrial Arbitration Act, 1912 at least equal to that received by him immediately prior to the date of the transfer, and the failure is not occasioned by the misconduct of the person, the council shall grant him a gratuity equivalent to the amount of four weeks' salary or wages for each year of service, the salary or wages being reckoned on the average of the weekly salary or wages paid to the person during the fifty-two weeks immediately preceding the date of his transfer.

(b) Nothing in this subsection requires the council to offer employment to the person beyond the date upon which he attains the age of sixty-five years.

(c) The amount of any gratuity payable under this subsection shall not in any case exceed an amount being the equivalent of the salary or wages

so reckoned which the person would have received from the date of the transfer until the date he attains the age of sixty-five years if he had continued in the employment of the council from which he was transferred.

(d) This subsection applies only to a person who has been employed continuously by the council of any one or more municipalities whether before or after the coming into operation of this Act for a period of not less than one year immediately preceding the date of his being so transferred.

(5) Where the person was immediately preceding the date of the transfer engaged by a council under a subsisting contract of service that provides for payment of compensation in the event of his employment being terminated, if the council to whom the person is transferred terminates the contract in breach thereof the council shall pay the amount of the compensation but if the amount of the compensation is less than the amount that would be payable to the person under subsection (4) of this section, the council shall in addition to the amount of compensation pay to him an amount equivalent to the difference.

(6) A person who is entitled to receive the compensation or the compensation and difference as provided under subsection (5) of this section is not entitled to receive a gratuity under subsection (4) of this section.

(7) The provisions of the Superannuation, Sick, Death, Insurance, Guarantee and Endowment (Local Governing Bodies' Employees) Funds Act, 1947, continue to apply to and in respect of the person in like manner and to the same extent as that Act would have applied if this section had not been enacted.

(8) An officer or employee of a council of a municipality that is affected by the constitution or alteration who at the time of the constitution or

alteration is engaged on war service as that expression is defined in the Defence Act 1903 of the Parliament of the Commonwealth as that Act is amended from time to time shall for the purposes of this section be deemed

- (a) to be still in the employ of the council and his war service shall be reckoned as service with the council for the purposes referred to in subsection (2) of this section; and
- (b) to have been employed continuously by the council for the purposes of subsection (4) of this section.

Transfer of
officers
where muni-
cipalities
divided.
Cf. N.S.W.
L.G. Act,
s. 20D.

22. (1) The provisions of this section apply to the transfer of those persons who are officers or employees of a council of a municipality in any case where pursuant to section twelve the whole of that municipality or whole municipalities and parts thereof are divided into a different number of municipalities.

(2) The council of each new municipality, and where municipalities and parts thereof are divided the council of any municipality of which part has been taken, shall confer with one another and agree upon an arrangement as to the transfer of those persons from the one to the other council.

(3) If the councils fail to agree within a period of thirty days from the date of the division or within such further period as the Minister may allow, the Minister may make the arrangement.

(4) An arrangement under this section shall—

- (a) in the case where a municipality is divided, provide for the transfer of those persons who immediately before the division were officers or employees of the council of the municipality or municipalities affected to the service of the council of the new municipality;

(b) in the case where a municipality and parts thereof are divided, provide for the transfer to the service of the council of the new municipality of

(i) those persons who immediately before the division were officers or employees of the council of the municipality wholly affected by the division; and

(ii) those persons who immediately before the division were officers or employees of a council of a municipality from which part has been taken,

as the councils of the municipalities affected may determine.

(5) An arrangement made under this section shall be embodied in a proclamation, and upon the publication thereof a person affected by the arrangement shall be

(a) transferred to the service of and become the officer or employee of the council of the new municipality specified therein;

(b) deemed to be appointed and employed under the provisions of this Act by that council, subject to any award or agreement in force under the Industrial Arbitration Act, 1912, on terms not less favourable to him than the terms on which he was employed immediately prior to the date of the publication of the proclamation and he shall, subject to such an award or agreement, for a period of one year from that date, while he continues to be so employed, be paid salary or wages at a rate not less than the rate at which he was employed at the date of the transfer of his services.

(6) The provisions of subsections (2) to (8) both inclusive of section twenty-one of this Act apply to and in respect of a transfer pursuant to subsection (5) of this section.

(7) Pending the publication of the proclamation the Governor may by order make such provisions as he may deem necessary or expedient for the temporary transfer to the service of any of the councils of the new municipalities of the officers or employees of the councils of any of the municipalities affected by the division and for any of the matters referred to in this section and for any other matter or thing incidental thereto.

Division 8.—Petitions.

23. A petition mentioned in subsection (1), (2) or (3) of section twelve is effectively presented if the petitioners—

- (a) address the petition to the Governor;
- (b) state in the petition whether the petitioners pray for the exercise wholly or partly of one or more of the powers conferred by this Part upon the Governor;
- (c) specify with particularity the power or powers and the extent to which the petitioners pray for the exercise of the power or powers;
- (d) describe in the petition where the petition is—
 - (i) for the constitution of a new district;
 - (ii) for the severance of portion of a municipal district from the district;
 - (iii) for the annexation of portion of the State to a district; or
 - (iv) for the division into wards or re-division of the wards of a district;

the boundaries of the proposed new district, or of the portion of the State proposed to be annexed, or of proposed wards as the case may be;

(e) so prepare the petition, that the subject matter of the petition may be completely disposed of in one Order;

(f) state in the petition the name of a person upon whom, and an address at which, notice to the petitioners may be served;

(g) cause the petition to be presented by serving it, accompanied where necessary by the statutory declaration mentioned in paragraph (a) of section twenty-four, by registered post on the Minister; and

Presentation
of petition.
Cf. M.C. Act,
s. 29.
Cf. s. 24 (a).
post.

(h) nominate, where the petition is required by section twenty-six to be accompanied by a deposit, the person to whom a refund, if any of the deposit is to be paid under section twenty-nine.

Cf. s. 26
post.

Cf. s. 29
post.

24. Unless the petitioners to a petition mentioned in subsection (1) of section twelve—

Verification
of petition.
Cf. M.C. Act,
s. 30.
Third
Schedule.
Cf. s. 12 (1)
ante.

(a) cause the signatures to it to be verified by statutory declaration, made in or substantially in the form in the Third Schedule, by a person signing the petition;

(b) within seven days after presentation of it, cause a copy of the petition to be served on the councils of municipalities which would be directly affected if the prayer of the petition were granted wholly or in part; and

(c) within seven days after each service effected as required by this subsection, send to the Minister a statutory declaration made by the person who effected the service deposing to having done so;

the petition is not effectively presented and the Minister shall cause notice to that effect to be served on the petitioners.

Cf. s. 23 (f)
ante as to
service on the
petitioners.

Part III.,
Div. 8.

Ss. 25, 26.

Cancelling
and adding
signatures.

Cf. M.C. Act,
s. 28.

25. (1) Within thirty-five days of the service on the Minister of a petition mentioned in subsection (1) of section twelve, a person who has signed the petition may cancel his signature to it, and a person who is eligible to sign it may add his signature to it, by posting to the Minister by prepaid registered letter post a statutory declaration deposing to the facts and applying to cancel or add his signature, as the case may be.

(2) If at the expiration of that period of thirty-five days, the number of signatories to the petition after taking into account those, if any, cancelled or added under subsection (1) of this section, is not sufficient to comply with the requirements of subsection (1) of section twelve, the petition is not effectively presented and the Minister shall cause notice to that effect to be served on the petitioners.

Cf. s. 12 (1)
ante.

Cf. s. 23 (f)
ante as to
service on the
petitioners.

Deposit.
Cf. Vic. L.G.
Act, s. 36;
and s. 12 (1)
ante.

Cf. s. 29 post
as to
disposal of
deposit.

Cf. subs. (2)
of this s.

Cf. s. 23 (f)
ante as to
service on the
petitioners.

26. (1) Unless the petitioners to a petition mentioned in subsection (1) of section twelve send to the Minister within fourteen days of service on them of notice from the Minister requiring them to do so, a deposit of not less than the appropriate sum mentioned in subsection (2) of this section, the petition is not effectively presented, and the Minister shall cause notice to that effect to be served on the petitioners.

(2) The deposit required in respect of each municipality required to submit the proposals in the prayer of the petition to a poll under section twenty-eight is that assessed—

(a) on the basis of twenty pounds for the municipality, where the ordinary revenue of the municipality was less than fifty thousand pounds per annum; or

(b) on the basis of fifty pounds for the municipality, where the ordinary revenue of the municipality, was fifty thousand pounds per annum or more;

for the financial year ending on the thirtieth day of June next preceding the service of the petition on the Minister.

Cf. s. 28
post.

27. On receipt of an effectively presented petition mentioned in subsection (1) of section twelve the Minister shall either—

- (a) present it to the Governor; or
- (b) before presenting it to the Governor, if the Minister thinks fit, direct the council or the councils of the municipality or municipalities in whose district or districts the petitioners are ratepayers—
 - (i) to examine the petition and statutory declarations, if any, relating to it, and satisfy itself or themselves that there are sufficient signatures of eligible persons to comply with the requirements of that subsection and that they are those of the persons whose signatures they purport to be; and
 - (ii) to submit the proposal or proposals in the petition to a poll of electors of the municipality or municipalities.

Minister may present petition under s. 12 (1) to the Governor, or direct poll to be taken.
Cf. Vic. L.G. Act, s. 36; and s. 12 (1) ante.

28. As soon as is reasonably practicable after a council receives a direction issued under section twenty-seven,

- (a) the council shall cause the petition and the statutory declarations relating to it to be examined;
- (b) if satisfied that there are signatures to the petition of eligible persons of the number required by the appropriate provisions of subsection (1) of section twelve and that they are those of the persons whose signatures they purport to be, the council shall cause to be published, not less than fourteen and not more than twenty-one days before the day appointed for the taking of the poll in a newspaper circulating in the district a notice—
 - (i) setting out the substance of the prayer of the petition; and

Council to give notice of poll.
Cf. Vic. L.G. Act, s. 36; and s. 12 (1) and s. 27 ante.

*Cf. s. 70 post
as to annual
municipal
elections.*

(ii) stating that a poll of electors entitled to vote in the district or in the portion of the district within the boundaries specified in the petition, as the case may be, will be taken on the proposal or proposals set out in the petition on the day and at the time appointed for the next annual municipal elections; or

(iii) where the petition has been effectively presented within one hundred and forty days of that day, stating that the vote will be taken on a day and at a time fixed by the Minister and specified in the notice;

and shall prepare for, conduct, and ascertain the result of the poll accordingly; or

(c) if not so satisfied by the examination, the council shall immediately on completion of the examination of the petition and statutory declarations, cause notice to that effect to be served on the Minister, stating in the notice the particulars in respect of which it is not satisfied.

*Application
of deposit.
Cf. Vic. L.G.
Act, s. 36;
and s. 26
ante.*

29. If,

(a) within six months of receiving a deposit mentioned in section twenty-six, the Minister has not directed the taking of a poll on the proposal or proposals in the petition; or

(b) a poll having been taken, not less than two-fifths of the valid votes recorded at the poll in the district if only one, or in each of the districts, if more than one, in which the poll is taken, are in favour of the proposal, if only one, or of each of the proposals, if more than one;

the Minister shall cause the sum deposited to be refunded

to the person nominated in the petition;
but, if

Cf. s. 23 (h)
ante as to
person
nominated.

less than two-fifths of the valid votes recorded
in the district, or in each of the districts, as the
case may be, are in favour of the proposition,
or each of the propositions, as the case may be,

the Minister shall cause so much of the sum
deposited as is required to defray the expenses
incurred in and in connection with the taking of
the poll, to be paid into the municipal fund or funds
of the municipality or municipalities concerned, and
the balance, if any, to be refunded to the person so
nominated.

Cf. s. 522
post as to
municipal
fund.

30. (1) In respect of a poll mentioned in section
twenty-seven—

Manner of
taking the
poll.
Cf. Vic. L.G.
Act, s. 36.

(a) the form of ballot papers,

Ballot
papers.

- (i) other than those for use in voting in
absence is that or substantially that
in the Twenty-Sixth Schedule;
- (ii) for use in voting in absence is that or
substantially that in that Schedule,
but may include such additions or
alterations as the Governor thinks
necessary or desirable for use in
voting in absence and by public
notice approves; and
- (iii) for use in any manner of voting, may
describe the proposal submitted to
the poll by such summary descrip-
tion as the Governor thinks sufficient
and by public notice approves;

Twenty-
sixth
Schedule.

(b) a person who is registered as an elector on
the roll of the municipality in whose district
the poll is being taken, and who,

Who may
vote.

- (i) where the petition prays for the constitution of a municipality, is enrolled in respect of land in such portion of the district as is proposed in the petition to be included in the district of the new municipality;
- (ii) where the petition prays for the severance of portion of a district and the annexation of that portion to another district, is enrolled in respect of land in that portion; or
- (iii) where the petition prays for the exercise of any other power, is enrolled in respect of land in the district in which the poll is being taken;

is entitled to receive ballot papers and to cast votes as if the poll were to determine the question as to whether a loan should or should not be raised;

Cf. s. 611 post
as to
question
of raising
loan.

Election
provisions
to apply.
Cf. Pt. IV.,
Div. 4, Sub-
div. E, post.

- (c) the provisions of this Act relating to the election of councillors, including those relating to voting in absence, apply *mutatis mutandis* in respect of the poll;

Poll is
carried by
majority.

- (d) a proposal on which a poll is taken is carried if a majority of the valid votes recorded are in favour of the proposal; and

Minister to
be notified
of result of
poll.

- (e) within twenty-one days after the result of the poll has been ascertained, the returning officer shall notify the Minister of the number of valid votes recorded for and against the proposal.

The Governor
to consider
result of
the poll.

(2) Before exercising a power in response to the prayer of a petition the Governor shall, where a poll has been taken in accordance with this section on the proposals in the prayer, take into consideration the result of the poll.

Ss. 31, 32, 33, 34.

Part III.,
Div. 9.*Division 9.—Appointment of Commissioner
where no Council.*Part III.
Div. 9.

31. Where a municipality has no council or has not sufficient councillors holding office to form a quorum, the offices of all of the members of the council become vacant, and the Governor may, by Order, appoint such person as he thinks fit to be a commissioner of the municipality, and may remove a person so appointed.

Power to appoint commissioner where there is no council or quorum.
Cf. M.C. Act, ss. 36A, 36B; and R.D. Act, ss. 30-31.

32. A commissioner so appointed is entitled to be paid such remuneration out of the municipal fund of the municipality as the Governor from time to time determines.

Remuneration of Commissioner.
Cf. s. 522 post as to municipal fund.

33. A commissioner so appointed is regarded as being the council of the municipality and has and may exercise the powers and shall discharge the duties of the council and the mayor or president.

Powers and duties of commissioner.

34. (1) Where a commissioner has been so appointed for a municipality, the Governor may, by Order, appoint such day as he thinks fit for holding an election for the purpose of restoring a council for the municipality, or in the case of a new municipality electing a council.

Election on council after appointment of commissioner.
Cf. M.C. Act, s. 36C; and R.D. Act, s. 32.

(2) An election held for either of those purposes is effective only if held pursuant to an Order so made.

(3) The powers and duties of the commissioner continue until the commencement of the first properly constituted meeting of the council elected after the Order.

Part IV.,
Div. 1.
Part IV.
Div. 1.

Ss. 35, 36.

PART IV.—THE MUNICIPAL COUNCIL.

*Division 1.—Qualification of Mayor, or President,
and Councillors.*

Qualification
of mayor,
president and
councillors.
Cf. M.C. Act,
s. 37; and
R.D. Act,
s. 23.

35. (1) A person who—

- (a) is over the age of twenty-one years;
- (b) is a natural born or naturalised British subject;
- (c) is either an owner of rateable land within the district of the municipality or occupier of rateable land within the district whose name appears on the electoral roll thereof;
- (d) is not disqualified under section thirty-six or section thirty-seven from being elected;

As to "Dis-
qualifica-
tions" see ss.
36 and 37
post.

is eligible to be elected as a member of the council of the municipality, whether as mayor, president, or councillor.

(2) Where a district is divided into wards, it is not necessary for the land of which he is the owner or occupier to be within the ward for which the person has been elected or nominated for election as a councillor.

(3) Where the owner of any rateable land is qualified to be elected as a member if the owner does not reside on the land any attorney, agent or business manager of the owner is, subject to the provisions of this Part, but notwithstanding that he has not the qualifications set out in paragraph (c) of subsection (1) of this section, qualified to be elected, and act as a member.

Disqualifi-
cation for
unpaid rates.

36. (1) A person is disqualified from being elected as a mayor, president or councillor of a municipality, if at the time of his nomination for election to the office he owes to the municipality, in respect of rateable land owned by him, other than in the capacity of a trustee or liquidator, the amount

of any rates or portion thereof imposed by the municipality on the land more than six months prior to the date of the nomination.

(2) A mayor, president or councillor of a municipality is disqualified from acting as such if, while holding the office, he fails to pay the amount of any rates for a period of six months after the rates are due and payable by him to the municipality other than in the capacity of a trustee or liquidator.

(3) Where the Governor is of opinion that on account of economic or seasonal conditions it is desirable that the operations of subsections (1) and (2) of this section should be suspended, he may, from time to time by proclamation, suspend their operation in such districts and for such periods as are specified in the proclamation and may by subsequent proclamation revoke or vary the proclamation.

37. (1) A person who—

- (a) is an undischarged bankrupt;
- (b) is a person convicted of and under or awaiting sentence for a crime;
- (c) is of unsound mind;
- (d) is the holder of an office of profit of the municipality;
- (e) has direct or indirect pecuniary interest in an agreement to which the municipality is a party; or
- (f) is not qualified to be elected a member,

Disqualifica-
tion.
Cf. M.C. Act,
ss. 38, 39; and
R.D. Act,
s. 24.

is, except where subsection (2) of this section provides otherwise, disqualified from being elected or acting as a mayor, or president, or councillor of a municipality.

Cf. subs. (2)
of this s.

(2) A person is not so disqualified—

(a) on the ground that he is the holder of an office of profit of the municipality by reason only that being a mayor, president or councillor,

(i) he receives a mayoral, or presidential allowance or travelling allowances;

(ii) he acts as a deputy returning officer, presiding officer or poll clerk under this Act, or receives remuneration for so acting;

(iii) he receives payment under paragraph (g) or (h) of section five hundred and thirteen; or

(iv) he is or may be entitled to any remuneration pursuant to sections thirty-eight or forty of the Bush Fires Act, 1954, but the exemption provided under this subparagraph continues so long only as the remuneration is not paid to him or, at his request or direction, to any other person.

(b) on the ground that he has direct or indirect pecuniary interest in an agreement to which the municipality is a party by reason only that—

(i) he has the pecuniary interest as a member of and in common with other members of an incorporated company which consists of at least twenty members and which is a party to the agreement, or as a director, manager or secretary of a company he has the pecuniary interest so long as he discloses to the council the interest prior to his nomination for election;

Cf. s. 513 (g)
or (h) post
as to
expenses
and loss of
earnings.

-
- (ii) in the ordinary course of business, and in good faith, he sells goods to, supplies services to, or does work for, the municipality, or for any person who has entered into a contract with the municipality;
 - (iii) he rents from the municipality for entertainments, whether for profit or otherwise, a building, hall, or room;
 - (iv) he is the lessee, licensee or occupier of land from the municipality;
 - (v) he is beneficially interested in a newspaper in which the municipality inserts advertisements;
 - (vi) he lends to the municipality money lawfully borrowed by the municipality in accordance with the provisions of this Act;
 - (vii) he purchases or hires chattels or engages servants from the municipality, where the purchases are made or the hiring or engagement is effected on the same terms and conditions as are available to other persons who are not members of the council;
 - (viii) he transfers to the municipality land acquired by it under its powers for the compulsory acquisition of land, or claims compensation from the municipality in respect of the the acquisition if the compensation is determined by a Compensation Court established under the provisions of the Public Works Act, 1902, or by agreement between the parties to which the Minister consents.

Cf. s. 513 (b)
post as to
insurance
risks.

(ix) he is insured against risks mentioned in paragraph (b) of section five hundred and thirteen or is insured against personal injury pursuant to section thirty-seven of the Bush Fires Act, 1954; or

Cf. No. 41
of 1953.

(x) he seeks or receives assistance from the municipality under the Assistance by Local Authorities in Wiring Dwellings for Electricity Act, 1953, or under the Health Act, 1911 or under any other Act;

Cf. No. 29 of
1955, s. 2.

(xi) he seeks or receives assistance from the municipality under any of its schemes approved by the Minister, if the work under the scheme has been let by public tender;

(xii) (I) he has the interest as a member of an association, which interest arises out of an agreement made or purporting to be made by or on behalf of the association with the municipality, being an interest that is held in common with all other members of the association who are bound by the agreement;

(II) in this subparagraph "association" means a body of persons, whether incorporated or not, consisting of not less than ten members which is not formed for the purpose of securing pecuniary profit to the members from the transactions thereof and having for its objects social, religious, educational, literary, musical, scientific, agricultural, horticultural or other like activities or the welfare and recreation of its members;

- (xiii) he purchases land or chattels sold for or on behalf of the municipality by public auction.

38. (1) A person elected to, or continuing under section nine in, the office of mayor, or president or councillor is not entitled after the coming into operation of this Act to act in the office until he has made and subscribed an oath or affirmation of allegiance and a declaration in the appropriate form in the Fourth Schedule.

Oath of allegiance and declaration to be made and subscribed.
Cf. M.C. Act, s. 40.
Fourth Schedule.
Cf. s. 9 ante.

(2) The person so elected to, or continuing in, office shall before acting in the office make and subscribe the oath or affirmation, and the declaration if elected or continuing as mayor or president, before and be attested by his predecessor in office, or a justice of the peace, or if elected or continuing as a councillor, before the mayor, or president, or a justice of the peace.

(3) Where a person elected or continuing as mayor, or president, or councillor does not, within two months after the day on which he has been declared to be so elected, or from the coming into operation of this Act if he continues in office, make and subscribe the oath of affirmation and the declaration, his office becomes vacant.

39. (1) Where a member of a council—

- (a) dies or ceases to have the qualifications required by section thirty-five;
- (b) becomes disqualified under section thirty-six or thirty-seven;
- (c) under the Bankruptcy Act, 1924 as amended, of the Parliament of the Commonwealth, has an order of sequestration made against his estate, or enters into a composition or scheme of arrangement with, or executes a deed of assignment for, the benefit of, his creditors;

Supervening disqualifications.
Cf. M. C. Act, s. 41; and
R.D. Act, s. 25; and
ss. 35, 36 and 37 ante.

(d) by written notice signed by him and delivered to the mayor, or president, or the clerk of the council, resigns from his office;

(e) is ousted from office—

(i) by a Court of Disputed Returns under Subdivision H of Division 4 of this Part;

(ii) by a court of summary jurisdiction under Part V.; or

(iii) on the dismissal of a council under section one hundred and fifty-six; or

(f) is absent without leave of the council, during the holding of three consecutive ordinary meetings;

Cf. s. 137 post as to disputed returns; s. 155 post as to ouster; s. 156 post as to dismissal of council.

Cf. subs. (2) of this s.

his office as member becomes, except where otherwise provided by subsection (2) of this section, vacant and the vacancy is an extraordinary vacancy.

(2) The non-attendance at the time and place appointed for an ordinary meeting of the council does not constitute absence from an ordinary meeting of the council—

(a) unless a meeting of the council at which a quorum is present is actually held on that day; or

(b) if the non-attendance occurs while proceedings in connection with the ouster of the member from office have been commenced and are pending or while the return of the member is disputed and proceedings relating to the disputed return have been commenced and are pending.

Cf. s. 155 post as to ouster from office.

As to disputed returns cf. s. 137 post.

Penalty for acting when disqualified. Cf. M.C. Act, s. 42. Cf. s. 38 ante as to oath, etc.

40. (1) A person, who being disqualified by the provisions of this Act to be or continue a member of a council, acts as such, or so acts before he has made and subscribed the oath or affirmation, and the declaration required by this Act, commits an offence against this Act except where the disqualification is unsoundness of mind.

(2) The acts and proceedings of a person elected and acting as a member of a council are, notwithstanding that at a material time he was or is not qualified to do so, as valid and effectual as if he were or is so qualified.

*Division 2.—Terms of Office of Mayors, Presidents
and Councillors.*

Part IV.
Div. 2.

41. (1) The longest term for which a person may be elected at one election—

Longest
possible
term of
office.

(a) to the office of mayor or president is two years, where the mode of election is by the electors, or one year where it is by the council;

Cf. subs. (3)
of this s.

(b) to the office of councillor is three years; but the longest term for which a person may be elected to the office is, in the circumstances mentioned in subsection (3) of this section, prolonged or shortened in accordance with the provisions of that subsection.

(2) The term of office of a member of a council commences—

Commence-
ment of
term of
office.

(a) where he is elected to fill an extraordinary vacancy

Cf. s. 39
ante as to
extraordinary
vacancy.

(i) on the day next following that of his nomination if he is elected unopposed;

(ii) on the day next following that of his election if he is elected by the taking of a poll;

(b) where he is elected at an annual municipal election,

Cf. s. 70 post
as to annual
municipal
elections.

on the Sunday next after the fourth Saturday in May in the year of the election

except where subsection (3) of this section provides otherwise;

Cf. subs. (3)
of this s.

(c) where he is elected—

*Cf. Part III.
Div. 2 ante
as to new
municipality.*

(i) at the first election of the council of a new municipality;

*Cf. Part III.
Div. 9 as to
appointment
of a com-
missioner.*

(ii) at the first election held to restore a council to a municipality after the appointment of a commissioner for the municipality;

*Cf. s. 156 post
as to dis-
missal of
council.*

(iii) at the first election held to restore a council of a municipality after dismissal by the Governor of the council;

*Cf. s. 12 (4)
(d) ante as
to increase
in number
of wards.*

(iv) at an election held to elect additional members to a council as a result of an increase in the number of wards;

*Cf. ss. 12 (2)
(1); 12 (4)
(d); and 19
ante.*

(v) at an election held pursuant to an Order made under paragraph (j) of subsection (2), or paragraph (d) of subsection (4) of section twelve, or under section nineteen; or

*Cf. s. 12 (4)
(d) ante as
to alteration
of boundaries
of wards.*

(vi) at an election held to elect additional members to a council as a result of an alteration of the boundaries of wards,

*Cf. s. 97
post as to
necessity or
otherwise
of poll.*

on the day next following that on which a poll, if necessary, is held, or on which a poll, if unnecessary, would have been held.

*Prolongation
or shortening
of term of
office.*

(3) (a) Where by an election other than an election to fill an extraordinary vacancy a person is elected to an office of member of a council—

(i) less than six months before the fourth Saturday in May in any year,

for the purpose of determining the date of his retirement from the office,

the term of office for which he is elected does not, although he occupies and acts in the office in accordance with the appropriate provisions

of subsection (2) of this section, commence until the first Sunday after the fourth Saturday in May next succeeding his election; or

Cf. subs. (2) of this s. ante.

(ii) less than six months after the fourth Saturday in May in any year,

for the purpose of determining the date of his retirement from the office,

the term of office for which he is elected commences, although he does not occupy the office in the meantime, on the first Sunday after the fourth Saturday in May next preceding his election.

(b) Where an election is postponed or deferred under this Act until after the fourth Saturday in May in any year, a member of a council whose term of office expires on that day is authorised by this paragraph to continue to act in the office until the election is held.

Cf. ss. 98, 130, or 131 post as to postponement and deferment of elections.

(4) The term of office for which a person is elected to the office of member of a council continues for the longest term, which is mentioned in subsection (1) of this section, and which is appropriate to the office except—

Termination before expiry of term of office.

(a) where an extraordinary vacancy occurs in office;

Cf. s. 39 ante as to extraordinary vacancy.

(b) where the office of councillor is sooner vacated through order of retirement in accordance with the provisions of subsection (7) of this section; or

Cf. subsec. (7) of this s.

(c) where—

Cf. s. 12 (4) (c) ante.

(i) the municipality, or the council of which he is a member, is abolished under paragraph (c) of subsection (4) of section twelve;

(ii) an Order directing otherwise is made under paragraph (d) of subsection (4) of section twelve;

Cf. s. 12 (4) (d) ante.

Cf. s. 20 (1)
(a) ante.

(iii) an Order directing otherwise is made under paragraph (a) of subsection (1) of section twenty;

Cf. s. 31
ante.

(iv) his office becomes vacant under section thirty-one;

Cf. s. 137
post.

(v) a court of disputed returns declares otherwise under section one hundred and thirty-seven;

Cf. s. 155
post.

(vi) an order made by a court on an application for ouster from office under section one hundred and fifty-five directs otherwise; or

Cf. s. 156
post.

(vii) the council of which he is a member is dismissed by the Governor under section one hundred and fifty-six.

Period of
occupancy of
office by
person
elected to
fill extra-
ordinary
vacancy.

(5) Where an extraordinary vacancy occurs in an office of a member of a council during a period for which an occupant of the office is elected, the person elected to fill the vacancy retires from the office on the day on which his immediate predecessor in the office would have retired had he remained in the office for the period for which he was elected to the office unless the person elected to fill the vacancy ceases to occupy the office sooner because of the operation of any of the provisions of this Act mentioned in subsection (4) of this section, or because of death or other cause.

Cf. subs. (4)
of this s.

Rotation of
retirement
from office
of councillor.

(6) The term of office of a person elected to the office of councillor—

Cf. subs. 2
(c) of this s.

(a) at an election mentioned in paragraph (c) of subsection (2) of this section; or

(b) at an election to fill two or more vacancies in the office of councillor of a council—

(i) where the vacancies exist in respect of the same ward of a district; or

- (ii) where the vacancies exist in respect of a district which is not divided into wards

expires at the termination of one, two or three years from the commencement of his term of office in accordance with the appropriate provisions of subsection (7) of this section.

Cf. subs. (7) of this s.

(7) (a) The terms of office of the councillors of a council—

Order of retirement from office of councillor.
Cf. s. 97 (5) (d) post.

- (i) where the number of councillors is a multiple of three, are such that one-third of the number of councillors retires from office on the fourth Saturday in May of each year;
- (ii) where the district is divided into wards represented by councillors to the number of three or a multiple of three, one-third of the councillors for each of those wards so retires;
- (iii) where—

the total number of councillors of a council is not a multiple of three; or

the number of councillors representing a ward is not three or a multiple of three;

the term of office

is such that on the fourth Saturday in May of each year, the number of councillors retiring from office is, in the opinion of the Returning Officer, as near as practicable to one-third of that total number and to one-third of the number of councillors representing each ward; and is such that a person does not hold the office of councillor for a term of more than three years as the result of one election.

(b) The order of retirement from office by councillors is in inverse order to that in which they are declared elected at the time of election by the Returning Officer.

(c) Where a district is divided into wards each of which is represented by the same number of councillors, the order of retirement from office by councillors representing each ward is in inverse order to that in which they are declared elected at the time of election by the Returning Officer.

(d) Where a district is divided into wards, which, or some of which, are not represented by the same number of councillors, retirement from office by councillors is as follows:—

- (i) Where the number of councillors representing the ward is three or more, not less than one-third of that number retires on the fourth Saturday in May of each year in inverse order to that in which they are declared elected at the time of the election by the Returning Officer.
- (ii) Where the number of councillors representing each ward is two, each retires in inverse order to that in which they are declared elected at the time of the election by the Returning Officer, and on the fourth Saturday in May in such year as ensures that each retires during a period of three years.
- (iii) Where each ward is represented by only one councillor, the order of retirement of each of the councillors is in inverse order to the percentage of primary votes cast for him at his election; or
- (iv) where one ward is or some wards are represented by only one councillor, and another ward is or other wards are represented by councillors of a number which is not three or a multiple of three, the order of retirement of each of the councillors is in inverse order to the percentage of primary votes cast for him at his election but is such that not less than one-third of the total number retires on the fourth Saturday in May of each year.

Ss. 41, 42, 43, 44.

Part IV.,
Divs. 2
and 3,
Subdiv. A.

(e) The order of retirement from office by councillors of a municipality, whether its district is or is not divided into wards, and if divided into wards, where each ward is or some of the wards are represented by the same or a different number of councillors is determined—

- (i) where one person is elected unopposed, as if his election had in fact been opposed and as if all electors on the roll for the district or ward, as the case may be, had cast their primary votes in his favour; or
- (ii) where more than one person is elected unopposed, by the drawing of lots by the Returning Officer.

42. The fact that a person has occupied office as a member of a council does not render him ineligible for re-election and, if not disqualified from doing so, he may again nominate for election to and hold office as a member of a council.

Former
occupancy
of office
does not
render
ineligible for
re-election.
Cf. s. 37 ante
as to dis-
qualification.

43. (1) Where during the term of office of a councillor of a municipality the office of mayor or president of the municipality becomes vacant, if the mode of election is by the electors, the councillor may, without resigning his office, nominate for election to the vacant office.

Councillor
may
nominate for
election to
office of
mayor or
president
without
resigning.

(2) If and when a councillor is elected to fill the vacancy, he is regarded as having resigned under section thirty-nine from his office as councillor and the resulting vacancy consequently is an extraordinary vacancy.

Cf. s. 39 ante,
as to
vacancy.

Division 3.—The Electoral Roll.

Subdivision A.—Persons Eligible to be Enrolled.

Part IV.
Div. 3.
Subdiv. A.

44. Persons are eligible to be registered as electors in electoral rolls of municipalities in accordance with the provisions of this Subdivision.

Electors.

Part IV.,
Div. 3,
Subdiv. A.

S. 45.

Eligibility
for registra-
tion as an
elector.

Cf. M.C. Act,
s. 49; and
R.D. Act,
s. 33.

45. (1) A person is eligible to be registered in the electoral roll of a municipality as an elector of the municipality, if—

- (a) he has attained the age of twenty-one years;
- (b) he is a natural-born or naturalised British subject; and
- (c) he is the owner or occupier of rateable land in the district of the municipality.

(2) Where the district is divided into wards, a person so eligible to be registered on the electoral roll of the municipality is eligible to be registered on the electoral roll of a ward in which the land is situated.

(3) Where rateable land, held as one holding, is situated partly in one ward and partly in another or other wards the occupier or, as the case may be, the owner of the land is eligible for registration as an elector on the roll of only one of those wards, being the ward—

- (a) nominated in writing by the occupier;
- (b) nominated in writing by the owner, when the occupier does not so nominate; or
- (c) selected by the council in whose district the wards are situated, if neither the occupier nor the owner so nominates.

(4) Where two persons in conjunction own, or wholly occupy, a separate and distinguishable piece of such rateable land, each of them shall for the purposes of this Part be deemed to be an owner or occupier, as the case may be, of the land, and the rateable value of the interest of each in the land shall be deemed to be one half of the rateable value of the whole of the land.

(5) Where three or more persons in conjunction own, or wholly occupy, a separate and distinguishable piece of rateable land, each of two only of them, being the two selected or deemed to be selected under

subsection (6) of this section, shall for the purposes of this Part be deemed to be an owner or occupier, as the case may be, of the land, and the rateable value of the interest of each in the land shall be deemed to be one-half of the rateable value of the whole of the land.

(6) The two persons referred to in subsection (5) of this section may be selected by all or a majority of all the persons so owning or occupying the land, but if for any reason including an equality of numbers a selection is not so made, or having been made, both or either of the persons selected cease or ceases to have an interest in the land as conjoint owner or occupier, then the two persons whose surnames are first and second in alphabetical order of the names of all those persons shall be deemed to be so selected.

(7) Where one person occupies a separate part of rateable land, whether the occupancy is of a separate part of a building on the land, or is of any other part, he shall for the purposes of this Part be deemed to be the occupier of land being the part so occupied, and the rateable value of that part—

(a) shall, if the valuation is assessed on unimproved value, be apportioned so as to bear to the valuation of the whole of the rateable land, the ratio which the area of the part bears to the area of the whole; or

(b) shall, if the valuation is assessed on annual value, be apportioned so as to bear to the value of the whole, the ratio which the rental value of the part bears to the rental value of the whole.

(8) Where two persons or more than two persons in conjunction occupy a separate part of rateable land,

(a) each, if there are only two of those persons;
or

- (b) if there are more than two of those persons, each of two only of the persons, selected in accordance with subsection (6) of this section,

shall for the purposes of this Part be deemed to be the occupier of land, being the part so occupied, and the rateable value of the part shall be apportioned in accordance with the provisions of paragraph (a), or, as the case requires, paragraph (b), of subsection (7) of this section, which provisions apply as if repeated in this subsection.

(9) Where rateable land is owned or occupied by a body corporate, a person nominated in writing by the body delivered to the clerk or, if a person is not so nominated, the manager, secretary or attorney of the body, is eligible to be so registered on its behalf.

(10) A nomination or selection

mentioned in subsection (3), (6) or (9) of this section

may be made from time to time

but, except in the case of a body corporate, not more than once in each year

and

unless in the case of a person selected under subsection (6) he ceases to be an owner or occupier of the land in respect of which he was selected, or in the case of a nominee mentioned in subsection (9) he ceases, whether through death or otherwise, to be able to act on behalf of the body by which he was nominated,

becomes effective on and after the first day of January next succeeding the day on which written notice of the nomination or selection is served upon the clerk of the municipality in which district the land is situated.

(11) Where a body corporate has nominated a representative under the provisions of subsections (9) and (10) of this section and the nomination is accepted by the council, the representative shall continue to represent the body corporate for the purposes of this Part until such time as it nominates in writing another person to so represent it or the council is satisfied that the firstmentioned representative no longer represents the body corporate.

(12) (a) Where a person occupies land which is owned by the Crown in right of the Commonwealth or State or by any agency or instrumentality of the Crown in right of the Commonwealth or State, if in respect of the land the Crown or the agency or instrumentality pays to the council in whose district the land is situated an *ex gratia* payment in lieu of rates of an amount at least equivalent to the amount of the rates which would be payable on the land based on the valuation referred to in paragraph (b) of this subsection if it were rateable, the land shall for the purposes of this Part be deemed to be rateable and the occupier is entitled to be registered on the electoral roll of the municipality as an elector.

(b) For the purposes of this subsection and this Part, the council may impute to the land a valuation, either on the unimproved capital value or the annual value, according to the system of valuation in force in the district, or in that portion of the district in which the land is situated.

(13) Where the district is divided into wards, and an elector occupies or owns rateable land in two or more of the wards, the elector is entitled to be registered as an elector in respect of the land situated in each of the wards.

(14) Where a person is the owner of rateable land his wife, if residing on the land, is entitled to be registered as an elector on the roll as the occupier on written application being made by her in that behalf to the council and where a woman is the owner of rateable land her husband, if residing on

Part IV.,
Div. 3,
Subdivs. A
and B.

Ss. 45, 46.

the land, is entitled to be so registered as occupier if he so applies and, if the application is granted by the council, it shall divide the valuation of the land equally between the owner and the spouse.

Part IV.
Div. 3.
Subdiv. B.

Subdivision B.—Preparation of Electoral Lists.

Electoral
lists.
Cf. M.C. Act,
s. 52; and
R.D. Act,
s. 38.

Fifth
Schedule.

Cf. par. (a)
of this subs.

46. (1) (a) For the purpose of compiling the electoral roll for the district or wards of a municipality, the clerk of the council of the municipality shall cause to be prepared and completed, not later than the thirty-first day of January, in each year, an electoral list in accordance with the form in the Fifth Schedule for the district and where the district is divided into wards an electoral list for each ward.

(b) The requirements of paragraph (a) of this subsection are sufficiently complied with, if one list is so prepared and completed as to show particulars relating to voting entitlement in respect of the wards, and those in respect of the district.

Clerk to give
notice that
application
for registra-
tion may
be made.
Cf. s. 690
post as to
official notice
board.

(2) The clerk of each council shall, not later than the fifteenth day of December in each year, by notice, published in a newspaper circulating in the district of the municipality, and by exhibiting a copy of the notice on the official notice board of the council, give notice that persons,

(a) who are eligible for registration as electors for the district or for a ward of the district as the case may be; and

(b) who require to be so registered;

may on or before the fifteenth day of January next succeeding that fifteenth day of December apply in the form in the Sixth Schedule to the clerk of the council to be so registered.

Sixth
Schedule.

Clerk to
include in
list, appli-
cants who
are eligible.

(3) The clerk of the council shall include in the list the names of persons who appear to him to be eligible for registration as being persons whose names have been included on rolls previously prepared for the municipality or for any other reason

Ss. 46, 47.

Part IV.,
Div. 3,
Subdiv. B.

which appears to him to be sufficient as well as the names of persons who before that fifteenth day of January have served upon him an application mentioned in subsection (2) of this section and whose applications should, in his opinion, be granted, together, in any case, with the particulars of the situation, description and valuation of the rateable property occupied or, as the case may be, owned by each.

Cf. subs. (2)
of this s.

(4) The clerk of the council shall

Particulars
to be
included in
list.

(a) cause the names to be arranged in alphabetical order in the list of the municipality or the ward as the case may be;

(b) cause the particulars indicated by the form in the Fifth Schedule to be included in the list;

Fifth
Schedule.

(c) sign the list; and

(d) cause a copy of the list to be exhibited on the official notice board of the council on that thirty-first day of January and during the whole of each of the next succeeding seven days.

Cf. s. 690
post as to
official notice
board.

47. (1) On or before the fifteenth day of February next succeeding the fifteenth day of January mentioned in section forty-six a person—

Applications
for altera-
tion of list.
Cf. M.C. Act,
s. 53; R.D.
Act, s. 39;
and s. 46
ante.

(a) who is eligible to be registered as an elector and whose name is not included in the electoral list may apply in the manner prescribed by subsection (2) of this section to have his name inserted in the list;

(b) who being registered as an elector objects to the retention in the list of the name of a person on the ground that he is not eligible to be registered as an elector, may apply in the manner prescribed by subsection (2) of this section to have that name removed from the list;

- (c) whose name has been inserted in the electoral list and who is dissatisfied with the particulars shown in the list as not specifying the correct number of votes to which he is entitled under the provisions of this Act, may apply to have that number of votes altered;
- (d) whose name has been omitted from the list and who claims to be entitled to vote in respect of rateable land in respect of which the name of another person is included in the list, may apply to have his name substituted for the name of that other and to have the name of the lastmentioned person removed from the list in respect of the land; or
- (e) who, being registered as an elector, objects that a person whose name is included in the list is not entitled to the number of votes set against that person's name, may apply to have the list corrected so as to show the correct number of votes to which that person is entitled.

Cf. subs. (1)
of this s.

Seventh
Schedule.

(2) (a) A person who desires to make an application under subsection (1) of this section may effectively do so by making it in writing signed by him and stating the grounds of his application in, or substantially in, such of the forms in the Seventh Schedule as is appropriate and posting it to the clerk of the council so that in the ordinary course of post it is delivered to him not later than that fifteenth day of February.

Cf. subs. (1)
of this s.

(b) A person who desires to make an application under paragraphs (b), (d) or (e) of subsection (1) of this section is required to post two copies of it to the clerk.

(c) So soon as is reasonably practicable after receiving the two copies of an application mentioned in paragraphs (b), (d) or (e) of this subsection the clerk of the council shall send one of the copies to

Ss. 47, 48, 49.

Part IV.,
Div. 3,
Subdivs. B
and C.

the person, for the removal of whose name or the variation of the number of whose votes from or on the list the application is made.

48. Where the clerk of the council receives applications made under section forty-seven he shall cause notice of

Particulars
of applica-
tions to be
exhibited on
official notice
board.
Cf. s. 47 ante.

(a) the names of the persons making them;

(b) the grounds upon which they are made;
and

(c) the names of the persons whom they affect;

to be exhibited on the official notice board of the council on the eighteenth day of February next following the fifteenth day of February, being the last day on which they may be made, and shall cause the notice to remain exhibited for the whole of each of the seven days succeeding that eighteenth day of February.

Cf. s. 690
post as to
official notices
board.

Subdivision C.—Revision of Electoral Lists.

Part IV.
Div. 3.
Subdiv. C.

49. (1) (a) Except where there are no applications made under section forty-seven, and in consequence a revision of the list is unnecessary, the council shall hold an open court, called a revision court, at such time and at such place, being the office of the council or another convenient place within the municipal district, as the council appoints for the purpose of revising the electoral list.

Council to
hold a court
for revision
of lists.
Cf. M.C. Act,
s. 55; and
R.D. Act,
s. 42.
Cf. s. 47 ante;
and s. 57
post as to cir-
cumstances
in which
holding of
revision
court is
unnecessary.

(b) The court shall revise the list at such time and place as the council so appoints, but, if a time and place is not appointed by the council, at such time and place as the mayor or president appoints, and in either case between the sixth day of March and the twenty-first day of March, both inclusive, in each year, or in the case of adjournment by the twenty-eighth day of March but no later unless the twenty-eighth day of March is a Sunday or public

holiday in which case the council shall hold the court on the day next following that is not a Sunday or public holiday.

(c) The clerk of the council shall give to persons who have made application under subsection (1) of section forty-seven and to the persons named in and in respect of whom the applications are made, seven days' notice of the time and place appointed for the holding of the court.

(2) The mayor or president as chairman, or, in his absence, a chairman being a member of the council appointed as chairman by the other members of the court, and not less than two other members of the council constitute the revision court.

Power to
adjourn
Cf. M.C. Act,
s. 56; and
R.D. Act,
s. 45.

50. The court may adjourn, and, if for half an hour after the time appointed for holding the court or resuming after an adjournment, a sufficient number of councillors to form a court is not present, the mayor or president, or, in his absence, a councillor, or the clerk of the council, shall adjourn the court, but the court shall not be adjourned beyond the twenty-eighth day of March in the year of the revision.

Clerk
to attend
court.
Cf. M.C. Act,
s. 57.
Cf. s. 46
ante.
Cf. s. 47
ante.

51. The clerk of the council shall attend the revision court, and produce to the court the electoral list mentioned in section forty-six the rate book and the notices or copies of the notices, if any, which relate to applications mentioned in section forty-seven, but if the clerk is unable to do so he, or the mayor or president shall appoint a person to do so in his place, and that person shall perform the duties of the clerk under this section.

Revision
court
may summon
witnesses.
Cf. M.C. Act,
s. 58; and
R.D. Act,
s. 46.

52. (1) The revision court has authority to hear, receive, and examine evidence, and, after a time and place have been appointed for holding the court,

Ss. 52, 53, 54.

Part IV.,
Div. 3,
Subdiv. C.

by summons issued by the chairman, to require such persons as the court thinks fit to appear personally before the court, at a time and place to be named in the summons, and to produce such books and papers in their possession or under their control as appear to the court necessary for the purpose of their examination.

(2) The court has the same powers for compelling the attendance of witnesses summoned and their examination upon the taking of oaths or affirmations, and their answering questions relating to the revision, as those conferred upon justices by the Justices Act, 1902.

Cf. No. 11 of
1902 as
am., ss. 74-78.

53. (1) The revision court shall in open court determine upon the validity of applications mentioned in section forty-seven, each member of the court having one vote unless there is an equal division of votes, when the chairman has a casting vote in addition to his vote as a member of the court.

Decision of
the court.
Cf. M.C. Act,
s. 59; and
R.D. Act,
s. 46.
Cf. s. 47 ante.

(2) The decision of the majority is the decision of the court and is not subject to appeal.

54. (1) The revision court shall insert in the electoral list under revision the name of a person who has applied and has proved to the satisfaction of the court to be entitled to have his name inserted.

Hearing of
claims and
objections
and
correction of
lists.
Cf. M.C. Act,
s. 60; and
R.D. Act,
s. 47.

(2) Except where this section requires otherwise, the court shall retain in the list the names of the persons, application for the removal from the list of whose names has not been made.

Cf. subss.
(5) and (6)
of this s.

(3) The court shall retain in the list the name of a person application for the removal from the list of whose name has been made unless the applicant

appears in person or by a representative on his behalf in support of the application, and satisfies the court that his application should be upheld.

(4) Where application is made for the removal the list, or any of the particulars set against his name, or for the correction of any of those particulars, and the applicant appears in person or by a representative on his behalf in support of the application, and the court is of opinion that the application, if not successfully contested, would be established, the person, if any, contesting the application is not required to prove his qualifications in support of the retention in the list of his name and the particulars set against his name to an extent greater than is, in the opinion of the court, necessary to justify refusal of the application, but if, on being required by the court to do so, he does not prove his qualifications to that extent and service upon him of notice of the application is proved, the court shall expunge his name from the list, or correct the particulars set against his name, as the case requires.

(5) The court shall expunge from the list the name of a person proved to be dead.

(6) The court shall, by means of inspection of the electoral roll and ratebook, correct a mistake or supply an omission which appears to the court to have been made in the list in respect of the name, place of abode, or trade or occupation of a person.

Costs in
frivolous or
vexatious
claims or
objections.
Cf. M.C. Act,
s. 61; and
R.D. Act,
s. 48.
Cf. s. 47 ante.

55. Where it appears to the court that a person has made or attempted to sustain a frivolous or vexatious application under section forty-seven, the court may award costs, not exceeding five pounds or such other sum as is prescribed by the regulations to be paid by him to the person contesting the application; and the amount so awarded is recoverable in a court of competent jurisdiction.

Ss. 56, 57, 58.

Part IV.,
Div. 3,
Subdivs. C
and D.

56. (1) The chairman of the revision court, in open court, shall settle the list by—

Certificate
of revision of
electoral list.
Cf. M.C. Act,
s. 62 and
R.D. Act,
s. 49.

- (a) writing his initials against a name expunged or inserted, and against a part of the list altered or in which a mistake has been corrected or an omission supplied;
- (b) initialling every page of the list so settled; and
- (c) causing to be written at the end of the list a certificate that the list has been revised and is correct, with the date of the certificate.

(2) The chairman, or an officer authorised by him and not less than two other members of the court, shall each sign the certificate.

57. If no application mentioned in section forty-seven has been received on or before the fifteenth day of February in a year, the holding of a revision court in that year is unnecessary, and the mayor, or president, or an officer authorised by him to do so, and two members of the council may, as soon as reasonably convenient after that day, but not later than the twenty-eighth day of March next succeeding that day, sign and certify as the settled list the electoral list as prepared in accordance with the provisions of section forty-six, by the clerk of the council.

Revision
court need
not be held
in certain
circum-
stances.
Cf. M.C. Act,
s. 63; and
R.D. Act,
s. 42.
Cf. s. 47 ante.

Cf. s. 46 ante.

Subdivision D.—Electoral Roll.

Part IV.
Div. 3.
Subdiv. D.

58. (1) The mayor or president or chairman of the revision court, as the case requires, shall deliver the electoral list so settled to the clerk of the council, who, as soon after receiving it as is reasonably practicable, shall, unless the council decides under subsection (2) of this section to adopt the electoral list as the roll—

Clerk to
make out
roll.
Cf. M.C. Act,
s. 64; and
R.D. Act,
s. 50.Cf. subs. (2)
of this s.

- (a) cause the names and the particulars set against the names in the electoral list to be written or printed in a roll, arranged in

Eighth
Schedule.

alphabetical order of the surnames, with the several particulars indicated in the form in the Eighth Schedule;

- (b) cause the names on the roll to be numbered consecutively in numerical sequence commencing with the numeral one opposite the first name;
- (c) cause a sufficient number of copies of the roll to be written or printed; and
- (d) sign and deliver the roll to the mayor or president of the municipality.

Cf. s. 46
ante.

(2) (a) Where the number of names in the list as completed under section forty-six is not increased or decreased by more than five per centum of that number as the result of expunging some of those names from, and inserting other names in, the list on the revision of it, the council may decide to adopt the list as so settled as the roll of the district or ward as the case may be.

(b) Where the council so decides, the clerk shall sign the list and deliver it to the mayor or president, and when he does so the list becomes the settled roll of the district or ward without compliance with subsection (1) of this section.

Roll signed
to be
electoral
roll.
Alterations.
Cf. M.C. Act,
s. 65; and
R.D. Act,
s. 51.

59. (1) It is an offence to alter a roll or list so settled except by authority of the council under subsection (2) of this section.

(2) From time to time, except during the period of twenty-nine days next preceding an election, the council may, on the application of an elector, or of the clerk of the council, or of a person interested—

- (a) insert in the roll with the appropriate particulars the name of a person who has, since the last preceding thirtieth day of January, become, and is, eligible to be registered in the roll as an elector;

- (b) expunge from the roll the name of a person who has, since the last preceding thirtieth day of January, ceased to be, and is not, eligible to be registered in the roll as an elector;
- (c) make such alterations in the description and unimproved value or annual value as the case may be of land set against the name of an elector who has acquired or disposed of rateable land in the municipality or ward as the case may be since the last preceding thirtieth day of January, as are necessary to make the particulars on the roll correspond with the description and value of the rateable land in the municipality or ward owned or occupied by the elector at the date of the application; and
- (d) make such consequential alterations in the roll as are appropriate.

(3) The roll with alterations, if any, authorised by this section, is the electoral roll of the district or ward, as the case may be, until superseded by a new roll.

60. A copy certified to be a copy of the electoral list or roll for a municipal district or ward by the mayor and clerk, or by the president and clerk, is *prima facie* evidence that it is a copy of the original of which it is certified to be a copy.

Certified copy of list to be evidence.
Cf. M.C. Act, s. 69; and R.D. Act, s. 52.

Subdivision E.—Supplemental.

Part IV.
Div. 3.
Subdiv. E.

61. The clerk shall furnish copies of the roll to persons requiring them on payment of the sum of ten shillings or such other sum as is prescribed by the regulations for each copy.

Clerk to furnish copies of roll.
Cf. M.C. Act, s. 68; and R.D. Act, s. 53.

Part IV.,
Div. 3,
Subdiv. E.

Ss. 62, 63, 64, 65.

Clerk
to supply
copy of roll
to Chief
Electoral
Officer.
Cf. M.C. Act,
s. 67.
Cf. s. 58 ante
as to delivery
of roll to
mayor.
Cf. Constitu-
tion Acts
Amendment
Act, 1899,
63 Vict. No.
19, s. 15.

Omission
to publish,
etc., does not
invalidate
proceedings.
Cf. M.C. Act,
s. 70; and
R.D. Act,
s. 54.

Minister
may appoint
time
for doing
anything
connected
with electoral
lists not
done within
time
prescribed.
Cf. M.C. Act,
s. 71; and
R.D. Act,
s. 55.

Minister
may direct
compilation
of fresh roll
in certain
cases.
Cf. R.D. Act,
s. 56.

62. In each year, as soon as reasonably practicable after the clerk has signed and delivered to the mayor or president the electoral roll, or the electoral list which has been settled as the electoral roll, for that year as required by section fifty-eight, the clerk shall deliver a duplicate copy of the roll or list settled as the roll to the Chief Electoral Officer of the State.

63. An omission to exhibit copies of an electoral list, or to keep a list for perusal or inspection, does not prevent, invalidate, or render imperfect any of the proceedings with regard to the compilation or completion of the list or roll.

64. If anything required by this Act to be done in connection with the preparation, revision, or completion of the electoral list, or the completion of the roll, for a municipal district or ward has not been done within the time appointed or limited for that purpose, the Minister may, by one or more public notices, direct it to be done, and may appoint the several times and intervals of times, as the case requires, at or within which anything required to be done in connection with the preparation, revision, or completion of the list or the completion of the roll shall or may be done, and the omission or non-compliance shall be rectified, and the list or roll validated according to the tenor of the public notice or notices.

65. (1) Where it is proved to the satisfaction of the Minister that a list for a municipal district or ward having been prepared, revised, or completed, or a roll for a municipal district or ward having been completed, has not been duly and regularly prepared, revised, or completed in accordance with this Part, he may, by one or more public notices, direct the compilation of a fresh roll, and that a fresh list be prepared and revised, a revision court be held, and that the list and roll be completed in the manner

Ss. 65, 66.

and in accordance with those directions which have effect according to their tenor, and the roll so compiled supersedes a prior roll for the municipality or ward.

(2) (a) Where the Minister so directs the holding of a court for the revision of an electoral list, he may authorise the court to be constituted and held by three persons nominated by him.

Procedure
on failure
of council
to hold
revision
court.
Cf. R.D. Act,
s. 57.

(b) The persons so nominated, of whom one shall be nominated chairman by the Minister, have the same powers and duties as if constituted a court of revision under section forty-nine.

Cf. s. 49
ante.

(3) The powers conferred upon the Minister by this section are limited by the provisions of section sixty-eight.

Cf. s. 68 post.

66. (1) Where—

(a) a district is divided so as to constitute two or more than two districts, or is divided into wards;

Adjustment
of roll on
division of
municipal
districts.
Cf. M.C. Act,
s. 72.

(b) there is a re-adjustment of wards;

(c) two or more municipalities are united; or

(d) an annexation to a district includes part of another district,

the clerk or clerks of the respective councils of the municipalities affected shall divide the electoral roll or rolls of those municipalities into separate rolls of electors for the resulting districts or wards, or shall make up those rolls into new rolls for the re-adjusted wards, or into a roll or rolls for the district of the united municipality, as the case requires, but shall make only such change in the numbering set against the names of electors the number of votes to which each is entitled in accordance with the provisions of this Act and such transpositions of those names and number of votes from

Part IV.,
Div. 3,
Subdiv. E.

Ss. 66, 67.

the roll of one district or ward to that of another district or ward as the circumstances of the case necessitate.

Cf. s. 58 ante.

(2) In carrying out the duties imposed upon him or them by subsection (1) of this section, the clerk or the clerks of the respective councils shall observe the provisions of paragraphs (a), (b), (c) and (d) of subsection (1) of section fifty-eight in respect of the rolls resulting from the carrying out of those duties.

(3) (a) In this subsection—

“new roll” means a roll resulting from the carrying out by the clerk or clerks of duties imposed by subsection (1) of this section;

“original roll” means a roll from which a new roll is compiled.

(b) Where as the result of the application of subsection (1) of this section a new roll is compiled for a district, or a ward of a district, the mayor or president of the municipality, shall settle the new roll by examining and comparing it with the original roll and if of opinion that the new roll is correctly compiled shall at the end of the new roll sign and show the date of signing a certificate that he has done so and is of that opinion.

Cf. ss. 59-65
ante.

(c) The provisions of this Act contained in sections fifty-nine to sixty-five both inclusive, apply *mutatis mutandis* to a new roll

Where no
council,
Governor
may appoint
person to
settle and
revise lists,
and fix
dates, etc.
Cf. M.C. Act,
s. 74.

67. (1) Where there is no council for a newly-constituted municipality, the requirements of this Act in respect of the preparation, revision, and completion of the electoral list and completion of the electoral roll shall be complied with by such person, at such time, and at such place, as the Governor, by Order, appoints.

(2) By Order the Governor may fix the date on or before which applications under section forty-seven may be lodged in respect of the lists, and may substitute for the dates mentioned in section forty-nine such other dates as he thinks fit.

Cf. s. 47 ante.

Cf. s. 49 ante.

(3) The person or persons so appointed shall discharge the duties imposed and may exercise the respective powers conferred by this Division upon a mayor, president, council, clerk, revision court, and chairman of a revision court.

(4) The provisions of this Act contained in sections fifty-nine to sixty-five both inclusive apply *mutatis mutandis* to a roll compiled pursuant to Orders made under this section.

Cf. ss. 59-65
ante.

68. (1) Where a provision of this Division has not been complied with the Governor may, by Order, declare that an electoral roll is valid notwithstanding the non-compliance.

Governor
may validate
irregular
roll.
Cf. R.D. Act,
s. 58.

(2) Where an Order is so made in respect of an electoral roll, the Minister shall not, in respect of that roll, exercise the powers conferred upon him by section sixty-five, but if under that section he had, before the making of the Order, already issued a direction which has not been completely given effect, he shall cancel the direction on the making of the Order.

Cf. s. 65
ante.

Division 4.—Election of Council.

Subdivision A.—Times Appointed for Election.

69. Where a municipality is newly constituted the Governor, by Order, may appoint such day after the constitution of the municipality for the holding of an election to elect the members of the first council as allows sufficient time for compliance with the provisions of this Act relating to nomination of candidates and to the other pre-requisites to the holding of the election.

First
elections in
newly-
constituted
municipal-
ties.
Cf. M.C. Act,
s. 76 and
R.D. Act,
s. 60.
Cf. Subdiv.
D, ss. 89-98
post.

Part IV.,
Div. 4,
Subdiv. A.

Ss. 70, 71, 72, 73.

Annual
municipal
elections.
Cf. s. 38 ante
as to offices
becoming
vacant.
Cf. M.C. Act,
s. 77; and
R.D. Act,
s. 61.
Cf. s. 136
post.

70. So that vacancies which occur on the fourth Saturday in May of each year throughout the State in offices of member of the council of each municipality may be filled by the election by the electors of the municipality of persons to the vacancies, that day in each year is appointed for the holding of the annual municipal elections.

Election
by electors
to fill
extraordinary
vacancy.
Cf. M.C. Act,
s. 81; and
R.D. Act,
s. 62.
Cf. ss. 72, 76
and 136 post.

71. The day for the holding of an election by the electors of a municipality of a person to fill an extraordinary vacancy in an office of member of the council of the municipality is the day appointed for the purpose—

- (a) by the mayor or president;
- (b) by the council, if a day is not appointed by the mayor or president; or
- (c) by the Minister, if a day is not appointed by the mayor, president, or council,

Cf. Subdiv.
D, ss. 89-93
post.

being such day as allows sufficient time for compliance with the provisions of this Act relating to nominations of candidates and to the other prerequisites to the holding of the election.

Vacancy
to remain
unfilled
in certain
circum-
stances.
Cf. s. 71 ante.

72. Notwithstanding the provisions of section seventy-one, where the extraordinary vacancy occurs during a period of one hundred and five days next preceding the fourth Saturday in May in a year and at a time which allows compliance with those provisions, the day for the holding of the election to fill the vacancy is the fourth Saturday in May in that year; and in the meantime the vacancy remains unfilled.

Election of
mayor or
president
where
elected by
council.

73. Where the mode of election to the office of mayor or president is by the council,

- (a) the councillors at the commencement of the first meeting of the council held after the annual election, or in the case of a council

- of a newly constituted shire, of the first meeting of the council, shall by secret ballot elect one of their number to the office of mayor or president, as the case requires;
- (b) the day, time and place of the first meeting of the councillors following their election to the office of councillor
- (i) are such as the outgoing council appoints; or
 - (ii) shall, in the case of a newly constituted municipality, or if an appointment has not been made under subparagraph (i) of this paragraph, be such as the Minister shall appoint by notice published in the *Gazette*;
- (c) the clerk shall act as chairman of the meeting or any adjournment thereof as provided in paragraph (d) of this section until the mayor or president is duly elected and where there is no clerk the Minister shall appoint in writing a person to so act as chairman, but neither the clerk nor that person unless he is a member shall vote at the meeting or any adjournment thereof;
- (d) if, as the first business of the meeting, the councillors, because of an equality of votes or for any other reason, do not elect one of their number to the office of mayor or president, the meeting shall be adjourned to the corresponding day and time of the next following week at the same place, but if that day is a public holiday it shall be adjourned until the day which follows that day but is not a public holiday or Sunday;
- (e) if at that meeting the councillors fail to elect one of their number to the office of mayor or president the chairman of the meeting shall report the fact to the

Minister and the meeting shall be further adjourned to a date to be fixed by the Minister;

- (f) when the Minister receives the report he may appoint one of the councillors, if he is willing to accept the appointment, to the office of mayor or president and shall appoint the day, time and place of the resumption of the adjourned meeting;
- (g) where none of the councillors is willing to accept the appointment, the Minister may recommend to the Governor that a commissioner for the municipality be appointed;
- (h) if at the time appointed for the resumption of an adjourned meeting the chairman is unable or unwilling to continue to act as such, the Minister shall from time to time as occasion requires appoint another person to act as chairman and the person so appointed shall act but shall not vote at the meeting or any adjournment thereof unless he is a member.

Offices of
deputy-
mayor and
of deputy
president.

74. (1) For the purposes of this Act, there is hereby created—

- (a) in respect of each city and of each town, the office of deputy-mayor; and
- (b) in respect of each shire, the office of deputy-president.

(2) The powers and duties of the offices of deputy-mayor and of deputy-president are those prescribed by this Act.

When office
of deputy
mayor and
of deputy-
president
to be filled
by election
by council.
Cf. s. 9 (6)
ante.

75. (1) The council of a municipality, which under subsection (6) of section nine remains a city or a town or becomes a shire, shall at its first meeting held after the coming into operation of this Act elect one of its councillors to the office of deputy-mayor or deputy-president.

(2) At the first meeting of each council held after the fourth Saturday in May of each year and in the case of a newly-constituted municipality, at the first meeting of its council held after the election of its council, the council shall elect one of its councillors to the office of deputy-mayor or deputy-president.

(3) Where a vacancy occurs in the office of deputy-mayor or deputy-president during the term of the office, the council shall from time to time as occasion requires elect one of its councillors to fill the vacancy for the remainder of the term.

(4) The term for which the councillor is elected to the office under subsection (1), (2) or (3) of this section expires on the fourth Saturday in May next following his election to the office, unless during the term he ceases to hold office as councillor, and if he does so, his term of office as deputy-mayor or deputy-president expires when he ceases to hold office as councillor.

(5) If, by reason of equality of votes or for any other reason, the council fails to elect a councillor to the office of deputy mayor or deputy president in accordance with this section, the clerk shall report the fact to the Minister.

(6) Where the Minister receives the report he shall cause a notice to be given to each member requiring him to attend a special meeting at the time and place specified in the notice in order to elect a deputy mayor or deputy president.

(7) If the members at the special meeting fail to elect a deputy mayor or deputy president, the clerk shall report the fact to the Minister, who may thereupon by notice in writing, appoint a councillor as

Part IV.,
Div. 4,
Subdiv. A.

Ss. 75, 76, 77.

deputy mayor or deputy president and the councillor so appointed shall be deputy mayor or deputy president, as the case may require, and shall be deemed to have been elected to the office at the time referred to in subsection (2) of this section.

Extra-ordinary vacancy in office of mayor or president not to be filled in certain circumstances.
Cf. M.C. Act, s. 82; and R.D. Act, s. 62.
Cf. s. 72 ante.

76. Where an extraordinary vacancy occurs in the office of mayor or president within the period of one hundred and five days last preceding the fourth Saturday in May in any year and under section seventy-two the office remains vacant, the deputy-mayor or deputy-president shall discharge the duties and may exercise the discretionary powers of the office during that period.

Circumstances in which deputy-mayor or deputy-president may act.
Cf. M.C. Act, s. 82A.

77. (1) Where there is a vacancy in the office of mayor or president of a municipality, or the mayor or president is absent from the district, or being in the district is unable or not available to carry out the duties or exercise the respective powers of the office of mayor or president at a time at which for the efficient administration of the local government of the municipality, it is necessary or convenient that they should be carried out or exercised, the deputy-mayor or deputy-president may carry out those duties and exercise those powers.

(2) Where there are vacancies in both offices of mayor and deputy-mayor, or president and deputy-president, or the occupants of both offices are absent from the district, or being in the district neither is able or available to carry out those duties or exercise those powers when it is so necessary or convenient, the clerk and two of the councillors, notwithstanding that they have not been appointed by the council for the purpose, may, except where this Act provides otherwise, carry out those duties and exercise those powers.

Cf. ss. 86, 97 (5) (e), 101 (8), 171 (6), 173 (5), 186, 272 (3), 626 (5) post as to provision otherwise.

Ss. 78, 79, 80.

Part IV.,
Div. 4,
Subdiv. B.Elections
in district
and in
wards.
Cf. M.C. Act,
s. 83.

78. The provisions of this Act relating to preparing for, conducting and ascertaining the results of elections to fill vacancies in the offices of members of a council of—

- (a) a municipality whose district is not divided into wards, apply to the whole of the district;
- (b) a municipality whose district is divided into wards—
 - (i) apply where the vacancy is in the office of mayor or president and the mode of election to that office is by the electors to the whole of the district; and
 - (ii) apply where the vacancy is in the office of councillor representing a ward, to that ward.

79. Where the number of offices of councillor of a council is increased, the provisions of this Act relating to preparing for, conducting and ascertaining the results of, elections, to fill the additional offices are with appropriate adaptations those relating to the filling of vacancies of the offices of council at an annual municipal election.

Election
of additional
councillors.
Cf. M.C. Act,
s. 84.
Cf. ss. 10, 12
(2) (j) 12 (4)
(d) and 19 as
to number
of members.

Subdivision B.—Number of Votes an
Elector may Cast.

Part IV.
Div. 4.
Subdiv. B.

80. The number of votes which an elector may cast at an election to fill a vacancy in the office—

Number of
votes.
Cf. M.C. Act,
s. 85; and
R.D. Act,
s. 34.

- (a) of mayor or president where the mode of election to that office is by the electors;
- (b) of councillor representing a ward, where the district is divided into wards; or
- (c) of councillor for the district, where the district is not divided into wards;

is determined in accordance with the provisions of this Subdivision.

Part IV.,
Div. 4,
Subdiv. B.

Ss. 81, 82.

Election of
mayor or
president.
Cr. M.C. Act,
s. 85.

81. (1) Where there is a vacancy in the office of mayor or president of a municipality and the mode of election to that office is by the electors, a person who is registered as an elector in the electoral roll of the municipality, may cast for each candidate whose nomination for election to fill the vacancy is valid such number of votes as is indicated in the following scale:

Annual Value of Rateable Land.	No. of Votes.
Not exceeding £75	1
Exceeding £75 and not exceeding £150	2
Exceeding £150 and not exceeding £300	3
Exceeding £300	4
Unimproved Capital Value of Rateable Land.	No. of Votes.
Not exceeding £400	1
Exceeding £400 and not exceeding £800	2
Exceeding £800 and not exceeding £1,600....	3
Exceeding £1,600	4

(2) Where, for the purposes of rating, both annual and unimproved values of land are used in the same district, in order to determine the number of votes to which an elector is entitled, each one pound of annual value shall be regarded as equivalent to five pounds of unimproved value.

Election of
councillor
for a ward.

82. Where the district of a municipality is divided into wards and there is a vacancy in the office of councillor representing a ward, a person who is registered as an elector in the electoral roll of the ward, may cast for each candidate whose nomination for election to fill the vacancy is valid, such number of votes as is indicated in the following scale:

Annual Value of Rateable Land.	No. of Votes.
Not exceeding £150	1
Exceeding £150	2

Unimproved Value.

Not exceeding £800	1
Exceeding £800	2

(2) Where, for the purposes of rating, both annual and unimproved values of land are used in the same district, in order to determine the number of votes to which an elector is entitled, each one pound of annual value shall be regarded as equivalent to five pounds of unimproved value.

83. Where the district of a municipality is not divided into wards and there is a vacancy in the office of councillor of the municipality, a person who is registered as an elector in the electoral roll of the municipality may cast for each candidate whose nomination for election to fill the vacancy is valid, such number of votes as is indicated in the scale set out in section eighty-two.

Election of
councillor
where there
are no
wards.

84. Electors may exercise the right to vote in accordance with the provisions of Subdivisions E and F of this Division, but nothing in this Act shall be construed so as to confer on any person the right to vote both in a representative and personal capacity, if in doing so he would cast more than four votes at any election of a person to the office of mayor or president or more than two votes in any election of a person to the office of councillor.

System of
voting.
Cf. Subdiv. F
of this Div.

Subdivision C.—Preparing for, Conducting, and
Ascertaining the Results of Elections
and Polls.

Part IV.
Div 4.
Subdiv. C.
Cf. M.C. Act,
ss. 87-89;
R.D. Act
ss. 63-66;
S.A. L.G.
Act, s. 108.

85. The chief electoral office of a municipality is that of returning officer.

Office of
returning
officer.

86. The Clerk of the Council is the returning officer of a municipality.

Occupant of
the office of
returning
officer.

Part IV.,
Div. 4,
Subdiv. C.

Ss. 87, 88.

Duties of the
office of
returning
officer.

87. The duties of the office of returning officer are

- (a) to ensure that the necessary preparations are made for the holding of elections and polls as and when required by this Act;
- (b) to appoint a deputy returning officer, presiding officers, and poll clerks, to discharge the duties assigned to them by this Act;
- (c) to ensure that the elections and polls are held and conducted in accordance with the provisions of this Act;
- (d) to ascertain the result of the elections and polls; and
- (e) to discharge the obligations imposed upon the occupant of the office by this Act.

Polling
places.

88. (1) (a) The council may appoint the polling places for an election or may direct the returning officer, who shall give effect to the direction, to appoint them; or may appoint some polling places and direct the returning officer, who shall give effect to the direction, to appoint such others as he considers necessary; and those so appointed are the polling places for the election, but this subsection does not preclude the returning officer from appointing such polling places as he thinks are necessary.

(b) Where the council or the returning officer considers it desirable polling places for the election may be appointed at places outside the district of a municipality.

(2) (a) Where the district of a municipality is divided into wards, one or more polling places may be so appointed for each ward, and one or more polling places may be so appointed for all of the wards.

(b) At the former, an elector qualified to do so may vote only in respect of an election for the ward for which the polling place is appointed, but at the latter an elector qualified to do so may vote in respect of an election for any of the wards.

Subdivision D.—Nomination of Candidates.

Part IV.
Div. 4.
Subdiv. D.
Cf. M.C. Act,
ss. 92-95;
R.D. Act,
ss. 68, 69 and
71; and Vic.
L.G. Act,
s. 128.

89. In this Subdivision—

Interpre-
tation.

“nomination day” means the last day upon which the nomination of a person as a candidate at an election to fill the office of a member of the council of a municipality may be delivered by, or on behalf of, the person to the returning officer of the municipality;

“nomination place” means the place appointed by the returning officer as the nomination place;

“northern district” means a district wholly or partly north of the twenty-sixth parallel of south latitude;

“southern district” means a district other than a northern district.

90. The nomination day for an election

in a northern district, is the twenty-ninth day;
and

Nomination
day for
northern
districts and
southern
districts.

in a southern district, is the twenty-second day;

last preceding the day appointed for the holding of the election.

Cf. Subdiv.
A of this Div.
as to day
appointed
for holding
election.

Part IV.,
Div. 4,
Subdiv. D.

Ss. 91, 92.

Returning
officer
to give
notice of
vacancy,
nomination
day and
nomination
place.
Cf. s. 70
ante as to
election by
council.

91. Where there is a vacancy in an office of member of a council of a municipality, which vacancy may be filled by the election of a candidate by the electors of the district of the municipality or of a ward of the district, the returning officer of the municipality shall appoint a nomination place and shall cause notice of the vacancy and of the nomination day and nomination place for the election to be published at least once in a newspaper circulating in the district—

- (a) if the district is a northern district, not more than sixty-three and not less than forty-nine days before the nomination day; or
- (b) if the district is a southern district, not more than forty-two and not less than twenty-eight days before the nomination day.

Candidates
for election.

92. A person may be a candidate for election to fill an office of member only—

Cf. Part IV.,
Div. 1, ss. 35
et seq. ante
as to qual-
ifications.

- (a) if at the time of his nomination as a candidate he is qualified to hold office if elected to it;
- (b) if at the time of his nomination as a candidate he is not a candidate to fill another office of member of the council at the same election or at any other election held by that Council on the same day; and
- (c) if, not earlier
 - (i) than thirty-five days before the nomination day, where the district is a northern district; or
 - (ii) than fourteen days before the nomination day, where the district is a southern district;

and, in either case, not later than four o'clock in the afternoon of nomination day, he delivers or causes to be delivered to the returning officer at the nomination place a completed nomination paper accompanied by a deposit, and accompanied, where the nomination paper is signed by his agent, by written authorisation signed by the candidate authorising his agent to sign the nomination paper on his behalf nominating him as a candidate for election to the office.

Cf. s. 93 post as to completed nomination paper, authorisation and deposit.

93. (1) The form of the nomination paper is the appropriate form in the Ninth Schedule.

Form of nomination papers. Ninth Schedule.

(2) A nomination paper is completed when it is signed by the candidate nominated by it, or is signed by his agent authorised in writing signed by the candidate nominated by it, to sign it on his behalf and to nominate him as a candidate for election to the office.

Completed nomination paper.

(3) A nomination paper shall contain a statement signed by the candidate nominated therein certifying that he is qualified to hold the office of member for which he is nominated, if elected to it.

(4) The amount of the deposit is the sum of five pounds and may be in the form only of legal tender, a cheque, a bank draft, a post office order, or postal notes.

Deposit. Cf. subs. (8) of this s.; s. 95 (3) and s. 134 post as to application of deposits. Cf. Coinage Act 1909-1947, s. 5, and Commonwealth Bank Act, 1945-1953, s. 43, both of the Commonwealth Parlt., as to legal tender.

(5) Where—

(a) a nomination paper is not completed, or is not delivered to the returning officer, or is not accompanied by a deposit, in accordance with the requirements of this Subdivision; or

- (b) the person nominated as a candidate for election to an office of member of a council has already been nominated by a nomination which is not withdrawn or rejected, as a candidate at the same election to fill any other office of member of the council

the returning officer shall reject the nomination as invalid.

(6) The returning officer shall not inquire into or decide upon a person's qualification to hold office of a member of a council, where the person is nominated as a candidate for election to the office, nor reject the person's nomination on the ground that he has not the necessary qualification.

(7) Acceptance by the returning officer of a nomination is conclusive evidence that the requirements of paragraphs (b) and (c) of section ninety-two have been complied with.

Cf. s. 92 (b)
and (c) ante.

(8) The returning officer, immediately he receives the deposit, shall pay it into the appropriate banking account of the municipality and record in the accounts of the municipality that it is held on trust pending its refund to the candidate or forfeiture to the municipality in accordance with the appropriate provisions of this Part.

Cf. ss. 95 and
134 post.

Nominations
to be
exhibited.

94. The returning officer for the election shall exhibit or cause to be exhibited on a notice board within public view at the nomination place, on the day on which he receives the completed nomination paper of a candidate for the election and the accompanying deposit, and agent's authorisation, if any, the name of the candidate and the office for election to which he is a candidate, and shall until four o'clock in the afternoon of the nomination day, cause them to be so exhibited.

95. (1) The nomination of a candidate is cancelled by his death or the withdrawal of his nomination.

Cancellation
of nomination.

(2) A candidate may withdraw his nomination, not later than seventy-two hours after four o'clock in the afternoon of the nomination day by signing and delivering or causing to be delivered to the returning officer written notice of withdrawal.

(3) Where a candidate cancels his nomination by withdrawal not later than twenty-four hours before four o'clock in the afternoon of the nomination day, he is entitled to a refund of the deposit which accompanied his nomination and the returning officer as clerk shall refund the deposit as soon as practicable, but in other cases the deposit is forfeited to the municipality and the returning officer shall, immediately he receives the notice of withdrawal, as clerk pay the deposit into the municipal fund and record the fact in the accounts of the municipality.

Cf. s. 134
post as to
death of
candidate.

96. The returning officer shall exhibit or cause to be exhibited on the notice board at the nomination place—

Cancellations to be
exhibited.

- (a) notice of the withdrawal of a candidate, on the day on which he receives it;
- (b) if the death of the candidate occurs, notification of the death, on the day on which he is satisfied that it has occurred; and
- (c) if he rejects a nomination, notification of, and the grounds of the rejection.

97. (1) Not earlier than four and not later than fifteen minutes past four o'clock in the afternoon of the nomination day at the nomination place the returning officer shall commence to read aloud in the presence and hearing of persons present there and then, the names of the candidates whose nominations have not been cancelled, the office for

Proceedings
on nomination
day.

election to which each is a candidate, and, where a candidate is nominated by his agent, the name of the agent and the written authorisation of the candidate for the agent to act on his behalf, and having so commenced between those times shall continue so to read all of those names, offices and authorisations.

(2) If the number of candidates for election to the respective vacancies in offices of members of a council is equal to the number of the vacancies, the returning officer shall declare the respective candidates elected to the respective offices.

(3) If the number of candidates for election to the respective offices of members of a council of a municipality is greater than the number of the vacancies, the returning officer shall cause to be published in a newspaper circulating in the district a notice showing—

(a) the names of the candidates and the respective offices, for election to which each is a candidate;

(b) the day appointed for holding the election; and

(c) the polling place or places appointed for the election,

and may cause such other notice of them to be given as he thinks fit, and shall in accordance with the provisions of this Act prepare for, conduct, and ascertain the result of, election by ballot of the votes of electors of the district or ward of the municipality, as the case may be, in respect of which vacancies exist, of a candidate or candidates to fill the respective vacancies.

(4) If the number of candidates for election to the respective offices of members of a council is less than the number of vacancies—

(a) the provisions of subsection (2) of this section apply to the extent to which there are candidates for election to the respective offices; and

Cf. Part IV.,
Div. 4, Sub-
div. A ante
as to time
for holding
election.

Cf. s. 88 ante,
as to
appointment
of polling
places.

- (b) in respect of the remaining vacancies, or all of those vacancies if there are no candidates, the returning officer shall, unless under subsection (5) of this section the council fills the vacancies, again carry out the duties relating to elections imposed upon him by this Act in general and by section ninety-one in particular until they are filled.

Cf. subsec.
(5) of this s.

Cf. s. 91.
ante

(5) (a) If after an election has been held to fill vacancies mentioned in paragraph (b) of subsection (4) of this section all or any of the vacancies remain unfilled, the council may select and appoint to the vacant offices persons, who are qualified to hold them, and who are approved by the Minister.

Cf. subs. (4)
(b) of this s.

(b) A council shall not make an appointment under paragraph (a) of this subsection to fill a vacancy until the returning officer has made at least one further attempt under paragraph (b) of subsection (4) of this section to fill it by an election, nor while a subsequent election to fill it is pending.

Cf. par. (a)
of this subs.

Cf. subs. (4)
(b) of this s.

(c) Where a person is so appointed to office he is regarded as having been elected to it by an election held on the day on which he is so appointed.

(d) Where there is a question as to the order of retirement of persons occupying the office of councillor, the order of retirement as between a person appointed under this subsection and another person or other persons,

Cf. s. 41 (7)
ante.

- (i) so appointed to the office of councillor on the same day, is that determined on the drawing of lots by the clerk;
- (ii) so appointed to the office of councillor on different days, is in inverse order of the time of appointment; or
- (iii) elected to the office of councillor, is such that persons so elected retire after persons so appointed.

(e) If anything required to be done for the purpose of making an appointment under this subsection cannot be done because of a vacancy in the office of mayor or deputy-mayor, or president or deputy-president of the council, or because there are insufficient members of the council to form a quorum, the Minister may do the thing or cause it to be done by a person appointed and authorised by him to do it.

Procedure
on day
appointed
for holding
election.

98. (1) If—

- (a) on the day appointed for the holding of an election;
- (b) on the day appointed for the resumption of the holding of an election where it is adjourned only once; or
- (c) on the ultimate day appointed for the resumption of the holding of an election where it is adjourned from time to time;

the number of candidates for election to the respective vacancies in offices of members of a council—

- (i) has, since nomination day, been reduced by the withdrawal of a candidate or candidates, so as to be equal to the number of vacancies, the provisions of subsection (2) of section ninety-seven apply as if repeated in this subsection;
- (ii) is, whether so affected by withdrawal or not, greater than the number of vacancies, the provisions of subsection (3) of that section apply as if so repeated; or
- (iii) has, since nomination day been reduced so as to be less than the number of vacancies, or as to leave no candidates, the provisions of subsections (4) and (5) of that section apply as if so repeated.

Cf. s. 130
post as to
adjourn-
ments.

Cf. s. 97 (2)
ante.

Cf. s. 97 (3)
ante.

Cf. s. 97 (4)
and (5) ante.

(2) Where a candidate for election to fill a vacancy in office of a member of a council dies after four o'clock in the afternoon of the nomination day and before the declaration is made under subsection (1) of section one hundred and twenty-eight, the election is void, and the vacancy or vacancies in an office of member shall be treated as an extraordinary vacancy or vacancies occurring on the date of the death of the candidate.

(3) If an election is not held, the returning officer shall unless under subsection (5) of section ninety-seven the council fills the vacancies, again carry out his duties relating to elections under this Act in general and under section ninety-one in particular until the vacancies are filled, or a commissioner is appointed or the council is dismissed.

Cf. s. 97 (5)
ante.

Cf. s. 91
ante.
Cf. ss. 31
et seq. ante
as to
appoint-
ment of
commis-
sioner.
Cf. s. 158
post as to
dismissal of
council.

Subdivision E.—The Polling.

Part IV.
Div. 4.
Subdiv. E.
Cf. M.C. Act,
Part IV.,
Div. 4 (v);
and R.D. Act,
Part III.,
Div. 9.

99. At an election of a candidate or candidates to fill a vacancy in an office of member of a council, an elector may—

Voting in
person or
in absence.

- (a) vote in person by attending at the appropriate polling place between eight o'clock in the forenoon and eight o'clock in the afternoon of the day appointed for holding the election, recording his vote on the ballot paper or, as the case may be, ballot papers supplied to him, and placing it or them in the appropriate ballot box provided at the polling place; or

- (b) where the provisions of section one hundred and eleven apply, vote in absence.

Cf. s. 111
post.

Part IV.,
Div. 4,
Subdiv. E.

Ss. 100, 101.

Secrecy in
voting.

100. The returning officer, either by causing separate compartments to be provided, or in such other manner as he thinks fit, shall ensure that at the polling place an elector may mark his ballot paper or, as the case may be, ballot papers so that the marking cannot, from the time when the elector commences the marking to the time when the ballot box is opened and the ballot papers are scrutinised by a person authorised to do so by this Act, be seen by a person other than the elector, except where provided otherwise by paragraph (b) of section one hundred and ten.

Cf. s. 110
(b) post as
to assistance.

Ballot
papers.

101. (1) The returning officer shall cause ballot papers to be printed for the election in such of the forms in the Tenth Schedule as are appropriate and of a number sufficient for the purposes of the election.

Tenth
Schedule.

Order of
appearance
of candi-
dates' names
on ballot
paper.

(2) Where there are more than two candidates for election to fill a vacancy the returning officer shall appoint a time and place for drawing lots to determine the order of appearance of the several candidates' names on the ballot paper, and shall cause notice of his intention to draw the lots at that time and place to be served on each of the candidates.

(3) The candidates and other persons who desire to do so may and the returning officer shall, attend at the time and place appointed.

(4) At the time and place appointed and in the presence of persons in attendance—

(a) the returning officer shall—

- (i) exhibit a list of the names of the candidates;
- (ii) exhibit as many cards as there are candidates, each card being of the same size, shape, and colour, and having the name of a different candidate written upon it;
- (iii) exhibit an empty receptacle;

(iv) place the cards in the receptacle and agitate them; and

- (b) the returning officer shall, in such manner that he is unable to see into it, draw the cards one at a time from the receptacle and record in a list the names appearing on the cards in the order in which they are drawn and sign and date the list, exhibit it to persons in attendance and retain it, until the election can no longer be questioned.

(5) The returning officer shall cause the ballot papers to be printed so that the names of the candidates appear upon it in the same order as that so recorded in the list by him.

(6) The returning officer shall mark or cause each ballot paper intended for use at the election to be marked as authorised for use at the election by writing his initials on the back of it, unless the council directs that his initials be stamped on the back of it, in which case he shall give effect, or cause effect to be given, to the direction.

102. Where only one polling place is appointed it is the chief polling place and the returning officer shall preside there as the presiding officer but the requirements of this section are sufficiently complied with if he arranges for the deputy-returning officer to preside there as presiding officer in his place, and the deputy-returning officer, or during his temporary absence a person appointed by him as his substitute for the purpose, does so.

Chief polling
place and
presiding
officers.
One polling
place.

103. Where more polling places than one are appointed—

Polling
places.

- (a) one of them, nominated as such by the council, or by the returning officer if the council does not nominate it, is the chief polling place;

Cf. s. 102
ante.

- (b) section one hundred and two applies in respect of presiding at the chief polling place so nominated;
- (c) a presiding officer shall preside at each of the polling places other than the chief polling place, at which the returning officer is presiding but the requirements of this paragraph are sufficiently complied with if during his temporary absence, a person appointed by him as his substitute for the purpose presides there in his place.

Scrutineers.

104. (1) By notice in writing signed by him and served upon the returning officer a candidate may appoint as his scrutineers, such number of persons as he thinks fit and nominates by name, to attend one at a time during an election at the polling place specified in the notice.

Cf. s. 105
post.

(2) A person who is so appointed and who makes and subscribes the declaration mentioned in section one hundred and five, may attend the polling place so specified during the election and act as scrutineer for the candidate by whom he is appointed, but shall not remain in the polling place while another person so appointed by the candidate as his scrutineer is in the polling place.

Declaration
by returning
officer and
other elec-
toral officers.

105. (1) A person appointed to carry out the duties of the office of returning officer, of deputy returning officer, of presiding officer, of substitute for a presiding officer, of poll clerk, or of scrutineer, for an election, shall not commence to carry out the duties of the office until he has made and signed a declaration in the form in the Eleventh Schedule.

Eleventh
Schedule.

(2) Where the office is that of returning officer the person appointed to it shall make and subscribe the declaration before a justice.

(3) Where the office is other than that of returning officer, the person appointed to it shall make the declaration either before a justice or a person who is entitled to vote as an elector at the election.

106. (1) A person occupying the office of returning officer, deputy returning officer, presiding officer, or substitute for a presiding officer, has power and authority—

Powers of
returning
officer,
deputy,
presiding
officers.
Cf. M.C. Act,
s. 101; and
R.D. Act,
s. 77.

- (a) to maintain and enforce order and keep the peace in or about a place at which, or a proceeding in relation to which, he is carrying out the duties of the office;
- (b) without other warrant than this Act, to arrest or cause to be arrested and take or cause to be taken before a justice, and charged with having done any of the following things which are offences against this Act, a person reasonably suspected by him of—
 - (i) knowingly and wilfully making a false answer to a question put to him under section one hundred and nine;
 - (ii) knowingly and wilfully casting or attempting to cast at an election a number of votes greater than the number which he is entitled to cast at the election;
 - (iii) personating or attempting to personate an elector; or
 - (iv) leaving or attempting to leave the polling place after having received a ballot paper without placing it in the ballot box, or if it is spoilt returning it to the presiding officer;
- (c) without warrant other than this Act, to cause to be removed a person who obstructs the approaches to the polling place or who conducts himself in a disorderly manner, or misconducts himself, or does not obey the

Cf. s. 103
post.

Cf. s. 110 (2)
post as to
spoilt ballot
papers.

Cf. s. 147 (1)
post as to
penalty for
misconduct,
and as to
offence for
re-entry
after
removal.

lawful orders of the returning officer, deputy returning officer, presiding officer or the substitute for a presiding officer.

(2) A person so removed shall not again enter the polling place during the time the election is being held without the permission of the returning officer, deputy returning officer, presiding officer, or the substitute for a presiding officer.

(3) Members of the Police Force of the State shall aid and assist the returning officer, presiding officer, and the substitute for a presiding officer in exercising the power and authority conferred upon them by this section.

Ballot
boxes.

107. (1) The returning officer shall cause to be provided at each polling place the number of ballot boxes necessary for receiving ballot papers deposited at the polling place in the course of the election or elections for which the polling place is appointed.

(2) A ballot box is a receptacle capable of being locked so as effectively to contain and conceal its contents completely and having when locked an opening of such dimensions only as to allow the insertion of a ballot paper into the receptacle.

(3) Where the election is held to elect a candidate or candidates to the office or offices of—

- (a) mayor or president where the mode of election is by the electors;
- (b) a councillor or councillors for a municipality whose district is not divided into wards;
- (c) a councillor or councillors to represent a ward;

the returning officer may, if in his opinion it is necessary or desirable to do so in order to facilitate or expedite the taking of the poll, assign a particular

box or group of boxes to receive only ballot papers relating to the particular office or offices mentioned respectively in paragraphs (a), (b) and (c) of this subsection and if a particular box or group of boxes is so assigned the presiding officer shall ensure that the ballot papers are deposited in the appropriate ballot boxes.

(4) As soon as is reasonably practicable before a ballot box is used for receiving ballot papers at a polling place, the presiding officer appointed to the polling place shall open the ballot box, satisfy himself that it is empty, and exhibit it to the poll clerks and scrutineers, if any, then present, and shall then lock and so seal it that on the box being opened the seal will break, retain the key of the lock, and place the ballot box where it will, while the poll is being conducted, be constantly in his view or in the view of his substitute during his temporary absence.

108. The presiding officer appointed to a polling place for an election shall ensure that it is open for receiving votes between—

Time during
which
polling places
open.

eight o'clock in the forenoon, when the poll commences; and

eight o'clock in the afternoon, when the poll closes,

of the day appointed for holding the election, but may in case of riot or violence or other cause adjourn the poll and close the polling place.

Cr. s. 130
post.
Adjournment
because of
riot or
violence
or other
cause.

109. (1) A person who attends a polling place to vote in person, shall present himself to the presiding officer or, if he is temporarily absent, to the substitute for the presiding officer.

Issue of
ballot papers
for voting
in person.

(2) The presiding officer or his substitute may, but if required to do so by a candidate or his scrutineer shall, ask the person all or any of the following questions:—

Questions.

(a) What is your name and address?

- (b) Are you the person whose name appears as (here state the name) in the electoral roll for the (here state the name of the district or ward as the case requires)?
- (c) Have you attained the age of twenty-one years?
- (d) Are you a natural-born or naturalised British subject?
- (e) Have you already voted at the present election?

(3) If the person—

- (a) does not answer such of the questions mentioned in subsection (2) of this section as are put to him; or
- (b) answers the questions but his answers do not, in the opinion of the presiding officer or his substitute, establish his right to vote;

the presiding officer or his substitute shall not give a ballot paper to him.

(4) If the person satisfies the presiding officer or his substitute that he is entitled to vote at the election the presiding officer or his substitute shall—

- (a) take the number of ballot papers necessary to enable the person to cast the number of votes which he is entitled to cast at the election;
- (b) mark his initials on the back of each ballot paper in such a position that the initials may be seen easily if the ballot paper is folded to conceal the vote marked upon the front of it;
- (c) indicate by a mark against the name of the person on the roll being used by him for the purposes of the election, that he has given to the person a ballot paper or ballot papers, as the case may be, for each election at which he is entitled to vote at the polling place; and

- (d) give the ballot paper or papers, as the case may be, to the person.

(5) A person is not required to answer questions put to him other than those specified in subsection (2) of this section.

Cf. subs. (2)
of this s.

110. (1) Where under section one hundred and nine ballot papers have been given to a person, without leaving the polling place,

Who to
mark votes
on ballot
paper when
voting in
person.
Cf. s. 109
ante.

- (a) he shall, unless he receives assistance mentioned in paragraph (b) of this subsection, take each of the ballot papers and retire alone to a compartment or other place provided in the polling place where he may mark his vote upon each ballot paper without the manner in which he does so being seen by any other person, and there mark his vote;

- (b) he shall, if his sight is so impaired, or through other cause his ability to read or to write is such, that he cannot vote without assistance, inform the presiding officer or his substitute of his disability, and either—

Persons
requiring
assistance
to vote.

- (i) request the presiding officer or his substitute to mark upon each ballot paper, the vote which he desires to cast, in which case the presiding officer or his substitute shall in the presence of scrutineers, if any are in attendance, give effect to the request and exhibit the ballot paper marked with the vote to the scrutineers; or
- (ii) request that instead of retiring alone as required by paragraph (a) of this subsection, he be permitted to retire with a person then in attendance, and that the latter be permitted to mark each ballot paper for him, in

Cf. para. (a)
of this subs.

which case the presiding officer or his substitute shall give the permission requested;

- (c) his vote having been so marked on a ballot paper, he, or if he receives assistance mentioned in paragraph (b) of this subsection, the person who marked his vote, shall fold the ballot paper so as to conceal the vote on the front of it but so as to reveal the initials placed on the back of it; and
- (d) in the presence of the presiding officer or his substitute, and scrutineers if any are in attendance, he, or, if he receives assistance mentioned in paragraph (b) of this subsection, the person who marked his vote, shall deposit the ballot paper in the appropriate ballot box, unless the ballot paper is spoilt by mistake or mishap.

Spoilt ballot papers.
Cf. C'th Electoral Act, No. 27 of 1918, s. 122.

Cf. s. 101 (6) and s. 109 (4) (b) ante.

(2) If and as often as the presiding officer or his substitute is satisfied that a ballot paper is so spoilt, he may on recording the facts cancel and destroy the spoilt ballot paper and give to the person in its place a new ballot paper initialled as required by subsection (6) of section one hundred and one and by subsection (4) of section one hundred and nine.

(3) The provisions of this section relating to the marking of votes on, and the deposit of, ballot papers in ballot boxes apply in respect of the new ballot paper.

Voting in absence.
Cf. M.C. Act, s. 110;
R.D. Act, s. 87; and
S.A. L.G. Act, Part XLIV.
Cf. s. 74 ante as to election by council to fill extraordinary vacancy in office of mayor or president.

111. (1) In this section—

“district election” means an election by the electors for the district to fill a vacancy in—

- (a) the office of mayor or president; and
- (b) the office of councillors;

to represent the district;

“ward election” means an election by the electors for the ward to fill a vacancy in the office of councillor to represent the ward.

(2) Where a day is appointed for the holding of an election, an elector entitled to vote at the election may make application in accordance with the provisions of subsection (3) of this section for an absent vote certificate and absent voting paper or, as the case may be, voting papers for the election if the elector desires to vote—

- (a) at a district election and resides more than five miles from the nearest polling place appointed for the election, or has reason to believe that on that day he will be absent from the district;
- (b) at a ward election for which polling places are appointed only in the ward, and resides more than five miles from the nearest polling place appointed for the election, or has reason to believe that on that day he will be absent from the ward;
- (c) at a ward election for which polling places are appointed in the ward in respect of which the vacancy exists and in another ward or other wards, and resides more than five miles from the nearest polling place appointed for the election, or has reason to believe that on that day he will be absent from the wards in which those polling places are appointed;
- (d) at the election and has reason to believe that on that day he will be prevented by illness or infirmity from attending a polling place appointed for the election;
- (e) at the election and being a woman has reason to believe that on that day she will be prevented by her approaching maternity from attending a polling place appointed for the election; or
- (f) at the election and is a person whose religious beliefs prevent him from casting a vote on that day.

Part IV.,
Div. 4,
Subdiv. E.

S. 111.

Application,
form, and
time of
making.

(3) In order to make an effective application the elector is required—

Cf. No. 28 of
1906, as
amended,
s. 106.
Twelfth
Schedule,
Form No. 1.

(a) to make it in writing in the form of a statutory declaration mentioned in section one hundred and six of the Evidence Act, 1906, and in or substantially in accordance with so much of Form 1 in the Twelfth Schedule as is appropriate to the case;

Cf. subs. (2).

(b) to declare in the application the ground mentioned in subsection (2) of this section upon which his application is made;

Cf. s. 113
post.

(c) to sign it in his own handwriting in the presence of an authorised witness mentioned in section one hundred and thirteen, and ensure that the witness attests his signature; and

(d) if he desires the application to be effective for an election, deliver or cause it to be delivered to the returning officer, so that—

(i) if posted to the returning officer, it is delivered to him in the ordinary course of post not later than twelve o'clock noon of the first of the two days last preceding that appointed for the holding of the election; or

(ii) if delivered otherwise than by post, it is received by the returning officer before the close of the poll on the day appointed for the holding of the election.

Continuing
grants of
certain
applications.

(4) (a) By Order the Governor may from time to time at the request of the councils concerned declare the districts or wards to which this subsection applies, and may in similar manner and on similar request cancel the application of this subsection to a district or ward.

(b) Where an elector resides in a district or ward to which this subsection applies, he may apply to the returning officer requesting to be supplied, from time to time as elections at which he is entitled to

vote are to be held and without further application, with a voting certificate and an absent voting paper or, as the case may be, voting papers for each of the elections whenever the polling place,

(i) which is appointed for the election;

(ii) at which he is entitled to vote at the election; and

(iii) which is nearest his place of residence;

is more than twenty miles from his place of residence.

(c) The provisions of paragraphs (a), (b) and (c) of subsection (3) of this section apply as if repeated with appropriate adaptations in this subsection.

*Cf. subs.
(3) (a), (b)
and (c) of
this s.*

(d) If the applicant desires the application under this subsection to be effective for an election, he shall deliver or cause it to be delivered to the clerk at least fourteen days before the election.

(e) The clerk as returning officer shall consider the application in relation to the first election held after he receives it.

(f) If the returning officer for that first election is satisfied that the application is properly signed and attested, and that the elector is entitled to vote he shall endorse the application in or substantially in the following manner,

"This application is granted in respect of (here state the election) and until cancelled this grant continues in respect of each succeeding election to be held from time to time in the (here state the district or ward) to fill vacancies in the office of member of the council of (here state the municipality)"

*Cf. s. 692 as
to polls on
loans, etc.*

and shall sign and date the endorsement and shall retain and produce it on each subsequent election held until the grant of the application is cancelled.

(g) Until the grant of the application is cancelled, the returning officer for each election, in respect of which the applicant is entitled to vote, shall without further application cause to be delivered to the applicant the appropriate absent vote certificate

Part IV.,
Div. 4,
Subdiv. E.

S. 111.

Cf. Twelfth
Schedule;
Forms
Nos. 2 and 3.

and absent voting papers in or substantially in Form No. 2 and Form No. 3 respectively in the Twelfth Schedule in time for the applicant to vote at the election.

(h) The returning officer shall cancel the grant if he is satisfied, that the applicant has changed the place of residence mentioned in the application; or is no longer entitled to vote; or if an Order is made cancelling the application of this subsection to the district or ward.

(i) From time to time during the continuance of the grant of an application, the returning officer, by written notice signed by him, may require the applicant to send to him a statutory declaration signed by the applicant and made before an authorised witness mentioned in section one hundred and thirteen, deposing to the applicant's place of residence at the time of making the declaration.

Cf. s. 113
post.

(j) If within twenty-eight days of that on which the requisition would be delivered in the ordinary course of post to the applicant, he has not made the declaration and delivered or caused it to be delivered to him, the returning officer shall cancel the grant and notify the applicant accordingly.

(k) Cancellation of the grant of his application does not preclude an elector residing in a district or ward to which this subsection applies from making a further application under this subsection.

(l) An applicant who changes his place of residence during the continuance of the grant of his application without delivering or causing to be delivered to the returning officer notice in writing signed by the applicant of the change, within fourteen days of making the change, commits an offence.

Penalty: Five pounds.

False
applications.
Penalty.

(5) An applicant who makes, and a person who induces an applicant to make, a false statement in an application for an absent vote certificate and absent voting paper, commits an offence.

Penalty: One hundred pounds.

Ss. 111, 112.

(6) Notwithstanding the provisions of the Stamp Act, 1921, stamp duty is not payable on a declaration mentioned in this section.

(7) A person who witnesses the signature of an applicant on an application for an absent vote certificate and absent voting paper or a declaration as to place of residence without—

(a) satisfying himself of the identity of the applicant; and

Duty of
authorised
witnesses.

(b) seeing the applicant sign the application or declaration in the applicant's own handwriting;

commits an offence.

Penalty: Fifty pounds.

(8) The person witnessing the application or declaration shall, in his own handwriting, sign his name on the application or declaration, and write under his signature his qualification to be an authorised witness and the date on which he signs it.

112. (1) The returning officer who receives an application mentioned in subsection (3) of section one hundred and eleven shall, if the application is received within the time limited by that subsection and, if he is satisfied that it is properly signed by the applicant and is properly witnessed, and that the applicant is entitled to vote, deliver or post to the applicant an absent vote certificate printed on an envelope addressed to the returning officer, an envelope marked, "ballot paper," and an absent voting paper or voting papers in the forms in the Twelfth Schedule, for the election at which the applicant is entitled to vote.

Duty of
returning
officer on
receipt of
application.
Cf. s. 111 (3)
ante.Twelfth
Schedule.

(2) The returning officer shall place his initials on the back of each absent voting paper he issues in such a position as to be easily seen if the voting paper is folded so as to conceal the vote.

(3) The returning officer shall keep applications for absent vote certificates and absent voting papers received by him, and shall keep them open for public inspection at reasonable times until the election can no longer be questioned.

(4) The returning officer shall note on the electoral roll used by him, and as far as practicable on the electoral rolls for use by presiding officers, the names of electors to whom absent vote certificates and absent voting papers have been issued.

(5) If a person whose name has been noted on the electoral roll as an elector to whom an absent vote certificate and absent voting paper have been issued claims to vote at an election or poll at a polling place, and when required to deliver to the presiding officer or his substitute, as the case may be, for cancellation his absent vote certificate and absent voting paper so delivers them or satisfies the presiding officer or his substitute that he has not received the absent vote certificate and absent voting paper, the presiding officer or his substitute, if satisfied that the person, had he received them would be entitled to vote, shall permit him to vote.

Authorised
witnesses of
absent
votes.

113. An authorised witness for the purposes of witnessing absent voting applications and absent votes is a person who is—

- (a) a justice of the peace;
- (b) a commissioner for declarations or affidavits;
- (c) a legally qualified medical practitioner;
- (d) a postmaster;
- (e) a bank manager;
- (f) a member of the Police Force of the State;
- (g) a classified civil servant of a State or of the Commonwealth;
- (h) the returning officer for the election or poll;
- (i) the clerk of a council;

- (j) enrolled as an elector for the Legislative Assembly who, at the time of witnessing an absent voting application or vote, is, whether temporarily or permanently, in a district that is situated wholly or partly north of the twenty-sixth parallel of South latitude,

except where he is a candidate for election in respect of a district or a ward in respect of which the applicant is proposing to make the application.

114. (1) Where an elector votes in absence—

- (a) the elector shall exhibit his absent voting paper, unmarked, and his absent vote certificate to an authorised witness; The making of an absent vote.
- (b) the elector shall then, in the presence of the authorised witness, sign his name in his own handwriting on the absent vote certificate in the place provided for the signature of the elector;
- (c) the authorised witness shall then sign his name in his own handwriting and write his qualification to be an authorised witness and the date on which he signs it on the absent vote certificate in the place provided for the signature of the witness;
- (d) the elector shall then, in the presence of the authorised witness, but so that the witness cannot see the vote, mark his vote on the voting paper, and shall fold the voting paper so that the vote cannot be seen, place the voting paper in the envelope marked, "ballot paper", seal that envelope and hand it to the authorised witness;
- (e) the authorised witness shall then place the envelope marked "ballot paper" in the envelope addressed to the returning officer, fasten the envelope, and hand it to the elector who shall forthwith post or deliver it, or cause it to be posted or delivered, to the returning officer;

(f) if the elector's sight is so impaired or through other cause his ability to read or write is such that he cannot vote without assistance, a person appointed by the elector may mark the elector's vote on the voting paper in the presence of the authorised witness and shall thereupon fold the voting paper so that the vote cannot be seen, place the voting paper in the envelope marked, "ballot paper", seal that envelope, and hand it to the authorised witness, who shall deal with it in accordance with paragraph (e) of this subsection, but if the elector requests the authorised witness to do so he shall take the action required by this paragraph to be taken by a person so appointed by the elector;

Cf. para. (e)
of this subs.

(g) the authorised witness shall not, unless under paragraph (f) of this subsection look at or make himself acquainted with the vote given by the elector, or assist the elector to vote, or interfere in any way with the elector in relation to his vote, or permit any other person to do so;

Cf. para. (f)
of this subs.

(h) an authorised witness shall—

- (i) comply with such of the provisions of this section as he is required to comply with;
- (ii) ensure that the requirements of this section are complied with by the elector voting in absence before him, and by any other person then present; and
- (iii) shall not unless authorised by law, disclose the elector's vote.

(2) A person who contravenes this section commits an offence.

Penalty: One hundred pounds.

Ss. 114, 115, 116.

(3) Where it is necessary for an elector to be supplied with more voting papers than one in order that he may cast the number of votes to which he is entitled, references in the provisions of this section to voting paper apply in respect of each of the voting papers.

115. (1) A person—

Improperly
voting.

- (a) other than an elector to whom the absent voting paper has been issued; or
- (b) other than a person appointed by an elector, or other than an authorised witness acting at an elector's request under paragraph (f) of subsection (1) of section one hundred and fourteen, to assist the elector who by reason of the impairment of his sight, or inability to read or write, is unable to vote without assistance;

Cf. s. 114 (1)
(f) ante.

who marks a vote upon the voting paper commits an offence.

Penalty: One hundred pounds.

(2) A person, other than the returning officer, an officer acting under his directions, or a person authorised by law to do so, who opens an envelope in which an absent voting paper has been placed under paragraph (e) or (f) of subsection (1) of section one hundred and fourteen, and which has been fastened in accordance with the provisions of the paragraph commits an offence.

Cf. s. 114 (1)
(e) and (f)

Penalty: Fifty pounds.

116. (1) A person present when an elector is before an authorised witness for the purpose of voting in absence—

Persons
present
to obey
authorised
witness.

- (a) shall obey directions given to him by the authorised witness; and

Part IV.,
Div. 4,
Subdiv. E.

Ss. 116, 117.

Cf. s. 114 (1)
(e) and (f)
ante.

(b) except under paragraph (f) of subsection (1) of section one hundred and fourteen where the elector is unable to vote without assistance because of impairment of sight or other inability—

- (i) shall not make any communication whatever to the elector in relation to his vote;
- (ii) shall not assist the elector or in any manner interfere with him in relation to his vote; and
- (iii) shall not look at the elector's vote or do anything whereby he becomes or is likely to become acquainted with the elector's vote.

(2) A person who contravenes this section commits an offence.

Penalty: One hundred pounds.

Checking
authorisa-
tion of votes
cast in
absence and
acceptance
or rejection.

117. After the close of the poll the returning officer—

- (a) shall produce the applications made and granted in respect of the poll for absent vote certificates and absent voting papers;
- (b) shall produce unopened the outer envelopes bearing the absent vote certificates received by him up to the close of the poll;
- (c) shall compare the signature of the elector on each absent vote certificate with the signature of the same elector on the application for the certificate, and allow the scrutineers to inspect both signatures;
- (d) if satisfied that the signature on the certificate is that of the elector who signed the application for the certificate, and that the signature appears to be witnessed by an authorised witness, and that the name of the elector is registered on the electoral roll, used for the election, shall accept the voting paper in the inner envelope marked, "ballot

- paper", without opening that inner envelope for further scrutiny, but, if not so satisfied, shall disallow the voting paper without opening the envelope in which it is contained;
- (e) shall withdraw from the outer envelopes bearing the absent vote certificates the inner envelopes marked, "ballot paper", and containing the absent voting papers so accepted for further scrutiny, and, without opening the inner envelopes or allowing any other person so to do, shall place them in the ballot box for further scrutiny; but before he does so, if only one voting paper is used by a person who is entitled to cast more than one vote, the returning officer shall mark on the inner envelope the number of votes which the elector using the voting paper was entitled to cast;
- (f) shall seal up in separate parcels, and until the result of the election can no longer be questioned, preserve—
- (i) the envelopes bearing absent vote certificates relating to absent voting papers so accepted for further scrutiny;
 - (ii) the unopened envelopes which contain absent voting papers and which are so disallowed; and
 - (iii) the outer envelopes which contained absent voting papers;
- and
- (g) shall proceed with the scrutiny of the absent voting papers accepted for further scrutiny.

118. The presiding officer at each polling place shall immediately on the close of the poll, seal up the ballot boxes containing the ballot papers taken at the polling place and shall, with the least possible delay, deliver or cause them to be delivered to the returning officer at the chief polling place.

Presiding
officers
to transmit
ballot papers
to returning
officer.
Cf. R.D. Act,
s. 88.
Cf. ss. 102
and 103 ante
as to chief
polling
place.

Part IV.,
Div. 4,
Subdiv. F.

Ss. 119, 120, 121.

Part IV.
Div. 4.
Subdiv. F.

Subdivision F.—System of Voting.

System of
voting.

119. The system of voting at elections held under this Act, is that prescribed in this Subdivision as the preferential system.

Preferential
system.
Cf. s. 121
post.

120. Under the preferential system of voting at an election held to fill a vacancy in the office of member of a council, an elector votes effectively if he indicates in accordance with the provisions of section one hundred and twenty-one, the order of preference in which he desires candidates whose names appear on the ballot paper to be elected.

Numerical
recording
of vote.

121. (1) The elector shall indicate the order of preference in which he desires the candidates whose names appear on the ballot paper to be elected, by marking against each name a numeral commencing with the numeral, "1" to indicate his first preference, and continuing in numerical sequence by marking the numeral, "2" against the name of the candidate whom he desires elected if his first preference is not elected, and the numeral, "3" against the name of the candidate whom he desires elected if his first and second preferences are not elected, and so on until he has marked a numeral of the sequence against each of the names.

(2) An elector complies with the provisions of subsection (1) of this section, if he marks the numeral "1" against the name of one candidate and omits to mark the numeral "2" against the name of the other candidate where the names of only two candidates appear on the ballot paper, or if he marks the numerals as required by the subsection against the names of all the candidates whose names so appear except one where the names of more than two candidates so appear; in any of those cases the candidate against whose name a numeral is not marked shall be deemed to rank last in the elector's order of preference.

Ss. 122, 123, 124, 125, 126, 127.

Part IV.,
Div. 4,
Subdiv. F.

122. Where a ballot paper has been effectively marked by an elector in accordance with the requirements of section one hundred and twenty-one, the returning officer shall accept it as valid unless he is required to reject it under section one hundred and twenty-four.

Acceptance
of validly
marked
ballot paper.
Cf. ss. 121
ante and
124 post.

123. As soon as practicable after eight o'clock in the afternoon of the day on which the election is held, the returning officer shall at the chief polling place, in the presence of such candidates and scrutineers, if any, as are in attendance, open the ballot boxes and examine and count the ballot papers contained in them and ascertain the result of the election.

Opening of
ballot boxes.

Cf. s. 118
ante as to
delivery of
ballot boxes
to chief
polling
place.

124. Subject to the provisions of subsection (2) of section one hundred and twenty-one, the returning officer shall reject and exclude from the count of votes a ballot paper on which is written anything not authorised by this Act or which does not comply with the requirements of this Act.

Rejection of
ballot
papers.
Cf. M.C. Act,
s. 111 (2);
and R.D. Act,
s. 89 (2).

125. When the returning officer rejects a ballot paper he shall endorse on it the word, "rejected".

Endorse-
ment of
rejection.

126. Unless a Court of Disputed Returns decides otherwise, the decision of the returning officer relating to the rejection of a ballot paper is final.

Decision as
to rejection.
Cf. s. 137
post, as to
Court of
Disputed
Returns.

127. (1) The result of the election is ascertained in accordance with the provisions of this section.

Ascertaining
result of
election
where
preferential
system of
voting
applies.

(2) In this section—

"absolute majority of votes" means the number of votes, which is counted at a progressive count in favour of one of the candidates,

and which is greater than the aggregate resulting from adding together the number of votes counted at the progressive count in favour of each of the other candidates who are continuing candidates;

“continuing candidate” means a candidate who is not excluded from the count as being already declared an elected or a defeated candidate;

“progressive count” means the count at a stage in the progress of ascertaining the result of an election in accordance with the provisions of this section.

One vacancy,
two can-
didates.

(3) (a) Where the election is held to fill one vacancy and there are only two candidates the returning officer shall count each unrejected ballot paper on which the numeral “1” appears against a candidate’s name as a vote in the candidate’s favour.

Cf. subs. (6)
of this s.

(b) The returning officer shall declare the candidate in whose favour the greater number of votes is counted to be elected to the vacancy, but if each candidate has an equal number of votes the returning officer shall, in accordance with the provisions of subsection (6) of this section ascertain who of the candidates is to be declared elected to the vacancy and shall declare the candidate so ascertained to be elected.

One vacancy,
more
candidates
than two.

(4) Where the election is to fill one vacancy and there are more candidates than two—

(a) the returning officer shall make the first progressive count, by counting each unrejected ballot paper on which the numeral “1” appears against a candidate’s name as a vote in his favour and if one of the candidates has an absolute majority of the votes so counted the returning officer shall declare him elected;

(b) if at that stage as a result of the first progressive count none of the candidates has an absolute majority of those votes the returning officer shall make the second progressive count by—

(i) declaring the candidate who has the least number of those votes a defeated candidate, but where each of several candidates has the same number of votes which number is less than the number of votes which any of the other candidates has, the returning officer shall, in accordance with subsection (7) of this section, ascertain which one of those several candidates is to be declared a defeated candidate and shall declare the candidate so ascertained to be a defeated candidate;

*Cf. subs (7)
of this s.*

(ii) counting each of the ballot papers on which the numeral "1" appears against that defeated candidate's name as a vote in favour of the continuing candidates against whose name the numeral "2" appears on the ballot paper;

(iii) ascertaining the total number of votes counted in favour of each continuing candidate at both the first progressive count and the second progressive count;

and if one of the continuing candidates then has an absolute majority of the votes so ascertained, declare that candidate elected;

(c) if at that stage as a result of the second progressive count or at a subsequent stage as a result of a subsequent progressive count, an absolute majority of votes is not established, the returning officer shall make a third and such further progressive counts, in similar manner to that prescribed by

Part IV.,
Div. 4,
Subdiv. F.

S. 127.

Cf. par. (b)
of this subs.

paragraph (b) of this subsection, as is necessary to establish an absolute majority of votes by—

- (i) declaring defeated the candidate who, at the particular stage, has the least number of votes;
- (ii) counting each of the ballot papers on which appears the numeral indicating an elector's preference in favour of the defeated candidate at that stage, as a vote in favour of the continuing candidate against whose name appears the numeral indicating the elector's next preference in the event of the defeated candidate's elimination from the count;
- (iii) ascertaining the total number of votes counted in favour of each continuing candidate by adding together the number of votes counted in his favour at each of the progressive counts made;

and the returning officer shall declare the candidate having the absolute majority of votes elected.

More
vacancies
than one,
and more
candidates
than
vacancies.

Cf. subs. (4)
of this s.

(5) (a) Where the election is to fill more vacancies than one and there are more candidates than vacancies, the returning officer shall count the votes and successively declare to be a defeated candidate, the candidate who at that stage as a result of each progressive count in accordance with the procedure prescribed by subsection (4) of this section has the least number of votes counted in his favour, until after so declaring there remains only a sufficient number of candidates to fill the vacancies.

(b) The returning officer shall declare each remaining candidate to be elected to fill a vacancy in an order according to the number of votes that have been counted in his favour, the candidate with the highest or higher number of votes as the case may be being first elected and so on.

(6) Where the result of a count of the votes whether made under subsection (3), (4) or (5) of this section is that no one candidate has an absolute majority of votes because the aggregate of the unrejected votes is equally divided between two candidates and—

- (a) of the two only one is a retiring member of the council, the returning officer shall declare the retiring member to be elected; or
- (b) of the two both are, or both are not, retiring members of the council, the returning officer shall draw lots to ascertain who of the two is to be declared elected, and shall declare the candidate so ascertained to be elected.

(7) Where as the result of a progressive count the returning officer is unable to declare that one candidate has had counted in his favour the least number of votes and is therefore a defeated candidate, because each of several candidates has the same number of votes counted in his favour, which number is less than the number of votes which any of the other candidates has had counted in his favour, and—

- (a) of those several candidates each or none is a retiring member of the council, the returning officer shall draw lots to ascertain who of them is to be declared a defeated candidate and shall declare the candidate so ascertained, to be a defeated candidate;
- (b) of those several candidates each but one is a retiring member of the council, the returning officer shall declare that one to be a defeated candidate;
- (c) of those several candidates one is a retiring member or some are retiring members of the council and the others are not, the returning officer shall draw lots to ascertain which one of the candidates who are not

retiring members is to be declared a defeated candidate, and shall declare the candidate so ascertained, to be a defeated candidate.

(8) At any time and from time to time before he declares publicly the result of the election, the returning officer may, if he thinks fit, either of his own motion or at the request of a candidate or scrutineer, recount the ballot papers entirely as if making the original count, or may make a recount of the ballot papers already counted in an original progressive count as if making the original progressive count, and shall rectify a decision which was made during the original count or original progressive count, including a decision to admit or reject ballot papers, and which in his opinion is shown by the recount to require rectification.

Cf. M.C. Act,
ss. 112-122;
R.D. Act,
ss. 95, 98-99;
and S.A. L.G.
Act, s. 139.

Subdivision G—Declaration of Result of Election and
Miscellaneous Matters relating to Elections.

Declara-
tion by
returning
officer of
result of
poll.

128. (1) On, or as soon as is reasonably practicable after, the day on which an election is held the returning officer shall—

- (a) publicly declare the names of the persons elected to fill the respective vacancies in office of members of the council;
- (b) determine—
 - (i) the term of office for which each person is so elected; and
 - (ii) his order of retirement from office; in accordance with the provisions of Division 2 of this Part, and publicly declare that term and order; and
- (c) cause the ballot papers used at the election to be placed in parcels, cause each parcel to be sealed and endorsed with a description of its contents and the endorsement to be signed and dated by the person making it,

Cf. s. 41
ante.

and retain them for the period during which complaints for offences relating to the election may be made has expired.

(2) After the expiration of the period during which complaints for offences relating to the election may be made, the clerk shall cause the ballot papers used at the election to be destroyed in the presence of two members of the council.

Destruction of
ballot
papers.
Cf. s. 646
(2) post,
as to
limitation
of time.

129. (1) Within seven days of the making of the last of the declarations mentioned in paragraphs (a) and (b) of subsection (1) of section one hundred and twenty-eight the clerk shall prepare and send to the Minister a return showing the particulars mentioned in those paragraphs.

Returns of
result to
be sent to
Minister.
Cf. s. 128
(1) ante.

(2) The Minister shall cause public notice of the particulars to be published in the *Gazette* as soon after he receives them as is reasonably practicable.

(3) Production of a copy of the *Gazette* in which the particulars are published is *prima facie* evidence of the matters mentioned in the particulars.

130. (1) Where proceedings at an election are interrupted or obstructed by a riot or violence, the returning officer shall not finally close the poll, but shall adjourn the taking of the poll until the day following, and, if necessary, shall further adjourn the poll from day to day until the interruption or obstruction ceases, when the returning officer shall again proceed with the taking of the poll.

Adjourn-
ment of
polling in
case of riot.
Cf. M.C. Act,
s. 114.
Cf. No. 30
of 1918,
s. 27 (2).

(2) If from a cause other than one mentioned in section (1) of this section a poll is not taken on the day appointed for taking it,

Adjourn-
ment when
from
another
cause no
election
held.
Cf. M.C.
Act, s. 115.
Cf. subs. (1)
of this s.

(a) the election is by this subsection adjourned until the corresponding day of the following week; and

(b) the returning officer shall give not less than three days' notice, by advertisement or by affixing placards in public places within the

district or by such other means as he thinks fit, of the adjournment and of the day to which the taking of the poll is adjourned.

(3) On an adjournment of a poll under this section, the returning officer shall, in the presence of the scrutineers and other officers then present—

- (a) seal the opening in each ballot box so that nothing can be put into or taken out of it without the seal being broken;
- (b) place the unused ballot papers and the rolls in use at the poll under seal; and
- (c) retain for safe keeping those ballot boxes, ballot papers, and rolls, and shall keep them safely unopened and sealed until, in the presence of the scrutineers, if any, and other officers present, they are opened and the seals are broken at the resumption of the adjourned poll.

Errors of
form not to
vitate
elections.
Cf. M.C. Act,
s. 116; and
R.D. Act,
s. 95.

131. An election is not void in consequence solely—

- (a) of delay at any of the stages of the election beyond the time appointed;
- (b) of error on the part of the returning officer;
or
- (c) of an error, defect, or impediment of a merely formal nature;

if the delay, error, defect, or impediment, does not affect the result of the election.

Election
not to be
questioned
for defect of
title.
Cf. M.C. Act,
s. 119.

132. Where, in or in connection with—

- the preparation for an election;
- the conduct of an election;
- the ascertainment of the result of an election;
- or
- the declaration and publication of the result of an election;

a person, in good faith—

exercises a power conferred, or carries out an obligation imposed or discharges a function, by virtue of what purports to be his appointment to an office, or what purports to be any other lawful authorisation to do so, including without affecting the generality of this paragraph,

the executing or issuing of a document;
the making of a declaration; and

the publishing or the causing of the publication of a notice or other thing;

the election is not rendered invalid merely because of

an omission, irregularity or defect in the appointment to the office or authorisation;

a formal omission, error, or defect in the document, declaration, or publication; or

because of the notice or other thing being published otherwise than at the time or for the period prescribed.

133. An action or other proceeding by or against a municipality is not affected because what purports to be an election to an office of member of the council of the municipality is, or may be, invalid.

Invalidity of election no plea to action.
Cf. M.C. Act, s. 120.

134. (1) As soon as is reasonably practicable after a Court of Disputed Returns may no longer adjudicate upon the declaration of the result of an election to fill a vacancy in office of member of a council, whether the election is a contested one or not, the council shall, unless it has already been forfeited under section ninety-five on withdrawal of the nomination, apply money, deposited under section ninety-two by or on behalf of a candidate on his nomination, in accordance with the provisions of this section appropriate to the case.

Application of deposit made on nomination.
Cf. s. 137 post as to complaint to and adjudication by Court of Disputed Returns.
Cf. s. 95 ante as to forfeiture.
Cf. s. 92 ante as to deposit.
Cf. M.C. Act, s. 121.

(2) The council shall repay to a candidate declared elected whether at a contested or an uncontested election the amount so deposited.

(3) (a) Where—

- (i) there is only one vacancy to be filled the council shall repay the amount so deposited to an unelected candidate if the number of votes counted in his favour after the first progressive count is at least one-fifth of the votes counted in favour of the candidate then having the greater or greatest number of votes counted in his favour, as the case may be;
- (ii) there are more vacancies than one to be filled the council shall repay the amount so deposited to an unelected candidate if the votes counted in his favour after the first progressive count are at least one-fifth of the votes counted in favour of a candidate who has then received the lower or lowest number of such votes, as the case may be, amongst the candidates who if the count were the final count would be elected to the vacancies.

(b) Where a candidate receives less than one-fifth of those votes by force of this subsection the amount so deposited is forfeited to the council.

(4) The council shall pay the amount deposited

- (a) to the candidate so entitled to repayment;
- (b) to a person, to whom the candidate so entitled, by written authority, signed by the candidate directs the council to pay it;
- (c) to the lawfully appointed personal representative of a candidate who dies—
 - (i) after nomination and before polling day; or
 - (ii) after having become entitled to payment under any other provision of this section and before the payment is made to him; or

- (d) to the person lawfully entitled to receive it, if before payment is made the candidate becomes of unsound mind or bankrupt;

and if the council does not repay the amount, the person entitled to the payment may recover it in a court of competent jurisdiction.

- (5) Where the amount so deposited is not repayable, the council shall pay it into the municipal fund.

135. (1) The council shall pay out of the municipal fund to the returning officer, irrespective of the fee payable to him under subsection (2) of this section, the reasonable expenses incurred by him in or in connection with the preparation for, conduct of, ascertainment of the result of, and declaration and publication of the result of, an election.

Payment of
expenses of
returning
officer.
Cf. M.C. Act,
s. 122.
Cf. ss. (2)
of this
section.

(2) The council shall pay out of the municipal fund for services rendered in connection with an election to a vacancy in office of member of the council by the respective officers mentioned in the Scale at the end of this subsection fees of not less than the amount shown against the respective offices

Office.	Fee.
For a contested election—	
(a) Returning officer, where the total number of electors registered on the electoral roll—	
(i) does not exceed 2,000	£ s. d. 5 5 0
(ii) exceeds 2,000 but does not exceed 5,000	7 7 0
(iii) exceeds 5,000	11 11 0
(b) Deputy returning officer	5 5 0
(c) Presiding officer (per hour)	10 0
(d) Poll clerk (per hour)	7 6

(3) Where an election is held to elect a person to the office of mayor or president simultaneously with an election to elect a person to the office of councillor, the number of electors shown on the mayoral

Part IV.,
Div. 4,
Subdiv. H.

Ss. 135, 136, 137.

roll shall be used as the basis for calculating any fee under the scale; and where there is an election for one or more wards the number of electors shown on the rolls actually used at the election shall be the basis for so calculating.

Power to
appoint
commis-
sioner not
affected.
Cf. R.D. Act,
s. 99.
Cf. Pt. III.,
Div. 9, ss. 31
et seq.
ante.
Cf. ss. 70 and
71 ante.

136. This Division does not affect the provisions of Division 9 of Part III. relating to the appointment of a commissioner, and the first election of the council after his appointment, nor authorise the holding of that first election otherwise than pursuant to an order made under that Division.

Part IV.,
Div. 4,
Subdiv. H.

Subdivision H.—Disputed Returns.

Invalid
elections,
how
remedied.
Cf. R.D. Act,
s. 100.
Cf. ss. (2)
of this
section.

137. (1) Where complaint is made within the time prescribed by subsection (2) of this section to a stipendiary magistrate by a person who was a candidate at an election held to fill a vacancy in the office of member of a council, or by six persons registered as electors entitled to vote at an election held for that purpose, that an election so held within or partly within a magisterial district in which the magistrate has jurisdiction was invalid, or that a person ought to be returned as a member of the council in preference to the person actually returned as elected—

- (a) the magistrate may issue a summons summoning—
 - (i) the returning officer at the election;
 - (ii) a person returned at the election; and
 - (iii) such other persons as he thinks fit, to appear before him on a day and at a time and place specified in the summons;
- (b) the magistrate, when the matter is called on for hearing is constituted a Court of Disputed Returns for the purposes of this

Act, and on the parties appearing, or in default of their appearance on it being shown that the summons was duly served, the magistrate may inquire into and adjudicate upon the matter of the complaint, and for the purpose may exercise any of the powers conferred upon justices by the Justices Act, 1902;

- (c) if on inquiry it appears to the Court that the election was invalid, or that a person ought to have been returned in preference to the person returned as elected, the Court may declare accordingly;
- (d) if the Court declares the election to have been invalid, it is null and void, and unless the Governor appoints a commissioner, the returning officer or if the case requires, a person appointed by the Minister to do so, shall prepare for, conduct, ascertain and declare the result of a fresh election;
- (e) if the Court declares that a person ought to have been declared elected in place of another person, the latter shall not act as a member of the council, and the person whom the Court declares ought to have been elected is regarded as having been elected.

*Cf. ss. 31
et seq. ante
as to
appointment
of com-
missioner.*

(2) A complaint may be made only within twenty-one days of the day of the election out of which the complaint arises.

*Limitation
of time for
complaint.*

(3) The Court may make such order as to costs as it thinks just and an order so made may be enforced as an order of a court of summary jurisdiction, but an order shall not be made for the payment of costs by a candidate other than the complainant, unless it is proved to the satisfaction of the Court that the candidate has by himself or his agent contravened the provisions of this Act.

(4) There is no appeal from a decision of the Court of Disputed Returns.

Part IV.,
Div. 5.

Ss. 138, 139, 140.

Part IV
Div. 5.

Division 5.—Electoral Offences.

Offences.
Cf. M.C. Act,
s. 123.

138. In order to secure the proper observance of this Part and the purity of elections held under this Act—

- (a) breaches of official duty;
- (b) illegal practices, including—
 - (i) bribery; and
 - (ii) undue influence; and
- (c) electoral offences,

are prohibited and punishable in accordance with the provisions of this Act.

Breach or
neglect by
officers.
Cf. M.C. Act,
s. 124.

139. (1) "Breach of official duty" includes—

- (a) an attempt by an electoral officer to influence the vote of an elector, or, except by recording his vote, the result of an election;
- (b) the disclosure except under compulsion of law of knowledge officially acquired by an electoral officer or scrutineer touching the vote of an elector; and
- (c) neglect or refusal by an electoral officer to discharge an official duty, and contravention by an electoral officer of any provision of this Part.

(2) Breach of official duty is punishable by a penalty not exceeding two hundred pounds, or by imprisonment not exceeding one year.

Bribery.
Cf. M.C. Act,
s. 125.

140. A person commits the illegal practice of bribery if he—

- (a) promises, or offers, or suggests, valuable consideration, advantage, recompense, reward, or benefit for or on account of, or to induce—
 - (i) candidature at an election;
 - (ii) withdrawal of candidature from an election;

- (iii) a vote or an omission to vote at an election;
- (iv) support of, or opposition to, a candidate for election;
- (v) a promise of a vote, omission, support, or opposition, mentioned in this paragraph; or
- (b) gives or takes valuable consideration, advantage, recompense, reward, or benefit for, or on account of, a candidature, withdrawal, vote, omission, support, or opposition, or promise, mentioned in paragraph (a) of this section; or
- (c) promises, offers, or suggests valuable consideration, advantage, recompense, reward, or benefit, for bribery, or gives or takes valuable consideration, advantage, recompense, reward, or benefit, for bribery.

141. A person commits the illegal practice of undue influence if he—

Undue
influence.
Cf. M.C. Act,
s. 127.
Cf. s. 142
post.

- (a) threatens, offers, or suggests violence, injury, punishment, damage, loss, or disadvantage, for or on account of, or to induce
 - (i) candidature at an election;
 - (ii) withdrawal of candidature from an election;
 - (iii) a vote, or an omission to vote at an election;
 - (iv) support of or opposition to a candidate for election; or
 - (v) a promise of a vote, omission, support, or opposition, mentioned in this paragraph; or
- (b) uses, causes, inflicts, or procures, violence, punishment, damage, loss, or disadvantage for or on account of a candidature, withdrawal, vote, omission, support, or opposition, mentioned in paragraph (a) of this section.

Part IV.,
Div. 5.

Ss. 142, 143, 144, 145.

Inter-
pretation.
Cf. M.C. Act,
s. 128.
Cf. s. 141
ante.

142. Without limiting the generality of the effect of the words in section one hundred and forty-one, "undue influence" includes interference or attempted interference with the free exercise of the franchise of an elector.

Illegal
practices.
Cf. M.C. Act,
s. 129.

143. In addition to bribery and undue influence, the following are illegal practices:—

- (a) The publication of an electoral advertisement, handbill, or pamphlet, or the issue of an electoral notice, without showing at the end of it the name and address of the person authorising it;
- (b) printing or publishing a printed electoral advertisement, handbill, or pamphlet, other than an advertisement in a newspaper, without the name and place of business of the printer being printed at the end of it; and
- (c) printing or publishing in a newspaper a letter or article concerning an election, without the name and the address of the person authorising it being shown at the foot of the letter or article.

Punishment.
Cf. M.C. Act,
s. 130.

144. An illegal practice is punishable—

- (a) in the case of bribery or undue influence, by a penalty not exceeding two hundred pounds or by imprisonment not exceeding one year; and
- (b) in the case of an illegal practice, other than bribery or undue influence, by a penalty not exceeding one hundred pounds or by imprisonment not exceeding six months.

Penalties
in case of
nomination
of persons
incapable
of acting.
Cf. M.C. Act,
s. 131.

145. A person commits an offence if he—

- (a) nominates himself or procures or permits himself to be nominated as a candidate for the office of member of a council knowing

that under the provisions of this Act he is incapable of occupying or continuing to occupy the office;

- (b) knowingly signs a nomination paper nominating or purporting to nominate as a candidate for the office of member of a council himself, or another person, where he knows that under the provisions of this Act the person nominated is incapable of occupying or continuing to occupy the office; or
- (c) knowing that the person nominated is not eligible to be registered as an elector to vote at an election to fill a vacancy in the office of member of a council, signs a nomination paper nominating himself or another person as a candidate for election to the vacancy.

Penalty: Fifty pounds.

146. (1) On polling day, and on days to which the polling is adjourned —

Prohibition
of canvassing
near polling
places.
Cf. M.C. Act,
s. 132.

- (a) canvassing for votes;
- (b) soliciting the vote of an elector;
- (c) inducing or attempting to induce an elector not to vote for a particular candidate; and
- (d) inducing or attempting to induce an elector not to vote at the election,

are prohibited in each polling place, and within a distance of twenty feet of each polling place.

(2) A person who contravenes this section commits an offence.

Penalty: Twenty pounds.

147. The matters mentioned in the first column of the table at the end of this section are electoral offences punishable with the penalty shown in the second column of the table opposite the statement of the offence.

Electoral
offences.
Cf. M.C. Act,
s. 133; and
R.D. Act,
s. 111.

TABLE OF ELECTORAL OFFENCES AND PUNISHMENTS

<i>First Column.</i> <i>Offences.</i>	<i>Second Column.</i> <i>Punishments.</i>
(a) Personating a person whether living or dead for the purpose of obtaining a ballot paper to which the personator is not entitled, or personating another person whether living or dead for the purpose of voting.	Imprisonment not exceeding two years.
(b) Fraudulently destroying or defacing a nomination or ballot paper.	Imprisonment not exceeding two years.
(c) Fraudulently putting a ballot paper or other paper into the ballot box.	Imprisonment not exceeding six months.
(d) Fraudulently taking a ballot paper from a polling place.	Imprisonment not exceeding six months.
(e) Forging, or, knowing it to be forged, uttering, a nomination or ballot paper.	Imprisonment not exceeding two years.
(f) In a polling place on polling day misconducting himself or failing to obey the lawful directions of an electoral officer.	Penalty not exceeding fifty pounds or imprisonment not exceeding one month.
(g) Supplying ballot papers without authority.	Imprisonment not exceeding six months.
(h) Voting or obtaining a ballot paper for the purpose of voting at an election oftener than entitled to vote, or if not entitled to vote at all.	Penalty not exceeding fifty pounds.
(i) Unlawfully destroying, taking, opening, or otherwise interfering with ballot boxes or ballot papers.	Imprisonment not exceeding six months.
(j) Wagering on the result of an election.	Penalty not exceeding fifty pounds.
(k) Without his authorisation, wilfully defacing, mutilating, destroying, or removing a notice, list, or other document, exhibited by an electoral officer, or by his authority.	Penalty not exceeding twenty pounds.
(l) Making a false statement in an application, return, or declaration, or in answer to a question authorised by this Act to be asked.	Penalty not exceeding fifty pounds.
(m) Wilfully making a false statement mentioned in paragraph (l) of this section.	Imprisonment not exceeding twelve months.
(n) Distributing an advertisement, handbill, or pamphlet published in contravention of section one hundred and forty-three.	Penalty not exceeding fifty pounds or imprisonment not exceeding one month.
(o) Canvassing by an officer or employee of a council at an election under this Act.	Penalty not exceeding one hundred pounds.

<i>First Column.</i>	<i>Second Column.</i>
<i>Offences.</i>	<i>Punishments.</i>
(p) Re-entering or attempting to re-enter a polling place without the permission of the presiding officer after being removed therefrom by the presiding officer, substitute for the presiding officer, or a member of the Police Force of the State, for misconduct.	Penalty not exceeding one hundred pounds or imprisonment not exceeding three months.
(q) A contravention of this Part of this Act for which no other punishment is provided.	Penalty not exceeding fifty pounds.

148. (1) The returning officer may take action against a person for a contravention of this Part, and if he incurs expenses in so doing the council shall repay the amount of the expenses to him from the municipal fund.

Returning officer authorised to prosecute.

(2) A candidate may take action against a person for a contravention of this Part.

Candidate authorised to prosecute.

(3) The council shall pay to the returning officer out of the municipal fund any costs that may be awarded against him in connection with any action taken by him against a person for a contravention of this Part.

(4) The returning officer shall pay into the municipal fund any fees or costs paid to him in respect of any action so taken by him.

(5) Notwithstanding the provisions of section forty-one of the Interpretation Act, 1918 or subsection (1) of this section, any person may take action for a contravention of this Part.

Saving.
Cf. No. 30 of 1918 as amended s. 41.

149. A person may be punished for an illegal practice committed directly or indirectly by himself, or by another person on his behalf, and with his knowledge or authority.

Liability for indirect acts.
Cf. M.C. Act, s. 137.

Parts IV.
and V.

Ss. 150, 151, 152, 153, 154, 155.

Attempts.
Cf. M.C. Act,
s. 138.
Cf. Crim.
Code, 1913,
s. 4 as to
attempts.

150. An attempt to commit an offence against this Part is an offence punishable as if the offence had been committed.

Certificate
evidence.
Cf. M.C. Act,
s. 139.

151. In proceedings relating to an offence under this Act the certificate purporting to have been signed by the returning officer and stating that the election mentioned in the certificate was duly held and that the person named in the certificate was a candidate at the election is *prima facie* evidence of the matter stated.

Indictable
offences.
Cf. M.C. Act,
s. 141.
Cf. Crim.
Code, 1913,
s. 3.
Cf. s. 646
post.

152. Offences which are mentioned in this Part, and which are punishable by imprisonment exceeding one year are misdemeanours.

Summary
conviction.
Cf. M.C. Act,
s. 142.
Cf. s. 646
post.

153. Offences which are mentioned in this Part, and which are not misdemeanours are punishable on summary conviction.

Criminal
Code not
to apply.
Cf. M.C. Act,
s. 143.
Cf. s. 152
ante and
s. 646 post.

154. Chapter XIV, of the Criminal Code, 1913, does not apply in respect of elections held under this Act, but this section does not affect the application of the Criminal Code, 1913, to offences which are misdemeanours under section one hundred and fifty-two of this Act.

PART V.—OUSTER FROM OFFICE.

Power to the
court of
summary
jurisdiction
to oust from
office.
Cf. M.C. Act,
ss. 144-146.
Cf. S.A. L.G.
Act,
ss. 706-710.

155. (1) Writs of *quo warranto*, informations in the nature of *quo warranto*, and other proceedings in the Supreme Court, to try or question the title of a person to act in office of member of a council are abolished.

(2) Writs of mandamus and other proceedings in the Supreme Court, to admit or restore a person to office as member of a council or to compel a council to proceed to the appointment of a person to an office of member of the council, are abolished.

(3) The proceedings—

- (a) for trying the right of a person to an office as member of a council;
- (b) for trying the right of a person to be admitted or restored to office as member of a council;
- (c) to compel his restoration or admission; or
- (d) to compel a council to proceed to an appointment to office as member of a council;

may be taken only on complaint made under the Justices Act, 1902, and be determined in a summary way only by a court of summary jurisdiction consisting of a stipendiary magistrate, and only then if the summons issued in respect of the complaint is served within one hundred and five days of the time when the person whose title is disputed was appointed or elected, or the cause arose by reason of which it is alleged that the person is liable to be ousted, whichever last happened.

(4) (a) A complaint may be made under subsection (3) of this section at the instance of the council, or by any person.

Cf. ss. (3) of this section.

(b) The court of summary jurisdiction may make an order—

- (i) declaring a person to be not entitled to the office of member of a council then occupied by him and that the office is vacant, or that the complainant or another person is entitled to the office;
- (ii) directing the council to make an appointment or that an election be held to fill the vacancy;
- (iii) to compel a person or persons to hold such election as is necessary.

(c) The court of summary jurisdiction may not make an order to admit or restore a person to an office, unless the court first declares that a person who is occupying the office is not entitled to the office and that the office is vacant.

Parts V.
and VI.

Ss. 156, 157.

Governor
may dismiss
a council.
Cf. R.D. Act,
ss. 122 and
123.

156. (1) Where, in the opinion of the Governor a council is not properly carrying out—

- (a) local government in the district of the municipality; or
- (b) the powers conferred and duties imposed upon it by an Act;

the Governor may by Order dismiss the council.

Cf. ss. (1) of
this section.

(2) By an Order made under subsection (1) of this section the Governor—

- (a) shall appoint the day on and after which all of the offices of member of the council are vacant;
- (b) shall appoint such day for holding an election to restore a council to the municipality as allows sufficient time for compliance with the provisions of this Act relating to nomination of candidates and to other prerequisites for the election, and as ensures the holding of the election as soon after the dismissal of the council as is reasonably practicable; and
- (c) may appoint a commissioner as if the appointment were made under Division 9 of Part III., with authority for the commissioner to exercise the powers and discharge the duties of a council for the municipality until a council is elected and holds its first properly constituted meeting after the making of the Order.

Cf. Part IV.
Div. 4,
Subdiv. D,
ss. 89 *et seq.*
ante as to
nominations,
etc.

Cf. Part III,
Div. 9, ss. 29
et seq. ante.

Part VI.

PART VI.—OFFICERS OF THE MUNICIPALITY.

Appointment
and
remunera-
tion of
officers.

Cf. M.C. Act,
s. 147; and
R.D. Act,
s. 129.

Cf. S.A. L.G.
Act, s. 157,
Vic. L.G.
Act, s. 158;
and N.S.W.
L.G. Act,
s. 99.

Cf. s. 5 ante.

157. (1) (a) Where there is inconsistency between the provisions of this Part and the provisions of an award or agreement in force under the Industrial Arbitration Act, 1912, the latter provisions prevail.

(b) The express reference in paragraph (a) of this subsection to the Industrial Arbitration Act, 1912, is by way of precaution only and does not affect the operation of section five.

Ss. 157, 158.

(2) From time to time as occasion requires, a council, having regard to the provisions of section one hundred and sixty—

Cf. s. 6 ante as to meaning of "officers."
Cf. s. 160 post, as to qualifications.

(a) shall appoint a person to the office of clerk of the council;

(b) shall, where Part XV. which relates to buildings applies to the district or portion of the district, and may, where that Part does not so apply, appoint a person to the office of building surveyor;

Cf. Pt. XV. post.

(c) may appoint persons to other offices, appointments to which, are in the opinion of the council necessary to the proper carrying out of the local government of the municipality under this Act;

(d) may appoint the same person to more than one office; and

(e) may join with the council of another or other municipalities in appointing a person to an office other than that of clerk.

158. (1) (a) The terms and conditions, including the remuneration and allowances, of employment, or engagement of a person so appointed to an office are those agreed between the council and the person.

Terms and conditions of appointment.

(b) Where by-laws of the municipality prescribe terms and conditions applicable to an office, a person who accepts appointment to the office is employed or engaged in the office on the terms and conditions so prescribed as applicable to it, notwithstanding that the terms and conditions so prescribed are not expressly included in the agreement, except where the by-laws permit a variation or departure from those terms and conditions, and the agreement provides for a variation or departure so permitted, in which case he is employed or engaged on the terms and conditions prescribed but as varied or departed from by the agreement.

(c) A condition of an appointment to the office of clerk, engineer, treasurer, or building surveyor, is that the person appointed may be removed from the office by the council, notwithstanding that the condition is not expressly included in, or is excluded expressly or by implication by, the agreement.

Removal
from office.

(2) The council may, but only in accordance with the terms and conditions of the agreement under which he is appointed to the office, remove an officer from an office and appoint a successor in his place.

(3) Notwithstanding anything to the contrary contained in the agreement under which a person is appointed to an office, the person shall retire from the office upon his attaining the age of sixty-five years, but where the council is of opinion that special circumstances exist which warrant his continuing to hold the office after he has attained that age, the council may, with the consent of the person, by resolution from time to time extend for such period or periods as it thinks fit the time during which the person may hold the office.

(4) The provisions of subsection (5) to subsection (12) of this section both inclusive apply only to persons holding office as clerk, engineer, treasurer or building surveyor of a council.

(5) (a) Where the council proposes to terminate the services of a person holding any of those offices except where they are terminated by reason of his retirement under subsection (3) of this section it shall either order an inquiry under this section or suspend him.

(b) Where an officer is so suspended the council shall state the reasons for the suspension.

(6) (a) Within seven days after suspension the officer may, if the inquiry has not already been held, apply to the council for an inquiry and thereupon

the council shall order an inquiry, but if the officer does not so apply the council may proceed to determine the matter.

(b) A person appointed by the Governor shall hold the inquiry.

(c) The person holding the inquiry shall make a report in writing on the matters inquired into.

(d) The original of the report shall be sent by him to the council and copies of the report shall at the same time be so sent to the Minister and the officer in respect of whom the inquiry was made.

(e) The report shall be read as soon as practicable in open council.

(7) Where an inquiry is ordered the decision of the council shall not be given until after the reading of the report.

(8) The person holding the inquiry has the powers conferred by the Royal Commissioners Powers Act, 1902, on a Royal Commission or the Chairman thereof.

(9) The council shall pay to the Minister the expenses of the person holding the inquiry (including the salary of any public servant for the period for which he is engaged thereon) or such portion thereof as the Minister may decide.

(10) (a) The person holding the inquiry may award costs and expenses (including the expenses referred to in subsection (9) of this section) to an amount assessed by him against either the council or the officer and any costs or expenses so awarded may be recovered as a debt in a court of competent jurisdiction.

(b) The person holding the inquiry shall also determine whether the officer shall or shall not be paid his salary or any part thereof for the period of his suspension.

(11) (a) In any case where the council decides to terminate the services of the officer notwithstanding that the report of the person holding the inquiry is substantially favourable to the officer, the Minister, on the application of the officer made within fourteen days after termination of his services, may, after such inquiry as he deems sufficient, direct the council to pay to the officer as from the date of termination of his services compensation not exceeding an amount equivalent to the amount of four weeks' salary or wages for each year of his service with that council, such salary or wages being reckoned on the average of the weekly salary or wages paid to him during the fifty-two weeks immediately preceding the date upon which the inquiry was ordered or the date of his suspension as the case may be.

(b) The council shall pay to the officer the amount of compensation as directed by the Minister, and if the council fails to do so the officer may recover it in a court of competent jurisdiction as a debt due to him by the council.

(c) When the council terminates the services of the officer notwithstanding that the report of the person holding the inquiry is substantially favourable to the officer, the officer is entitled to the same superannuation benefits and benefits for annual recreation or long service leave under an award or agreement in force under the Industrial Arbitration Act, 1912 as though he had voluntarily resigned from the service of the council.

(12) For the purposes of this section "council" includes county or regional council.

Regulations
relating to
qualifica-
tions of
officers.

159. The Governor may make regulations—

- (a) prescribing the respective educational and professional qualifications necessary to be held by persons occupying the respective offices of clerk, engineer, building surveyor, and treasurer of councils generally or by

a class or classes of council, whether classification is determined by the amount of revenue of a municipality, the location of the district of a municipality, or otherwise;

- (b) constituting committees for the purpose of examining those persons, or a class or classes of those persons, and granting certificates of qualification to persons who pass the examinations, or who are otherwise qualified to receive certificates;
- (c) prescribing the mode of determining and obtaining recognition for those qualifications in other States of the Commonwealth;
- (d) providing for the cancellation of those certificates by the committees, and the grounds upon which, and the manner in which, the cancellation may be effected; and
- (e) prescribing fees payable in respect of examinations and certificates.

160. (1) Where the occupant of the office of clerk, engineer, building surveyor or treasurer is not required to be qualified, a council may appoint a person to the office notwithstanding that he is not qualified.

Appoint-
ments to
office to
which
regulations
do not apply.

(2) Where regulations so made require the occupant of the office of clerk, engineer, building surveyor or treasurer to be qualified the council shall not appoint a person to the office—

Appoint-
ments to
office to
which
regulations
apply.

- (a) unless he holds the appropriate certificate of qualification issued under the regulations; or
- (b) if he does not hold that certificate, unless the Minister approves the appointment.

(3) A council shall not remove from the office an officer holding an office when regulations so made come into operation, because he is not the holder of a certificate of qualification required by the regulations to be held by the occupant of the office.

Saving of
existing
officer's
rights when
regulations
come into
operation.

(4) No such regulation shall have application to or affect the appointment to any such office of a person holding office as a clerk, engineer, building surveyor or treasurer at time of the making of the regulations.

Protection of credit towards long service leave in certain cases.

161. (1) Where a municipality credits service by an officer or employee towards entitlement to long service leave, and an officer or employee, having been jointly engaged or jointly employed by several municipalities which so credit service, serves those municipalities, but ceases to be engaged or employed jointly by all of them and continues to be engaged or employed or is re-engaged or re-employed, by and serves one of them or some of them,

- (a) he is entitled to credit for the whole of that service; and
- (b) each of those municipalities which he has served shall contribute towards the amount of remuneration payable to him during his long service leave in the ratio which his period of service with it bears to the whole of his service with all of them.

Cf. ss. (1) of this section.

(2) If a question or dispute arises under subsection (1) of this section, the Minister shall decide it and his decision is not subject to appeal, and as evidenced by a certificate purporting to have been signed by the Minister may be registered in, and enforced as a judgment of a court of competent jurisdiction.

Security by officer entrusted with money. Cf. M.C. Act, s. 148; and R.D. Act, s. 129.

162. (1) Where a person is appointed to an office, in the carrying out of the duties of which he is entrusted by the council with the custody or control of money, the council shall not permit him to commence to carry out the duties until it takes such security as the Minister considers sufficient for the faithful carrying out by him of those duties, either in the form of a guarantee by an insurance company carrying on business in the State, or in the form of a bond with at least two sureties.

Ss. 162, 163, 164.

(2) The council shall ensure that during the time a person so appointed is carrying out those duties the security continues effective.

(3) If the security is a guarantee taken from an insurance company the council shall pay from the appropriate fund the initial premium and renewal premium from time to time payable to the company in respect of the guarantee.

163. A person who is an officer and is removed from his office, and who is in possession of, or accountable for money, goods, valuables, account books, accounts, or papers belonging to, or concerning the municipality, shall deliver up and account for them to the council of the municipality immediately he is so removed.

Removal of officers.
Cf. M.C. Act, s. 149.

164. (1) An officer engaged or employed by a council to collect on account of the municipality rates or other money shall, after he has received money on that account, pay it over to a person authorised by the council to receive it on the account of the municipality, and shall obtain from the authorised person who shall issue it, a receipt, which when so issued is a discharge to the officer so paying.

Collector of rates to pay over money and make returns.
Cf. M.C. Act, s. 150.

(2) An officer making payment as required by subsection (1) of this section shall include in the payment all money received by him on account of the municipality up to the day of making it.

Cf. ss. (1) of this section.

(3) Where the officer so engaged or employed receives payment in cheques, he shall hand over to the authorised person the actual cheques received by him; and where he receives payment in coin or bank notes, he shall hand over to the authorised person, in coin or bank notes, the amount received by him, after deducting the sums paid away by him in giving change, but without other deduction.

Part VI.

Ss. 165, 166.

Officers to
deliver
accounts,
etc.
Cf. M.C. Act,
s. 152.

165. An officer engaged or employed by a council—

- (a) shall from time to time, when required by the council, make out and deliver to the council, or to a person authorised by the council to receive it, a true and accurate account, in writing signed by him, of all money received by him on behalf of the municipality;
- (b) shall state in the account how, and to whom, and for what purpose the money has been disposed of, and, together with the accounts, shall deliver the vouchers and receipts for the payments; and
- (c) shall pay to the council, or to the authorised person the money which appears to be owing by him upon the balance of the accounts.

Officers
failing to
render
accounts or
pay balance,
etc.
Cf. M.C. Act,
s. 153.

166. (1) If an officer does not render an account, or produce and deliver up the vouchers and receipts in his possession or power, relating to the account, or pay the balance shown by the account as owing by him, when so required, or if, for five days after being required by the council of the municipality to do so, an officer of the council does not deliver up to the council, or to a person authorised by the council to receive them, the papers and writings, property, matters and things in his possession or power relating to the giving effect to this Act or any other Act conferring a power or imposing an obligation on the municipality, or belonging to the council, a court of summary jurisdiction may, on complaint of the matter being made under the Justices Act, 1902, by or on behalf of the council, hear and determine the matter in a summary way, and may order the officer to render the accounts, or to deliver up the vouchers and receipts, or to pay over the balance owing by him, or to deliver up the papers, writings, property, matters and things, as the case requires.

Ss. 166, 167, 168.

(2) If the officer does not obey the order, the court of summary jurisdiction may commit him to prison for a term not exceeding six months.

167. Proceedings against or dealing with an officer, under this Part may be taken, carried out and enforced against him after he has ceased to hold office; and proceedings against or dealing with an officer under this Part does not deprive the council of a remedy which it has under a guarantee or bond for the faithful carrying out of his duties by him.

Proceedings
against
officers after
removal.
Cf. M.C. Act,
s. 154.

168. (1) On the resignation or death of an officer or other employee, or on the cessation or abolition of the office or position of an officer or other employee, the council may, in accordance with the provisions of this section, cause to be paid to the officer or other employee, or to such of his surviving relatives as the council thinks fit, a gratuity.

Gratuity on
resignation,
death or
abolition
of office.
Cf. M.C. Act,
s. 155; and
R.D. Act,
s. 130.

(2) A council shall not pay the gratuity—

- (a) unless the officer or employee has served the council in the capacity of officer or employee or both capacities for at least ten years; or
- (b) unless before completing that period of service he has died, or become physically or mentally incapable of so serving the council.

(3) Subject to the provisions of subsection (4) of this section the maximum amount payable as a gratuity is an amount equal to one month's salary or wages at the rate of the last payment made by the council to the officer or employee as his salary or wages for each year of that service, limited to twelve years, less such amount, if any, as has been paid by the council as the council's contribution on account of the officer or employee under a scheme mentioned in section one hundred and sixty-nine.

Cf. s. 169
post.

(4) A council may, if it thinks the special circumstances of the case warrant it, with the approval of the Minister, pay a gratuity not authorised by this section or a gratuity exceeding in amount that so authorised.

Super-
annuation
and death
benefits.

169. (1) In this section—

“scheme” means a scheme under which a municipality and its officers and employees contribute to a fund for payment of superannuation on retirement and death benefits on the death of the officers and employees.

“specified period”—

(a) in the case of a municipality whose district is a former municipal district or a former road district mentioned in section nine, means a period of six months from the coming into operation of this Act;

(b) in the case of a municipality newly constituted after the coming into operation of this Act, means a period of six months from the day on which the municipality is constituted;

Cf. s. 9 (6)
ante.

Cf. No. 58
of 1947,
amendment
by Nos. 12 of
1949, and 12
of 1950.

(2) If within the specified period a municipality is not participating in a scheme under the Superannuation, Sick, Death, Insurance, Guarantee and Endowment (Local Governing Bodies' Employees) Funds Act, 1947, the Minister shall cause to be served upon the council of the municipality a notice requiring the council so to participate within such time as the Minister specifies.

(3) If the Minister is satisfied that the council is not so participating within the time specified in the notice or such further time as he thinks reasonable, the Minister may on behalf of the municipality formulate a scheme and by public notice declare it to be in operation.

Ss. 169, 170, 171.

(4) A scheme so formulated and declared to be in operation has effect as if formulated and put in operation with the Governor's approval by the municipality under that Act, and the council of the municipality shall exercise such powers and discharge such obligations as are necessary to give effect to the scheme accordingly.

(5) This section does not apply to The City of Perth.

170. A decision made under this Part by the Minister is not subject to appeal.

Decisions made by the Minister are final.

PART VII.—PROCEEDINGS OF COUNCILS.

Part VII.

171. (1) Electors' meetings are either general meetings or special meetings.

Electors meetings.
Cf. M.C. Act, s. 156; and R.D. Act, s. 144.

(2) Once at least in each financial year at a time appointed by the council, the council of a municipality shall hold a general meeting of the electors of the municipality.

General meetings.

(3) Where at least fifty of the electors or five per centum of the electors, whichever is the lesser number, or at least one-third of the councillors sign and cause to be delivered to the mayor or president a written request to have a matter discussed at a special meeting and clearly state the nature of the matter in the request, the mayor or president shall convene the meeting for a day, being within thirty-five days of the delivery of the request.

Special meetings.

(4) The mayor or president shall convene the meeting by causing notice of the time, day, and place of the meeting, and notice of the matter, to be published in a newspaper circulating in the district, and to be posted on the official notice board of the council, at least fourteen days before that for which the meeting is convened, and shall cause the notice so posted to be kept posted until the conclusion of the meeting.

(5) The place at which an electors' meeting may be held is a public hall or building, other than one licensed for the sale of intoxicating liquors, situated in the district of the municipality or, with the consent of the Minister, in the district of an adjoining or neighbouring municipality.

(6) The mayor or president, if present, shall preside at an electors' meeting, but if he is absent or retires from the meeting the deputy-mayor or deputy-president shall preside, but if the deputy-mayor or deputy-president is absent or retires from the meeting, a councillor chosen by the electors present, who is present and willing to so preside, or if there is no councillor present and willing to preside an elector who is so present and willing, chosen by the electors present shall preside.

(7) At an annual general meeting of electors the order of business is—

- (a) the receiving of annual financial statements;
- (b) the reading of the report of the auditor or auditors;
- (c) the reading of the reports of the mayor or president;
- (d) dealing with special business notice of which has been given in the notice convening the meeting; and
- (e) dealing with such other general business as the mayor or president thinks fit, or as the majority of electors present may decide.

Ordinary
and special
meetings of
the council.
Cf. M.C. Act,
ss. 157, 166;
and R.D. Act,
s. 131.

172. (1) The council shall meet for the transaction of business at such places and at such times as the council from time to time appoints, and at least once in every three months, unless the district is situated wholly or partly northward of the twenty-sixth parallel of south latitude, in which case the

Ss. 172, 173.

ordinary meetings of the council may, with the approval of the Minister, be held once in every six months, instead of once in every three months.

(2) The mayor or president may convene a meeting of the council as often as he thinks fit, by notice in writing signed by him or the clerk, sent to each councillor before the meeting.

(3) If the mayor or president refuses or neglects to call a meeting of the council after receiving a request for that purpose, signed by at least three councillors, those councillors may call a meeting of the council, by serving a notice in writing signed by them and stating the business to be transacted, on each of the other members of the council at least twenty-four hours before the time of the commencement of the meeting in the case of a municipality which is a city or town and at least seven days before the time of the commencement of the meeting, where the municipality is a shire.

173. (1) The provisions of this section apply to meetings of a council.

Proceedings
at council
meetings.
Cf. M.C. Act,
ss. 158, 160,
162; R.D. Act,
s. 132; and
S.A. L.G.
Act, s. 147.

(2) A council shall not transact business at a meeting unless a quorum is present.

Quorum.

(3) The number of members of a council necessary to form a quorum—

- (a) where the total number of the members of the council is an even number, is one-half of that total;
- (b) where the total number of the members of the council is an odd number, is the integer nearest to but greater than one-half of that total; or
- (c) where subsection (4) of this section applies, the number fixed under that subsection.

Cf. subs. (4)
of this s.

(4) Except where there are vacancies in at least half of the offices of members of a council, the Minister may by written notice signed by him and

Cf. subs. (3)
of this s.

delivered to the mayor or president reduce the number of members, mentioned in paragraph (a) or paragraph (b) of subsection (3) of this section as necessary to form a quorum, if he is satisfied that, owing to absence with leave of the council or to other exceptional circumstance, that number is not available to form a quorum.

Adjourn-
ment.

(5) If at the expiration of half an hour from the time fixed for the commencement of a meeting of a council a quorum is not present, the mayor or president, or, in his absence the deputy-mayor or deputy-president or in his absence the majority of councillors present, or any councillor present alone, or in the absence of the mayor or president and all the councillors, the clerk, may adjourn the meeting; and business which could have been transacted had there been a quorum at the meeting, may be transacted at the resumption of the adjourned meeting.

(6) A council may adjourn a meeting to a future time, to a place within the district of the municipality, or to the office of the council.

Mayor or
president to
preside.

(7) The mayor or president, or, in his absence the deputy-mayor or deputy-president, or, in his absence a councillor chosen by the councillors present, shall preside.

Vote of
mayor or
president.

(8) The mayor or president shall not vote unless there is an equal division of votes, in which case he has and may exercise a casting vote.

Votes of
councillors.
Cf. s. 37 (3)
ante and
s. 174 post.

(9) At meetings of a council except where he is prohibited from voting by this Act, a member of the council present in his seat when a question is put, shall vote on the question openly and not by secret ballot.

(10) The result of voting openly is determined on the voices, unless a member of the council calls for a show of hands, in which case, the result is determined on the count of raised hands and upon a vote on the voices or on a show of hands being taken, a councillor may call for a division.

Ss. 173, 174.

(11) The division shall thereupon be taken by those voting in the affirmative passing to the right of the chair and those voting in the negative to the left of the chair.

(12) The names of the councillors who voted on the question on which there is the division shall be recorded by the clerk in respect of every division together with details of whether they voted in the affirmative or negative together with the names of those councillors who abstained from voting.

174. (1) In this section—

“common interest” means an interest which is common

to the public; or

to the ratepayers of the municipality; or
to the inhabitants of the district of the municipality;

whether the matter relates

to the supply by the municipality of a service or thing, including gas, electricity, water; or

to the hire and supply by the municipality of goods and services; or

to the terms applying to the right to participate in the supply or the hiring of the service or thing; or

to the consideration by a council of the adoption, modification or revocation of a town planning scheme under the Town Planning and Development Act, 1928 or by-laws made under that Act for any of the matters mentioned in paragraph three of the Second Schedule to that Act for either—

(a) the whole of its district; or

(b) a portion of its district comprising not less than one-third of the area of the district; or

Members prohibited from taking part in consideration of or voting on a matter in which they are interested.
Cf. M.C. Act, s. 161; R.D. Act, s. 135; Q. L.G. Act, s. 14 (4); and s. 37 (2).
(b) (vii) ante.

to any other matter, whether of the same kind as, or a different kind from those here specified;

“interest” means a direct or indirect interest in a matter;

“matter” includes a contract, proposed contract and any proposal or thing in which the municipality has an interest;

“public body” includes a person or association of persons who as a body and not for their own profit carry on activities for the promotion and encouragement of, and giving effect to, things of public concern and interest, whether in relation to churches, chapels, religious bodies, schools, hospitals, benevolent and charitable institutions, science, art, literature, recreation, the supply of services or commodities or otherwise.

Cf. 59 Vict.
20 (1895),
s. 2 and 23
and 24
Geo. V.,
51, U.K.
(1933) s. 305.

(2) In the application of this section—

- (a) a person is to be regarded as having an interest in a matter if the person or his nominee is a member of a body corporate or other body having a direct interest in the matter, but is not to be regarded as having an interest in the matter merely because the person or his nominee holds an interest, whether in stock or shares or otherwise in the body, as a trustee, or in any other capacity if the person has no beneficial interest in the stock, shares, or interest, in the body, or if the body is a public body;
- (b) a person is to be regarded as having an interest in a matter, if the person or his nominee is a partner or is in the employment or service of another person having a direct interest in the matter, but he is not to be regarded as having an interest in the matter merely because he or his nominee holds a partnership interest as a trustee

or in any other capacity and has no beneficial interest in the partnership, or if that other person is a public body;

- (c) (i) persons married to each other are to be regarded as living together unless living apart pursuant to a deed of separation or order of a court of competent jurisdiction

- (ii) in the case of persons married to each other and living together the interest of one if known to the other is to be regarded as the interest of the other.

- (3) (a) A member of a council

who has an interest, other than a common interest, in a matter

shall

unless exempted under subsection (6) of this section,

Cf. ss. (6) of this s.

give notice

in accordance with subsection (4) of this section disclosing the fact that he has the interest,

Cf. ss. (4) of this s.

and shall not take part in the consideration or discussion, and shall not vote, in respect of the matter at a meeting of the council.

(b) A person who contravenes the provisions of paragraph (a) of this subsection commits an offence unless he did not know, and proves that he did not know, that a matter in which, at the material time, he had an interest was the subject for consideration at a meeting of the council.

Cf. para. (a) of this subs.

Penalty: One hundred pounds.

(4) A member of a council who has an interest in a matter—

- (a) shall, unless he has already given a general notice under paragraph (b) of this subsection, disclose the fact that he has the interest in the matter at a meeting of the council at which the matter is a subject

Cf. para. (b) of this subs.

for consideration as soon after the commencement of the meeting as is practicable; or

- (b) may give to the clerk written notice that he has the interest in the matter, and on giving the notice is regarded as having disclosed the interest as required by this section.

(5) The clerk shall record in a book to be kept for the purpose particulars of disclosures made by members in accordance with the requirements of this section, and shall make the book available for inspection by ratepayers of the municipality at reasonable times.

(6) (a) Where the number of the members of a council prohibited by this section from the consideration or discussion of, or voting upon, a matter in which they have an interest, is at any one time so great a proportion of the whole of the council as to impede the transaction of business, or where for any other reason the Minister is of opinion that it is in the interests of ratepayers or inhabitants of the district that he should do so, the Minister may, on the application of the council or the clerk with or without imposing conditions or restrictions, exempt a member or members from the prohibition, and an exemption so granted has effect according to its tenor.

Cf. para. (a) of this subg.

(b) Contravention of a condition or restriction imposed under paragraph (a) of this subsection is an offence.

Penalty: One hundred pounds.

(7) (a) A council may by resolution exclude a member of the council from a meeting of the council while it has under consideration a contract, proposed contract, or other matter in which he has an interest which precludes him from taking part in the consideration and discussion of it and voting on a question with respect to it.

Ss. 174, 175, 176.

(b) Where a resolution in respect of a matter is passed under paragraph (a) of this subsection, the person whom it affects shall not attend the meeting, while the council is considering, discussing, or voting on the matter.

Cf. para. (a) of this subs.

175. (1) A council shall hold ordinary meetings for transacting the ordinary business of the council.

Business which may be conducted at ordinary meetings.
Cf. M.C. Act, s. 163.

(2) Ordinary business includes—

- (a) superintending the conduct of the officers of the council;
- (b) inquiring into the conduct of the contractors engaged and persons employed by the council to execute works;
- (c) inquiring into the state and progress of works;
- (d) generally giving such directions from time to time as are necessary for carrying into effect the purposes of this Act or for exercising a power conferred, a duty or obligation imposed upon the council by this or another Act, or the carrying out of a function which the council is authorised by this or another Act to carry out.

(3) If at an ordinary meeting a councillor objects that a motion moved without notice does not deal with ordinary business, the motion shall be of no effect unless it is agreed to at the meeting by an absolute majority of the members of the council.

(4) Ordinary meetings are open to the public except on such occasions as the council, by resolution, which may be moved without notice, directs otherwise.

176. A council shall not transact business other than ordinary business at an ordinary meeting of the council, unless a member of the council intending to propose the transaction of the other business,

Notice of extra-ordinary business.
Cf. M.C. Act, s. 164.

Ss. 176, 177, 178.

gives each of the other members of the council written notice signed by him of his intention to do so, prior to the commencement of the meeting, or where the by-laws of the municipality provide for the notice, in accordance with the by-laws.

Resolution,
how revoked
or altered.
Cf. M.C. Act,
s. 165.

177. (1) A council may, at the same meeting at which it is passed, rescind or alter a resolution if all the members of the council who were present in their seats at the time the resolution was passed are also present in their seats at the time the rescission or alteration is proposed.

(2) A council may, at a meeting after that at which it was passed, rescind or alter a resolution—

- (a) where notice of the motion to rescind or alter is not given, if a motion to that effect is carried by an absolute majority of the members of the council; or
- (b) where the member intending to propose the rescission or alteration has, through the clerk given written notice of his intention to each of the other members of the council at least seven days before the meeting, if a motion to that effect is carried by a majority of the members voting on the proposal at the meeting;

but not otherwise.

Notice of
meeting.
Cf. M.C. Act,
s. 167.
Cf. s. 172
ante.

178. (1) A person or persons authorised by this Act to convene a meeting, or the resumption of an adjourned meeting of the council, may do so effectively by causing written notice convening it and specifying the time of meeting or resumption, and, in case of a special meeting, the object of the meeting, to be delivered, or sent by post or otherwise, to the place of abode, or to the usual place of business, if any, within the municipal district, of the mayor or president and each of the councillors before the holding of the meeting.

Ss. 178, 179.

(2) At a special meeting a council shall not transact business other than that specified in the notice convening it.

179. (1) A council—

Committees.
Cf. M.C. Act,
s. 168; and
R.D. Act,
s. 137.

- (a) may appoint such number of members of the council, being less than one-half of the total number of the members of the council, as—
 - (i) an occasional committee; or
 - (ii) a standing committee;
- (b) shall fix the quorum for the transaction of business at meetings of a committee so appointed;
- (c) may delegate to a committee so appointed such of the council's powers and duties, except power to borrow money and power to impose rates, as the council thinks fit;
- (d) may make rules for the guidance of a committee so appointed;
- (e) may remove from a committee a member appointed to it and appoint another member of the council to take his place on the committee; and
- (f) may, where vacancies occur on the committee, appoint members of the council to fill them.

(2) A member may resign from a committee so appointed by delivering, or causing to be delivered, to the clerk written notice of his resignation signed by him.

(3) (a) A committee so appointed shall not enter into a contract or other commitment or undertaking without first having the express authorisation of the council to do so.

(b) A contract, commitment, or undertaking, entered into without that authorisation is of no effect.

(4) A committee so appointed is answerable to the council and shall, as and when required by the council to do so, report fully on its activities to the council.

**Advisory
committees.**

180. (1) Where a council thinks fit, the council may appoint persons, whether members of the council or not, as an advisory committee for the purpose of advising the council regarding the establishment, management, and control, of a cemetery, recreation ground, hospital, hall, public library, reading room, community centre, and any other thing, vested in or under the care, control, or management, of the council, whether the thing is of the same kind as, or of a different kind from, those here specified.

*Cf. s. 179 (1),
(e) and (f);
(2) and (4)
ante.*

(2) The provisions of paragraphs (e) and (f) of subsection (1) of section one hundred and seventy-nine and those of subsections (2) and (4) of that section apply to an advisory committee as if repeated in this section.

**Managing
committees.**

181. (1) Where a council thinks fit the council may, in accordance with the provisions of this section, appoint persons, whether members of the council or not, as a committee and delegate power to the committee to manage a hall, reading room, public library, or community centre.

(2) A council may so appoint and delegate only on the carrying of a resolution of the council, by an absolute majority, authorising the appointments and the delegation.

*Cf. s. 179 (1),
(e) and (f);
and (2) and
(4) ante.*

(3) The provisions of paragraph (e) and (f) of subsection (1) of section one hundred and seventy-nine and those of subsections (2) and (4) of that section apply to a committee appointed under this section as if repeated in this section, except that it is not necessary to appoint members of the council to the committee.

(4) The delegation may be unconditional or subject to conditions specified in the resolution.

(5) Where conditions are not imposed by the resolution, the council may by resolution subsequently carried by an absolute majority impose conditions.

(6) Where conditions have been imposed the council may from time to time by resolution carried by an absolute majority rescind or alter, or add to the conditions.

182. (1) A committee so appointed, whether under section one hundred and seventy-nine, one hundred and eighty or one hundred and eighty-one may from time to time meet, and adjourn from time to time and from place to place as the committee thinks fit, but shall not transact business at a meeting unless the quorum fixed by the council is present.

Meetings,
chairman,
etc., of
committee.
Cf. M.C. Act,
s. 170; and
R.D. Act
s. 138 (4).
Cf. ss. 179,
180, and 181
ante.

(2) The mayor or president is *ex officio* a member and chairman of a committee so appointed.

(3) The mayor or president may but is not obliged to preside as chairman of the meetings of a committee so appointed, and, if in accordance with the provisions of this section, he intimates his intention is not to do so, or does not intimate his intention at all, the members of the committee may elect one of their number to preside in his stead.

(4) The mayor or president may so intimate his intention by declaring it at the first meeting of the committee held after the declaration of the annual election of members of the council, or by giving to each of the members of the committee at or before that meeting written notice of his intention not to preside, but if at or before that meeting he does not so give notice he is regarded as having intimated that his intention is not to preside.

(5) If a mayor or president intimates or is regarded as having intimated that his intention is not to preside, he shall not, unless under subsection (6) of this section he is authorised to do so, preside until the corresponding first meeting of the committee in the following year.

(6) If the Minister is of opinion that through inadvertence or for other good reason the mayor or president has omitted to intimate his intention not to preside, and the mayor or president desires to preside, the Minister may authorise him to preside, and he may preside accordingly and notwithstanding the election of a chairman by the committee, but otherwise the chairman so elected is authorised to preside.

(7) If the chairman, whether the mayor or president or a member of the committee so elected, is absent, the members of the committee present at a meeting of the committee may elect one of their number then present to preside as chairman, and the person so elected is authorised to preside at the meeting.

(8) The chairman of a committee shall cause minutes of the proceedings of the committee to be recorded and kept in a minute book.

(9) The decision of a committee on a question is that decided by a majority of the votes of the members present, including the chairman who has a deliberative vote, and who in the case of an equal division of votes, has a casting vote.

Committee
may appoint
sub-
committee.
Cf. M.C. Act,
s. 171.

183. A committee so appointed may appoint a sub-committee of its members and delegate to the sub-committee the exercise of such of the powers and the performance of such of the duties of the committee as the committee thinks fit; but the sub-committee shall not exercise a power or perform a duty without the approval of the committee by which the sub-committee is appointed.

Ss. 184, 185, 186, 187

184. The proceedings of a council, a committee, or a sub-committee of a council are, notwithstanding a defect in the election or appointment of a person to the office of member of a council, or that he is incapable of holding the office, as valid as if there were no defect in the election or appointment and no incapacity to hold the office.

Defect in office of mayor, president or councillor does not invalidate proceedings of council, committee or sub-committee.
Cf. M.C. Act, s. 172.

185. Notwithstanding a vacancy in the office of member of a council, if the number of members in office is at least a quorum of the council, the business of the council may be carried on by the members in office who may exercise the powers of the council, as if there were no vacancy.

Vacancy in council not to stop business.
Cf. M.C. Act, s. 173.

186. Where because of death, absence, or other impediment, it is not possible or convenient for an officer of a council to do a thing which by this Act he is required or authorised to do, the mayor or president may appoint a person to do it, and a person so appointed may do it.

In case of inability of office bearer to perform duties substitute may be appointed.
Cf. M.C. Act, s. 174.
Cf. s. 77 ante.

187. (1) A council shall from time to time provide and maintain a public office within the district, or, if more convenient, outside the district together with all necessary and proper furniture, for holding meetings, and for use of its officers, and for transacting public business relating to the municipality.

Office, etc., of the council.
Cf. M.C. Act, s. 175; and E.D. Act, s. 143.

(2) The council shall cause to be published in a newspaper circulating in the district notice of the situation of the office and of the days and hours during which the office is open for the transaction of business with the public, and if there is a change in the situation of the office or in the hours the council shall cause notice of the change to be published similarly.

(3) If the office is situated outside the district, it is for the purposes of this Act, regarded as being within the district.

(4) For the purpose of so providing a public office the council may purchase or rent land or buildings which it deems necessary, or alter, remove, or enlarge a building, or cause a new building to be erected upon land purchased or rented under the provisions of this Act, or otherwise belonging to the municipality.

Minutes—
how
recorded.
Cf. M.C. Act,
s. 176; and
E.D. Act,
ss. 140-142.
Cf. s. 654
post.

188. (1) The council shall cause minutes of the proceedings of the council to be recorded and kept in a book, and shall cause to be so entered and kept—

- (a) the names of the members attending each meeting;
- (b) the time at which any member enters or officially withdraws from the meeting room during the course of a meeting;
- (c) the names of the members voting on each question on which there is a division, and resolutions;
- (d) orders, and other proceedings of the council; and
- (e) details of any motion moved at each meeting, whether it is passed, defeated or has lapsed;

and shall cause the minutes of the proceedings of a meeting to be read at the next ordinary meeting of the council, and if found to be correct the mayor or president, or other chairman, shall sign and date each page of the minutes in confirmation of the fact that they have been found correct.

(2) A council may, by its by-laws, provide that pasting or otherwise permanently affixing the minutes to the leaves of a book is a sufficient recording of the minutes in the book, and that the reading at the next ordinary meeting of the minutes of the previous meeting may be dispensed with when members have been supplied with copies of them at least three days before the holding of that next ordinary meeting; and compliance with by-laws so

made is sufficient compliance with the provisions of subsection (1) of this section relating to the recording of the minutes in a book, and to the reading of them at the next ordinary meeting of the council, but does not dispense with the necessity of the confirmation of them at that meeting.

Cf. (1)
of this
section.

(3) The council shall cause the book in which the minutes are so recorded to be kept at the office or usual place of meeting of the council available for inspection by members of the council, and rate-payers and electors of the district, during office hours on application to the clerk.

Inspection
of minutes.

189 A document is validly executed by a municipality when the seal of the municipality is affixed to it by the mayor or president in the presence of the clerk, and the mayor or president and the clerk attest the affixing of the seal.

Documents:
how
executed.
Cf. M.C. Act,
s. 177.
Cf. ss. 272
(2) and 643
post.

PART VIII.—BY-LAWS.

Part VIII.
Div. 1.

Division 1.—Power of Councils to Make By-laws.

Cf. M.C. Act,
Part VIII.;
and R.D. Act,
Part V,
Div. 3.

190. (1) A council may make by-laws in accordance with the provisions of this Part.

By-laws.

(2) By-laws made under this Act are required to be confirmed by the Governor before being published in the *Gazette* and laid before each House of Parliament under subsection (6) of this section.

Confirma-
tion
required.
Cf. ss. (6) of
this section.

(3) The provisions of the Interpretation Act, 1918, in general and those of sections thirty-six and thirty-eight of that Act in particular apply in respect of by-laws made, and the making of by-laws under this Act.

Cf. No. 30 of
1918, as
amended,
ss. 36 and 38.

(4) The express inclusion in subsection (3) of this section of the application of the provisions of sections thirty-six and thirty-eight of the Interpretation Act, 1918, does not exclude the application to this Act or by-laws made under this Act, of any of the other provisions of that Act.

Or. No. 30 of
1918 as am.
gen., and
ss. 3 (2) and
(3); 4 as to
"By-law"
and "This
Act"; 17, 25
and 39 specif

Part VIII.,
Div. 1.

S. 190.

Procedure
for presenta-
tion for con-
firmation.

(5) Where a council intends to submit a by-law for confirmation by the Governor, the council shall—

(a) cause a draft of the proposed by-law to be prepared;

(b) resolve that the by-law be made;

(c) record the resolution in, or substantially in, the form of the Thirteenth Schedule and cause the seal of the municipality to be affixed to the form;

(d) cause notice of the intention to submit the by-law for confirmation by the Governor to be published once in a newspaper circulating in the district of the municipality, and cause to be stated in the notice the purport of the by-law and notification that the full text of the by-law may be inspected by members of the public free of charge at the office of the council;

(e) cause a copy of that form together with a full text of the by-law to be posted and kept posted on the official notice board of the council during the period of twenty-one days commencing on the day of the publication; and

(f) after the publication in the newspaper cause the sealed form mentioned in paragraph (c) of this subsection to be delivered to the Minister, who, if satisfied that the council has complied with the requirements of this subsection, shall present it to the Governor.

Of. para. (e)
of this subs.

Procedure
on con-
firmation.

(6) If the Governor confirms the by-law the Minister shall, on payment by the council of the cost of publication, cause the by-law to be published in the *Gazette* and to be laid before both Houses of Parliament as required by section thirty-six of the Interpretation Act, 1918.

General
provisions
relating to
by-laws.

(7) A by-law may be so made—

(a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or

specified times, throughout the district or in a specified part or specified parts of the district and in areas which although not within the district are, by this Act or by Order made under sub-section (8) of this section, to be regarded for the purpose of the by-law making power, as being within the district;

Cf. subs. (8) of this s.; and ss. 193 (a) (iii) to (v), 219 (d), 223 (3) (b), and 227 (2) (b) (iv), post.

- (b) so as to require a matter affected by it to be in accordance with a specified standard or specified requirement; or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to delegate to or confer upon a specified person or body, or class of person or body, a discretionary authority;
- (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from the provisions of the by-law either wholly or to such extent as is specified.
- (d) so as to impose for a breach of the by-law, other than a by-law made under Part XV which relates to buildings, and which makes provisions for penalties for breach of by-laws made under that Part,
 - (i) a maximum penalty of fifty pounds; with or without provision for
 - (ii) a maximum daily penalty during the breach, of five pounds per day; with or without provision for
 - (iii) a minimum penalty not exceeding one-tenth of the maximum penalty and maximum daily penalty, if any, for the breach; and with or without provision for

Cf. Part XV s. 434 post.

(iv) the minimum penalty and minimum daily penalty, if any, increasing in severity by one-tenth of the maximum for each successive breach of the same by-law by the same offender;

Cf. M.C. Act,
s. 187; and
s. 5 ante.

(e) only if the by-law is not inconsistent with or repugnant to any of the provisions of this Act or any other law in force.

Extension
of by-law
making
power to
area outside
district.

(8) Where in the opinion of the Governor a by-law making power conferred by this Act on a council should be extended to an area which is outside the district, the Governor may by Order declare that for the purpose of the exercise of the power the area is to be regarded as being within the district and that the council may exercise the power in respect of the area as if in fact it were within the district.

By-law
making
powers
generally.

191. (1) A council may so make by-laws prescribing forms, fees, matters, and things, which by this Act are contemplated, or are required or permitted to be prescribed, or which appear to the council to be necessary or convenient for the purpose of effectually carrying out the provisions of this Act, or for better effecting the operation, objects, and purposes of this Act.

General
power not
affected by
enumera-
tion of
specific
power.
Cf. subsec.
(1) of this s.
and s. 190
ante.

(2) The enumeration in this Act of specific matters in respect of which a council may make by-laws does not affect the generality of the power conferred by subsection (1) of this section and by section one hundred and ninety.

"Specified."

(3) Where in a power conferred by this Act to make a by-law the expression, "specified" is used, the expression, unless the context requires otherwise, means specified in the by-law.

Aerodromes.

192. A council may so make by-laws for controlling the use and management of such aerodromes as are under the care, control, or management, of the municipality.

193. For the safety, decency, convenience and comfort of persons in respect of bathing, a council may so make such by-laws as it thinks fit generally and in particular—

Bathing.
Cf. N.S.W.
L.G. Act,
s. 354.

- (a) for regulating public bathing and the costumes of bathers and the conduct of bathers and others—

- (i) in public baths under the care, control, or management, of the council;
- (ii) in private baths open to public view;
- (iii) in rivers, watercourses, tidal and non-tidal waters, in or outside but adjoining the district of the municipality, notwithstanding that an Order has not been made under subsection (8) of section one hundred and ninety;

Cf. s. 190 (8)
ante.

- (iv) in the sea adjoining though outside the district of the municipality but only pursuant to an Order made under subsection (8) of section one hundred and ninety; and

Cf. s. 190 (8)
ante.

- (v) in a public place, or public reserve adjoining any of the places mentioned in subparagraphs (i), (ii), (iii) and (iv) of this paragraph, but only if the public place or public reserve is under the care, control, or management of the municipality;

- (b) for prohibiting either by notices placed in the vicinity of the locality, or by the by-law itself without the placing of notices, bathing in a specified locality, absolutely; or subject to specified conditions; or during specified times; or by either sex during specified times;

- (c) for prohibiting bathing in a locality indicated by specified notices, specified flags or other specified indicators placed in position by a specified person or body, or a class of person or body, during such time as the locality is so indicated;

Of. para. (c)
of this s.

(d) for authorising a specified person or body, or a class of person or body, from time to time, to place notices, flags, or other indicators mentioned in paragraph (c) of this section in position and remove them;

Of. para. (d)
of this s.

(e) for prohibiting persons or bodies other than those authorised under paragraph (d) of this section from removing or otherwise interfering with indicators so placed;

(f) for authorising and regulating the provision, management and use of changing rooms, bathing houses, and similar premises, and requiring the provision of separate accommodation for each sex;

(g) for prescribing the maximum charges which may be imposed for the use of the changing rooms, bathing houses, and premises under the control or management of the Council; and

(h) for prohibiting the provision, management and use of changing rooms, bathing houses and similar premises unless by authority of a license issued by the council.

Baths.

194. A council may so make by-laws—

(a) for regulating the provision, management and use of public baths;

(b) for regulating the admission of persons, and the conduct of persons admitted, to public baths;

(c) for requiring the provision of separate accommodation for each sex while attending public baths for bathing;

(d) for requiring the provision of separate baths which may be used in private at the premises at which the public baths are conducted;

(e) for requiring the provision of and requisites for hot and cold baths, vapour and medical baths at those premises;

- (f) for prescribing in respect of baths under the control or management of the council the maximum charges which may be imposed for the use of the baths and for the requisites and for a service rendered in connection with the management of the baths; and
- (g) for prohibiting the provision and management of public baths unless by authority of a license issued by the council.

195. A council may so make by-laws—

Bazaars.

- (a) for regulating the provision, management and use of premises as bazaars, sale yards or repositories for the sale of live stock or vehicles or both;
- (b) for the maintenance of cleanliness of premises; and
- (c) for prohibiting the provision, management, and use of premises as such, unless by authority of a license issued by the council.

196. A council may so make by-laws—

Bee-keeping

- (a) for regulating the keeping of bees;
- (b) for prohibiting the keeping of bees absolutely; and
- (c) for prohibiting the keeping of bees in the district unless by authority of a license issued by the council.

197. A council may so make by-laws—

Breeding of
dogs and
birds.

- (a) for regulating the keeping of dogs and cage birds for breeding purposes;
- (b) for prohibiting the keeping of dogs and cage birds for breeding purposes absolutely; and
- (c) for prohibiting the keeping of dogs and cage birds for breeding purposes unless by authority of a license issued by the council.

Part VIII.
Div. 1.

Ss. 198, 199, 200.

Brick-
making.

198. A council may so make by-laws—

- (a) for regulating brickmaking;
- (b) prohibiting brickmaking absolutely; and
- (c) prohibiting brickmaking unless by authority of a license issued by the council,

provided that nothing in this section shall empower a council to prohibit the continuance of brickmaking which is being carried on at the commencement of this Act, unless the person carrying on such brickmaking is paid reasonable compensation in such amount as the council and such person agree upon, or failing agreement in such amount as is awarded by a single assessor in case the parties agree upon one, otherwise by two assessors, one to be appointed by each party.

Bridges,
jetties, etc.

199. (1) In this section,

“jetties” means jetties, piers, wharves, and landing places, whether in or adjacent to the sea or a river.

(2) A council may so make by-laws—

- (a) for regulating the management and use of bridges and jetties, under the care, control, or management, of the council;
- (b) requiring and prescribing the lighting of jetties, and where jetties are not lighted as required, for authorising the council to light them at the expense of, and to recover the amount of that expense from, the owner in a court of competent jurisdiction; and
- (c) prescribing the maximum charges that may be imposed for the use of or admission to jetties, under the care, control, or management, of the council.

Caravans.

200. (1) In this section—

“caravan” means a vehicle designed, or fitted, or being capable of use, as a habitation or for dwelling or sleeping purposes.

(2) A council may so make by-laws—

- (a) for regulating the use of caravans;
- (b) prohibiting the use of caravans absolutely;
- (c) regulating the use of land for the parking of caravans and prescribing the conditions on which land may be so used; and
- (d) prohibiting the use of caravans unless by authority of a license issued by the council.

201. A council may so make by-laws—

- (a) for regulating and requiring the cleaning of chimneys;
- (b) for prohibiting persons from carrying on business as chimney sweeps unless by authority of a license issued by the council; and
- (c) for regulating the construction, use and management of furnaces and chimneys so as to prevent as far as possible, the emission of smoke, dust, grit and cinders, and prescribing and requiring the carrying out of such structural alterations of furnaces and chimneys as are necessary to prevent as far as possible the emission of smoke, dust, grit, and cinders.

Chimneys,
Chimney
sweeps and
furnaces.

202. A council may so make by-laws—

- (a) for requiring the owner of vacant land to clear the land of trees, scrub, undergrowth and rubbish;
- (b) for requiring the owner or occupier of any land within the district to remove, within a time specified in a notice given by the council and served on the owner or occupier of the land, refuse, rubbish, or other material whatsoever which, in the opinion of the council, is likely to affect adversely the value of adjoining property or the health, comfort or convenience of the inhabitants thereof; and

Clearing
vacant land.

- (c) where the owner does not clear the land or remove the refuse, rubbish or other material as required, for authorising the council to clear or remove it at the expense of, and recover the amount of the expense from, the owner in a court of competent jurisdiction.

Crossings
and
footpaths
and drains.
Cf. ss. 357-
360 post.

203. A council may so make by-laws—

- (a) for prescribing the circumstances in which crossing places for animals or vehicles or both may or shall be constructed across footpaths and drains from a street to privately owned property; and
- (b) for prescribing the width to which, the materials of which, and the mode in which a crossing shall be constructed.

Dangerous
and offensive
things.

204. A council may so make by-laws—

- (a) for regulating or prohibiting either absolutely or unless under authority of a license issued by the council, the keeping of a thing whether an animal or a bird or any other thing, whether animate or inanimate, which in the opinion of the council is offensive or dangerous; and
- (b) for regulating the carriage, handling and storage of gunpowder, explosives, cartridges and other dangerous goods of the same kind.

Depasturing
fees.

205. A council may so make by-laws—

- (a) for authorising the council to prescribe the fees and charges payable for grazing stock on a common which is vested in the municipality, where authority to do so is not conferred on the council by the Land Act, 1933; and
- (b) for collection and enforcing of payment of fees so prescribed.

Disorderly
places and
conduct.

206. (1) In this section—

“brothel” means a house, room, or other premises, kept or occupied, whether by one or more than one person, for the purposes of prostitution.

(2) A council may so make by-laws—

- (a) for the suppression and restraint of brothels, disorderly houses, houses of ill-fame, and places used for habitual prostitution, of prize fights, dog fights, or cock fights, of gaming tables, and gambling of every description;
- (b) for prohibiting a person from keeping or managing, or assisting in the management of a brothel, house of assignation, or house of ill-fame, or place used for habitual prostitution; or from permitting premises, or a part of premises to be used as a brothel, or house of assignation, or for the purposes of habitual prostitution, or from letting premises or part of premises knowing that the premises or the part is to be used as a brothel, or for the purposes of habitual prostitution; or from continuing as a tenant of premises or a part of premises a person who keeps the premises or part as such; and
- (c) for preserving public decency.

207. A council may so make by-laws—

Dogs.

- (a) for regulating the manner in which persons may keep dogs; and
- (b) for requiring persons who keep dogs to control them and for prescribing the manner in which those persons shall control them.

208. A council may so make by-laws—

Dumping of
hot ashes.

- (a) for regulating or prohibiting the dumping of hot ashes; and
- (b) for minimising danger likely to arise from hot ashes.

209. A council may so make by-laws—

Fairs, labour
marts and
employment
offices.

- (a) for establishing fairs, public sales, labour marts and employment offices; and
- (b) for regulating the conducting and management of them.

Fencing.

210. A council may so make by-laws—

- (a) for regulating the manner in which, the materials of which, and the dimensions to which, fences and walls may be erected;
- (b) for requiring and regulating the maintenance of fences and walls;
- (c) where fences or walls are not maintained as required, authorising the council to maintain them at the expense of, and to recover the amount of that expense from, the owner in a court of competent jurisdiction;
- (d) prescribing what are dangerous fences, and walls, and prohibiting the erection of dangerous fences and walls on or within ten feet of the boundary of a public place; and
- (e) for prescribing what constitutes a “sufficient fence” for the purposes of the Cattle Trespass, Fencing and Impounding Act, 1882, and a fence sufficient to resist the trespass of cattle for the purposes of this Act either for the whole of the district, or for any part or parts of the district specified in the by-laws, and so that fences of different classes may be prescribed for various parts of the district.

Fires.

211. A council may so make by-laws—

- (a) for the prevention, suppression, and speedy extinguishment of fires;
- (b) for regulating the duties and reward of firemen, and making provision for them and their dependants in case of death or accident in the discharge of duty;
- (c) for authorising firemen to enter upon premises for the purpose of extinguishing fires;
- (d) for authorising members of fire brigades to call assistance for the suppression or extinguishment of fires;

- (e) for the management of fire-plugs, alarm-bells, and fire engines;
- (f) for securing a prompt supply of water in cases of fire;
- (g) for prohibiting or regulating the placing, stacking, storage, and keeping of hay, straw, bark, thatch, reeds, coal, firewood, and timber, and prescribing the construction of premises in which all or any of them may be sold or stored;
- (h) for prohibiting or regulating the erection of a tent, pavilion, or shed, or other structure of calico, canvas, or other inflammable material;
- (i) for prescribing the kind, quantity, and quality, of inflammable or combustible materials or substances, which may be kept at any one time in one place;
- (j) for prohibiting or regulating the placing, stacking, storage, and keeping or leaving of empty cases, paper, shavings, crates packed with straw, and dangerous or inflammable substances; and
- (k) for prohibiting or regulating the storage of petroleum, kerosene, fuel-oil and other inflammable liquids.

but paragraphs (a) to (e) both inclusive of this section do not apply within that portion of any district to which the Fire Brigades Act, 1942, applies.

212. A council may so make by-laws for prohibiting and regulating the establishment and maintenance of—

Firewood
sawmills and
depots, etc.

- (a) firewood sawmills;
- (b) firewood depots;
- (c) timber mills;
- (d) timber yards; and
- (e) junk yards,

provided that nothing in this section shall empower a council to prohibit the continuance of the above enterprises (c) and (d) which are being carried on

at the commencement of this Act, unless the person, or persons, carrying on such enterprises is paid reasonable compensation in such amount as the council and such person, or persons, agree upon, or failing agreement in such amount as is awarded by a single assessor in case the parties agree upon one, otherwise by two assessors, one to be appointed by each party.

Fishing.**213.** A council may so make by-laws—

- (a) for the purposes for which regulations may be made under paragraphs (b) and (c) of section six of the Fisheries Act, 1905, and for which proclamations may be made under sections nine and ten of that Act, but so that the application and effect of by-laws made by a council under the authority of this paragraph are restricted to Western Australian waters vested in or under the control of the council;
- (b) for providing that under license from the council, fish may be taken from waters to which by-laws under this section apply;
- (c) for matters which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to by-laws so made as fully as if they were regulations or proclamations under the Fisheries Act, 1905, and in particular for providing—
 - (i) for the detention, punishment and apprehension of offenders and the prevention of offences;
 - (ii) for the forfeiture to Her Majesty of property or articles used or intended to be used, and fish taken, in breach of a by-law; and
 - (iii) for adopting the provisions of section forty-three of the Fisheries Act, 1905, and applying them *mutatis mutandis* to prosecutions for breaches of by-laws so made.

214. A council may so make by-laws for regulating the use of the foreshore of the sea, and of rivers, of watercourses and of tidal and non-tidal waters.

Foreshores.

215. A council may so make by-laws—

Goats.

- (a) for prohibiting or regulating the manner of keeping and depasturing goats and the driving of goats over streets and other public places, and empowering the council to seize, impound, or destroy goats found at large in streets and other public places; and
- (b) for requiring the annual registration of goats kept within a city, town, or townsite, or a specified part of the district of the municipality, and an annual registration fee not exceeding ten shillings for each goat.

216. A council may so make by-laws—

Hand carts.

- (a) for regulating the use of hand carts in streets and other public places; and
- (b) for prohibiting the use of hand carts in streets and other public places absolutely, or unless under authority of a license issued by the council.

217. (1) In this section—

Hawkers.

“hawker” means a hawker, pedlar or other person who, with or without any horse or other beast bearing or drawing burden, travels and trades and goes from town to town or to other men’s houses or is in any street there soliciting orders for or carrying to sell or exposing for sale any goods, wares or merchandise, but does not include—

- (a) commercial travellers or other persons selling or seeking orders for goods, wares, or merchandise to or

from persons who are dealers therein, or selling or seeking orders for books or newspapers;

- (b) sellers of vegetables, fish, fruit, newspapers, brooms, matches, game, poultry, butter, eggs, milk, or any victuals;
- (c) persons selling or exposing for sale goods, wares or merchandise in any public market or fair lawfully established, or upon any racecourse, agricultural show ground, or public recreation ground;
- (d) sellers of goods of their own manufacture;
- (e) persons representing a manufacturer whose goods are sold direct to consumers only and not through the medium of a shop.

(2) A council may so make by-laws—

- (a) for regulating or prohibiting the hawking in the district of the municipality of goods, wares, or merchandise, and requiring licenses to be obtained from the council by hawkers, and requiring hawkers to carry and use scales;
- (b) for prescribing the annual fees, not exceeding twenty pounds, to be paid for hawkers' licenses and for differentiating in such fees according to the description of goods, wares, or merchandise hawked, and the localities or portions of the district in which they are hawked;
- (c) for limiting the number of licenses to be issued and for refusing to grant a license, either when the limit is reached or for any other reason specified in the by-laws;
- (d) for requiring a badge displaying a number and the year of issue to be issued to persons licensed to hawk, at a fee not exceeding five shillings; and

- (e) for requiring hawkers to display the prescribed badge when hawking or offering or exposing goods for sale or hire.

(3) The by-laws shall provide that the council shall not entertain any application (other than an application for a license by way of renewal of a license) unless the applicant produces a certificate signed by two Justices of the Peace certifying that the person sought to be licensed is of good character and reputation and is a fit person to exercise the trade of a hawker.

218. A council may so make by-laws—

Hoardings.

- (a) for requiring the use of hoardings, fences, lights, and other things for the preservation of safety where works are in progress in or upon land or premises abutting a street or other public place, or land under the control of the council;
- (b) for the prohibition or regulation of bills, placards, and advertisements attached to, or pasted, painted, or stencilled, on hoardings, walls, buildings, or structures, whether erected upon private property or upon a public place; and
- (c) for the prohibition or regulation of hoardings erected upon private property, and for the removal by the council, or a person acting under the authority of the council, of a hoarding, or of a bill, placard, or advertisement, which is attached to, or pasted, or painted, or stencilled, on a hoarding, and which, in the opinion of the council, is dangerous or objectionable, and for the recovery of the expenses of the removal from the owner of the property in a court of competent jurisdiction.

Horses.

219. A council may so make by-laws—

- (a) for the prohibition or regulation of the—
 - (i) breaking in of horses in streets and other public places, either by leading, riding, or driving; and
 - (ii) driving of cattle along streets and other public places;
- (b) for the prohibition of entire horses being led or exhibited through or in streets or other public places during specified hours;
- (c) for the prohibition of mares being covered except in yards, buildings, or premises enclosed or screened from public view; and
- (d) for the prohibition or regulation of the riding of horses on the sea-shore within or adjoining though outside the district of the municipality, notwithstanding that an Order has not been made under subsection (8) of section one hundred and ninety.

Cf. s. 190 (8)
ante.Land which
cannot be
drained.**220.** A council may so make by-laws—

- (a) declaring specified land as being land which cannot conveniently be drained sufficiently so as to render it suitable for the erection of buildings upon it;
- (b) for prohibiting persons from erecting buildings upon land so declared; or
- (c) prescribing the conditions on which buildings may be erected upon land so declared.

Lawns and
gardens in
streets.**221.** A council may so make by-laws—

- (a) for permitting and regulating the planting and maintenance of lawns and gardens in streets by owners and occupiers of land abutting the streets;
- (b) for permitting and regulating the laying of pipes under, and the provision of taps in, streets for watering lawns and gardens so

permitted to be in streets, with water drawn from the private supply of the owner or occupier of the pipes and taps, or with water lawfully obtained by him from the body constituted for, and having the control of the supply of water in the district under an Act; and

- (c) for prohibiting the riding and driving of animals and vehicles over lawns and gardens so permitted.

222. (1) In this section,

Licenses.

“license” means a license mentioned in this Part.

(2) A council may so make by-laws—

(a) prescribing—

- (i) the form and manner of application for the license;
- (ii) the duration for which the license is operative;
- (iii) the fees payable in respect of the application for, the issue, and the renewal, of the license, including differentiating fees in respect of differentiating licenses, or licenses of the same class but issued for a particular purpose or subject to particular conditions;
- (iv) the conditions, including special conditions in a particular case or particular class of case, on which the license is issued;
- (v) as the penalty of a breach of a condition so prescribed a penalty not being greater than the maximum penalty and not less than the minimum penalty, if any, prescribed for a breach of the by-law in respect of which the license is issued;

- (vi) the circumstances in which a license may be cancelled, renewed, or replaced where lost or destroyed and the fee payable for the replacement;
 - (vii) the certificate, badge, or other indicia indicating that a license has been issued and is in operation, and when, how and by whom the certificate, badge or other indicia is to be displayed;
 - (viii) requiring the person to whom the license is issued to produce it when required by a person authorised in writing by the council to require its production, to that person, or within a specified time of being so required, to that person or to the clerk or another specified person; and
 - (ix) whether and in what circumstances a license is transferable, or in case of death or incapacity is transmissible, and the fees payable on transfer or transmission; and
- (b) providing for the issue and a charge for the issue by the council, on the registration of an animal, of a registration disc inscribed with the name of the municipality and the registration number, and requiring the person in charge of the animal to keep the disc attached to its neck.

Power
to review
refusal of
application
for license.
Cf. s. 235
post as to
licenses for
quarrying.

(3) (a) This subsection does not apply to a license for carrying on an extractive industry mentioned in section two hundred and thirty-five.

(b) Where a person makes application for a license and the council does not grant the license within thirty-five days of the making of the application, the person may within fourteen days of the expiration of that period make to the council a written request signed by him for the reason why the license has not been granted.

(c) Within fourteen days of the service of the request on the council, the council shall serve on the person making it a notice in writing signed by the clerk stating the reason why the license has not been granted.

(d) If the person is dissatisfied with the reason stated in the notice he may take proceedings for an order directing the council to issue the license to him—

(i) by making within fourteen days of the service of the notice upon him a complaint under the Justices Act, 1902, that on grounds stated in the complaint the council has wrongly failed to issue the license to him; and

(ii) by serving within that period of fourteen days the summons issued in respect of the complaint.

(e) The court of summary jurisdiction hearing the complaint may make an order directing the council to issue the license, or may dismiss the complaint as the court thinks fit, but shall have regard to provisions of a relevant by-law which limits the number of licenses of a particular class which may be issued.

*Cf. s. 217 (2)
(c) ante as
to limit in
respect of
hawkers'
licenses.*

(f) The cost of and incidental to the making and hearing of the complaint as between party and party shall be paid as taxed by the clerk of the court by the unsuccessful party to the successful party unless the court for good cause orders otherwise.

(g) Proceedings for an order directing the council to issue a license may be taken only on complaint under the Justices Act, 1902, and heard only by a stipendiary magistrate sitting as a court of summary jurisdiction.

(h) The provisions of the Justices Act, 1902, relating to appeal apply in respect of decisions under this subsection.

*Cf. No. 11
of 1902,
ss. 197
et. seq.*

Cf. s. 217
ante as to
hawkers and
subs. (3) (a)
of this s.

(4) Except as provided otherwise by paragraph (a) of subsection (3) of this section the provisions of this section are in addition to and not in derogation of any other provisions of this Act relating to licenses.

Markets,
fairs, etc.

223. (1) In this section—

“markets” includes fairs, and public sales of live stock, fish, wares, merchandise, and provisions, at premises provided for the purpose by the council of a municipality, whether the premises are conducted for the purpose by or for the council, or are conducted for the purpose under agreement with the council, otherwise than by or for the council.

(2) A council may so make by-laws—

- (a) for regulating the provision, management, and use, of markets and the premises at which markets are conducted, and services provided in connection with markets;
- (b) for regulating the provision, management and use of stalls, pens, and standings, at markets;
- (c) prescribing the maximum amounts chargeable as tolls, dues, stallages, and other fees for use of the market premises, and of the stalls, pens, and standings, and for services provided by the council, or where the premises are conducted by a person under agreement with the council, for services provided by that person;
- (d) for prohibiting nuisances at, and obstructions in the market premises and in the approaches to them;
- (e) for fixing the days on which, and times at which markets may be conducted, and prohibiting the markets being conducted on days and at times other than those so fixed;

Ss. 223, 224.

- (f) for prohibiting the sale, exposure or offering for sale of unwholesome goods at markets;
 - (g) for requiring and regulating the use of weighing machines and scales at markets, and prohibiting the use of false or defective weights, weighing machines, scales, and measures, and requiring persons to obtain from the council a license to erect weighing machines at markets; and
 - (h) prohibiting dishonest practices in, and in respect of, the sale of things at markets.
- (3) (a) A council may so make by-laws—
- (i) for prescribing what constitutes a wholesale sale of fish;
 - (ii) for prohibiting the wholesale sale of fish except in markets established in the district;
 - (iii) for regulating the wholesale sale of fish in those markets; and
 - (iv) for prohibiting or regulating the wholesale sale of fish in the district where a market for the wholesale sale of fish is established in an adjoining district.
- (b) In this subsection—
- the sea;
 - the seashore; and
 - a river

Markets
for sale of
fish.

abutting a district is to be regarded as being within the district, notwithstanding that an Order has not been made under subsection (8) of section one hundred and ninety.

Cf. s. 190 (8)
ante.

224. (1) In this section—

“amusements” means merry-go-rounds, swing boats, shooting galleries, water chutes, and other things usually conducted for amusement at fairs, carnivals, and shows, whether conducted at a fair, carnival, or show or elsewhere, and includes dancing rooms, skating rinks, and amusement parks however designated, and whether conducted at a fair, carnival, or show, or elsewhere.

Merry-go-
rounds, etc.

(2) A council may so make by-laws for regulating, or prohibiting absolutely, or unless under authority of a license issued by the council, the provision and conducting of amusements—

- (a) within the district; and
- (b) (i) in the sea;
(ii) on the sea shore;
(iii) in rivers and tidal and non-tidal waters; and
(iv) on the banks of rivers and those waters; whether within the district or adjoining but not within the district, and notwithstanding that an Order has not been made under subsection (8) of section one hundred and ninety.

Cf. s. 190 (8)
ante.

Motels.

225. A council may so make by-laws for regulating the establishment, operation and maintenance of buildings known as motels.

Motor
tracks.

226. A council may so make by-laws—

- (a) for setting apart tracks to be used by a specified class or specified classes of traffic only; and
- (b) for prohibiting persons from using a track so set apart for traffic other than that so specified as the traffic for which the track may be used.

Notices and
plans.

227. Where under this Act a notice is required to be given or may be given, or a plan is required to be supplied or may be furnished, a council may so make by-laws prescribing what information is to be given in the notice or plan, and the manner in which the notice is to be given and the plan is to be supplied.

Nuisances.

228. A council may so make by-laws for the prohibition, regulation and abatement of nuisances.

229. A council may so make by-laws authorising officers of, or other persons appointed by, the council, or members of the Police Force of the State, either with or without warrant, to arrest and remove persons offending against this Act.

Offenders.

Cf. No. 30 of
1918 as am.
s. 4.
"This Act"
includes
by-laws.

230. A council may so make by-laws—

- (a) for regulating the appointment, duties, and conditions of service of officers and other persons employed or engaged by the council, including the regulation of long service leave;
- (b) for defining the functions and regulating and enforcing the proper performance of the duties of those officers and persons;
- (c) for the punishment of persons falsely representing themselves to be officers of or persons employed or engaged by the council, or having authority of the council to do a thing.

Officers.

231. A council may so make by-laws—

Parking
Stations.

- (a) with respect to the control and management of parking stations established by the council under this Act and the management and operation of parking facilities provided by the council under this Act;
- (b) prescribing charges payable by any person using, or in respect of any vehicle occupying a parking station or parking facility so established or providing and differentiating in the fees charged in respect of the various classes of vehicles and exempting any person or vehicle or class of person or class of vehicle from paying all or any of those charges;
- (c) prescribing conditions under which and the period or periods of time during which a parking station or parking facility may be used or occupied;

-
- (d) providing for the protection of parking stations and parking facilities and all equipment pertaining to them against misuse, damage, interference or attempted interference by any person;
 - (e) regulating the parking and standing of vehicles in any parking station and prohibiting any person from parking or standing any vehicle in a parking station otherwise than in accordance with the by-laws; and
 - (f) declaring that all or portion of any street or public place specified in the by-laws is a metered zone in which a person may not park a vehicle until he has paid a parking fee by inserting a coin in a parking meter, and
 - (i) with respect to the control and management of metered zones and metered spaces and the operation of parking meters provided by the council;
 - (ii) prescribing charges payable by any person using, or in respect of any vehicle occupying a metered zone or metered space and exempting any person or vehicle or class of person or class of vehicle from paying all or any of those charges;
 - (iii) prescribing conditions under which and the period or periods of time during which vehicles may be left in metered zones or metered spaces and the manner in which, and the time or times at which the driver of a vehicle shall insert the prescribed coin or coins in a parking meter;
 - (iv) providing for the protection of parking meters, metered zones and metered spaces against misuse, damage, interference or attempted interference by any person, and for

the protection of parking meters against the insertion, or attempted insertion therein of anything other than the prescribed coin or coins;

- (v) regulating the parking and standing of vehicles in a metered zone or metered space and prohibiting any person from parking or standing a vehicle in a metered zone or metered space otherwise than in accordance with the by-laws;

but no by-law shall be made under the authority of this paragraph without the prior approval of the Minister for the time being charged with the administration of the Traffic Act, 1919.

232. A council may so make by-laws—

Petrol
pumps.

- (a) for regulating the installation and use of petrol pumps;
- (b) for prohibiting persons from installing petrol pumps or from permitting petrol pumps to remain—
 - (i) in a street or other public place;
 - (ii) within such distance of a street or other public place as the council thinks fit, having regard to danger from fire or explosion, the free passage of traffic, and the carrying out of authorised works in the street or place;
- (c) prohibiting persons from installing petrol pumps or from continuing to have petrol pumps in streets, or other public places, or elsewhere, unless by authority of a license issued by the council.

233. A council may so make by-laws—

Porters.

- (a) for the regulating of the business of persons as porters;
- (b) for prescribing the maximum charges which porters may impose for their services; and

- (c) for prohibiting persons from carrying on business as porters unless under authority of a license issued by the council.

Protection
and use of
municipal
property.

234. (1) In this section—

“property” means property vested in or under the care, control, or management of a municipality.

(2) The council may so make by-laws—

- (a) for the preservation of property;
- (b) for prohibiting the misuse of, obstruction to the proper use of, and damage, injury, and destruction to, property;
- (c) for regulating the management of property;
- (d) for regulating the conduct of persons using property;
- (e) for prohibiting the cutting, collecting, and removing of timber, firewood, stone, and other matter, from property, absolutely or unless by authority of a license issued by the council;
- (f) for the appointment and guidance of persons employed in the maintenance and management of property;
- (g) for prescribing the times during which property may be open for use by the public;
- (h) for prescribing property, on which and the days on which, and times, bounds, and limits within which, games, contests, matches and gymnastics, are permitted, and for regulating or prohibiting them, upon property; and prescribing the charges which may be imposed for permission to conduct them;
- (i) for prohibiting or regulating the admission of vehicles and cattle on property;
- (j) for prohibiting, absolutely or unless by authority of a license issued by the council, or for regulating the sale and exposing for sale of anything on, and the taking of, or offering to take, photographs for sale or reward on property and public places;

cf. s. 244 (x)
post.

- (k) prescribing the occasions on which and circumstances in which charges may be imposed for admission to property; and the amount of the charges; and prohibiting admission except on payment of the prescribed charges on those occasions and in those circumstances;
- (l) for prohibiting or regulating shooting in, on, or over, property;
- (m) for the granting, with the approval of the Minister for Forests or the Minister for Lands, as the case may be, of licenses for cutting firewood on, and the removal of gravel, stone, or sand from, reserves vested in the municipality, in addition to licenses required under the Land Act, 1933, or Forests Act, 1918; and
- (n) for prohibiting persons from depasturing cattle on, or driving cattle over, property unless under authority of a license issued by the council.

235. (1) In this section—

“carrying on an extractive industry” means quarrying and excavating for stone, gravel, sand and other material.

Quarrying
and excavat-
ing.

- (2) This section does not apply to carrying on an extractive industry on Crown land.
- (3) A council may so make by-laws—
 - (a) regulating the carrying on of an extractive industry;
 - (b) prohibiting the carrying on of an extractive industry unless by authority of a license issued by the council; and
 - (c) requiring, as a condition of the license, that the person carrying on an extractive industry shall pay into a fund established for the purpose of restoring and reinstating any area excavated under the authority

of the license such sum at such times as is prescribed in the license, authorising the council to apply the money in the fund to or towards the restoration and reinstatement if the person does not carry out the restoration and reinstatement at his own cost, but otherwise requiring the council to refund to him the money so paid by him to the fund, when the restoration and reinstatement has been carried out to the satisfaction of the council; or

- (d) requiring, as an alternative to payment into such a fund an applicant for a license to give to the council a bond, with or without sureties, in such sum as the council deems sufficient to ensure that the person carrying on an extractive industry will himself carry out, or cause to be carried out, such restoration and reinstatement work as is agreed upon between the council and the applicant on the granting of the license, and providing, in the case of default by the applicant in so carrying out the work or so causing it to be carried out, for forfeiture of the bond and payment of the sum therein referred to to the council, and empowering the council to apply that amount, or so much of that amount as is required, to carry out the work.

Of subs. (3)
of this s.

(4) A person who applies to a council for a license mentioned in subsection (3) of this section and whose application is not granted within twenty-eight days of service of the application on the council may, by causing to be delivered to the Minister an appeal in writing signed by the applicant stating his grounds, appeal to the Minister to direct the council to grant the application and to issue the license to the applicant.

(5) The Minister shall consider the appeal and may refuse it or may grant it and direct the council to issue to the applicant the license subject to such conditions, if any, as the Minister thinks fit to impose.

(6) Where the Minister so directs the council shall carry out the direction.

(7) (a) Where a court of petty sessions convicts a person of a charge of carrying on an extractive industry in contravention of a by-law so made under this section, the court may make an order restraining the person from continuing or repeating the carrying on of an extractive industry.

(b) Section one hundred and fifty-nine of the

*Cf. Justices
Act, 1902,
as am. s. 159.*

(c) The jurisdiction conferred upon the court by this subsection, does not affect the jurisdiction of the court to impose a penalty prescribed by a by-law so made.

(d) The provisions of the Justices Act, 1902, relating to appeal apply in respect of an order made under paragraph (a) of this subsection.

*Cf. No. 11
of 1902,
ss. 197
et. seq.*

236. A council may so make by-laws for regulating the proceedings of the council and general and special meetings of ratepayers and electors of the municipality.

*Ratepayers'
meetings
and council's
proceedings.*

237. A council may so make by-laws pre-

Rates.

- (a) the times at which rates, license fees, and other charges, payable to the council shall be paid;
- (b) the manner in which those rates, license fees, and charges, may be collected;
- (c) the manner in which payment of those rates, license fees, and other charges may be enforced; and
- (d) the circumstances, if any, in which discount is allowable, and the discount.

*Cf. s. 550 (2)
post as to
discount on
payment of
rates.*

238. (1) In this section—

Records.

“records of the council” includes deeds, books, papers, documents, and other records of the council.

(2) A council may so make by-laws for the custody of the records of the council.

Sand drift.

239. A council may so make by-laws as are necessary or convenient for giving effect to sections five hundred and fifteen to five hundred and eighteen both inclusive in relation to land within its district and in the by-laws may make provision for preserving the effect of measures taken under Part XXIII.

School
hostels.
Cf. ss. 503
and 512 post.

240. A council may so make by-laws in respect of hostels, constructed, acquired or otherwise established by the council for school children

- (a) for regulating the establishment, maintenance, management, and control, of those hostels;
- (b) for regulating the admission of persons for accommodation at those hostels;
- (c) for prescribing the fees and charges which may be imposed in respect of accommodation at those hostels; and
- (d) for regulating the conduct of persons accommodated at those hostels.

Shoe blacks.

241. A council may so make by-laws—

- (a) for regulating the business of persons as shoe blacks; and
- (b) for prohibiting persons from carrying on business as shoe blacks unless under authority of a license issued by the council.

242. (1) In this section—

Stalls.

“stall” means a movable or temporarily fixed stall for the sale of goods, wares, merchandise or services;

“stallholder” means a person in charge of a stall.

(2) A council may so make by-laws—

- (a) for regulating the places in which persons may set up stalls;
- (b) for prescribing the days and times during which a stallholder may conduct business at a stall;
- (c) for regulating the conduct of stallholders in and about stalls;
- (d) for regulating the management of stalls;
- (e) for requiring and regulating the use at stalls of weighing machines, scales, and measures, and prohibiting the use of false or defective weights, weighing machines, scales and measures;
- (f) for prohibiting dishonest practices in and in respect of the sale of things at stalls;
- (g) for prohibiting the setting up, and conducting of business at, stalls absolutely, or unless by authority of a license issued by the council; and
- (h) for prescribing fees for licenses so issued including differentiating fees according to the description of the things or services which are authorised by the license to be sold at the stall, or the position or place at which the stall is authorised by the license to be set up and conducted, or the days and times during which business is authorised by the license to be conducted at the stall.

Straying
animals and
destruction
of diseased
animals.

243. (1) A council may so make by-laws—

- (a) for prohibiting a person having the custody of an animal—
 - (i) from permitting the animal to stray from a place at which he is entitled to have the animal; and
 - (ii) from driving, or riding, or permitting the driving or riding, of an animal having a contagious or an infectious disease in a street, or other public place; and
- (b) for authorising the council to cause an animal which has a contagious or infectious disease and which is in a street, or other public place, to be killed and its carcass disposed of at the expense of the person having the custody of the animal, and to recover the amount of the expense from him in a court of competent jurisdiction.

Of, subs. (1)
(a) (i) of
this s.

(2) A court of petty sessions on the hearing of a complaint of a contravention of a by-law made under subparagraph (i) of paragraph (a) of subsection (1) of this section shall dismiss the charge if the person charged proves that he took precautions, which in the opinion of the court were reasonable, to prevent the animal from straying.

Streets—
use and
manage-
ment.

244. A council may so make by-laws—

- (a) for regulating and controlling the use, management, and maintenance, and for preventing the misuse of streets, stands and footpaths;
- (b) for the prohibition of obstructions of streets, ways and footpaths, and of water channels and watercourses in them, but the council may not prohibit the owner of a street, way, or other public place, which is not dedicated to public use but which the public are allowed to use, or prohibit a person deriving

title through the owner, from exercising the right of closing it, whether temporarily or otherwise;

- (c) for regulating the paving and repairing of streets, ways and footpaths;
- (d) for cleansing streets, ways and footpaths;
- (e) for requiring the owner or occupier of premises abutting a paved footpath in a street, way or other public place, to cleanse the footpath and for regulating the mode and time of the cleansing of the footpath and for prohibiting the shaking of carpets, rugs, and doormats in streets, ways, footpaths and other public places;
- (f) for requiring the owner or occupier of premises having
 - a cellar;
 - other part of the premises; or
 - a way of access to or from the premises;under a street, way, footpath, or other public place,
 - to fill in the cellar, or other part of the premises, or way of access, up to the level of the street, way, footpath, or public place;or
 - if there is an opening through the street, way, footpath, or public place into or from the cellar, or other part of the premises, or way of access, to close the opening securely;and for authorising the council, if he does not comply with the requirement, to do so at his expense and to recover the amount of the expense from him in a court of competent jurisdiction;
- (g) for requiring the owner or occupier of land, where part of a building or structure on the land protrudes into or above a street,

way, footpath, or other public place, so as to constitute, in the opinion of the council an obstruction of the street, way, footpath, or public place, or a danger to users of the street, way, footpath, or public place, to remove the part so protruding; and for authorising the council, if he does not comply with the requirement, to do so at his expense and to recover the amount of the expense from him in a court of competent jurisdiction;

- (h) for requiring the owner or person having the care, control, or management, of posts or poles in a street, way, footpath, or other public place,

to paint or coat and keep them painted or coated and to remove such of them as are bent, dangerous, unsightly or not in use; and for authorising the council, if he does not comply with the requirement, to do so at his expense and to recover the amount of the expense from him in a court of competent jurisdiction;

- (i) for prohibiting or regulating the making of noise or obnoxious odours, caused by persons for advertisement purposes, or in connection with addressing the public, or by the use of motor cycles, gramophones, amplifiers, wireless appliances, bells, or other instruments or appliances, on or in a street, way, footpath, or other public place, or in private property;
- (j) for prohibiting or regulating the playing of musical instruments, or singing, or addressing public meetings in streets, ways, footpaths, and other public places;
- (k) for prohibiting or regulating advertising through, and the throwing and discharging of handbills and other printed matter in, streets, ways, footpaths, and other public places, or in or upon private property;

-
- (1) (i) for prohibiting unless by authority of a license issued by the council, or regulating the erection, putting up, situation, maintenance and use of hoardings, signboards, signs, awnings, blinds, lamps, illuminated signs and other things, and bill posting, and the painting, stencilling, placing, and affixing of advertisements, in, on, or above, or within such distance of a street, way, footpath, or other public place, as the council thinks fit, having regard to safety, the free passage of traffic, and the carrying out of authorised works in the street, way, footpath, or public place, and to the suitability or otherwise of all or any of those things, to the locality;
- (ii) for prohibiting persons from setting up sunshades of a specified class or specified classes in a street, way, footpath, or other public place, unless by authority of a license issued by the council;
- (iii) for prohibiting persons from the setting up, and the posting, painting, stencilling, placing, and affixing, of advertisements on hoardings unless by authority of a license issued by the council; and
- (iv) for prohibiting or regulating the provision or use in buildings and structures abutting streets, ways, footpaths, and other public places, of things including hoists, for use above the level of a street, way, footpath, or other public place;
- (m) for prohibiting or regulating the use of iron spikes, broken glass, barbed wire and other things which in the opinion of the council are, or are likely to be, dangerous, on the walls, fences, gates, and other parts of premises, or on anything erected on property abutting a street, way, footpath, or other public place;

- (n) for regulating the traffic for any purpose in or along a street, way, footpath, or other public place;
- (o) for prohibiting persons from leaving animals or vehicles, in a street, way, footpath, or other public place so as to obstruct portion of the street, way, footpath, or public place, and for authorising persons appointed by the council for the purpose and members of the Police Force of the State to seize animals and vehicles so left, and for providing for the custody and disposal of animals and vehicles so seized;
- (p) for prohibiting persons from permitting goods, or merchandise, including coal, charcoal, firewood, soil, fertilisers, and building material from remaining in a street, way, footpath, or other public place for a longer period than is necessary for delivering the goods or merchandise into the place of delivery;
- (q) for prohibiting and regulating the deposit of anything in, or the excavation of, and for prohibiting injury to the surface of, a street, way, footpath, or other public place, and for authorising the council to remove the thing deposited, and to reinstate the street, way, footpath, or public place at the expense of the person or persons responsible for the deposit, excavation, or injury, and to recover the amount of the expense from him in a court of competent jurisdiction;
- (r) for prohibiting and regulating mining under streets, ways, footpaths, and other public places;
- (s) for prohibiting or regulating the throwing, placing, or leaving, or causing to be thrown, placed, or left, orange peel, fruit, or other vegetable substances, or offensive, noxious, or dangerous substances on a street, way, footpath or other public place;

- (t) for prohibiting persons from throwing, placing or draining offensive, noxious, or dangerous fluids into a street, way, or other public place, or into a gutter, drain, or footpath in a street, way, or other public place;
- (u) for prohibiting owners or occupiers of premises from draining or allowing offensive, noxious, or dangerous fluids to flow from the premises into a street, way, or other public place, or a gutter, drain or footpath in a street, way, or public place;
- (v) for regulating the provision of private telephone lines, and the placing of posts or poles and apparatus for private telephone lines, in streets, ways, footpaths, and other public places, and prohibiting the provision of private telephone lines in streets, ways, footpaths, and other public places, unless by the Postmaster General's authority, given under section eighty-one of the Post and Telegraph Act, 1901, as amended of the Commonwealth;
- (w) for prohibiting absolutely or unless by authority of a license issued by the council, or for regulating the taking of, or offering to take, photographs for sale or reward in streets, ways, footpaths, and other public places; Cf. s. 234 (2)
(j) ante.
- (x) for prohibiting or regulating the construction of pipe lines and the laying under streets, ways, footpaths, and other public places, of pipes leading from or to private property; and
- (y) for authorising the closure of any street to traffic where, by reason of heavy rain, the street would or is likely to be damaged by the passage of traffic, and for authorising the mayor or president together with the clerk to order the closure if, in their opinion, the street would be likely to suffer damage through the passage of traffic.

Swimming
pools.

245. (1) In this section—

“swimming pool” means a place or premises provided for the purpose of swimming by the public, whether in the sea, in tidal or non-tidal waters, or water specially provided at the place or premises.

(2) A council may so make by-laws—

- (a) for regulating the provision, management and use of swimming pools;
- (b) for regulating the admission of persons, and the conduct of persons admitted to swimming pools;
- (c) requiring the provision of separate accommodation for each sex while attending swimming pools for the purpose of swimming;
- (d) prescribing the maximum charges which may be imposed for admission to, use of, and a service rendered in connection with the conducting of, public swimming pools; and
- (e) prohibiting the provision and conducting of swimming pools unless by authority of a license issued by the council.

Tennis
courts, etc.

246. (1) In this section—

“courts” means tennis courts, bowling greens, croquet lawns, basketball courts and grounds for other games.

(2) A council may so make by-laws—

- (a) for regulating the construction and erection of courts;
- (b) for regulating the management of courts;
- (c) for regulating the conduct of persons at courts;
- (d) for regulating the hours during which courts may be illuminated.

Ss. 246, 247, 248, 249, 250.

(3) The power conferred by this section to make by-laws in respect of courts, extends to courts on private property.

247. A council may so make by-laws to have effect within the area in respect of which the municipality is registered as a trout acclimatisation society, for all or any of the purposes set out in subsection (8) of section thirty-one of the Fisheries Act, 1905.

Trout
Acclimatisa-
tion
Districts.

248. A council may so make by-laws for carrying into effect all or any of the purposes mentioned in the Second Schedule to the Town Planning and Development Act, 1928.

Town
planning.
Cf. No. 39 of
1928 as
amended
s. 30 and
Second
Schedule to
that Act.

249. A council may so make by-laws for authorising the planting of, and for the preservation of trees, shrubs, and plants, in streets, ways, footpaths, and other public places vested in or under the care, control, or management of the municipality.

Tree plant-
ing in
streets, etc.

250. (1) In this section—

Verandahs.

“verandah” means a verandah or balcony protruding into or above a street, way, footpath, or other public place.

(2) A council may so make by-laws—

- (a) for regulating the construction, use and proper maintenance of verandahs;
- (b) requiring the owner or occupier of land on which there is a building or structure having a verandah supported by posts erected in, or on, a street, way, or footpath, or other public place, to remove the verandah within a specified time; and
- (c) authorising the council where the owner or occupier does not comply with the requirement, to do so at his expense, and to recover the amount of the expense from him in a court of competent jurisdiction.

251. (1) In this section—

“satisfactory” means satisfactory to the council.

(2) A council may so make by-laws—

(a) for requiring the owner of land upon which a dwelling or other habitable building is erected, to provide by such of the following means as he chooses, a supply of water to the building sufficient for domestic purposes, namely—

(i) by connecting the dwelling or building to a public water main, if it passes within one hundred yards of the building;

(ii) by installing satisfactory water tanks of a capacity specified, but being of not less than three thousand gallons, which tanks are connected with a water catchment approved by the council; or

(iii) by providing a satisfactory supply of water from wells or other sources of supply, approved by the council;

and authorising the council, if he does not so provide a supply of water to the building sufficient for domestic purposes, to do so at his expense, and to recover the amount of that expense from him in a court of competent jurisdiction;

(b) for enabling the council to exercise a power, authority, discretion conferred or to comply with an obligation imposed upon the council by Acts relating to water supply;

(c) for regulating the supply and distribution of water from sources of supply vested in or under the care, control or management of the council;

(d) for preventing the contamination or pollution of rivers, creeks, streams, the sea, and other public waters, places for water, wells,

and fountains, within or adjoining the district or within the limits of a catchment, water supply, or other area vested in or under the care, control or management of the council;

- (e) for preventing the pollution or obstruction of or injury or damage to water courses, water-channels, pools, wells, dams, tanks, reservoirs, and other waters within the district;
- (f) for regulating, and for securing, the cleanliness of places, plants, and buildings, connected with the condensation of water for sale, and for prescribing the precautions to be taken against infection and contamination of the water, and the limits within which the business of a condenser of water may be carried on;
- (g) for prohibiting persons from carrying on the business of condensation of water for sale, unless by authority of a license issued by the council; and
- (h) for requiring the owners or occupiers of land upon which is carried on a business or activity from which an offensive, noxious or dangerous fluid results or in which an offensive, noxious or dangerous fluid is used, to provide for the safe and efficient disposal of the fluid; and for authorising the council if the owner or occupier does not comply with the requirement, to do so at his expense and to recover the amount of that expense from him in a court of competent jurisdiction.

252. A council may so make by-laws—

Weigh
bridges and
weighing
machines.

- (a) for regulating the installation and management of, and housing for, weigh bridges and weighing machines in public places;

- (b) for prohibiting the installing and management of weigh bridges and weighing machines in public places absolutely or unless under authority of a license issued by the council; and
- (c) prescribing the charges which may be imposed by persons managing weigh bridges and weighing machines in public places.

Works and
undertak-
ings.

253. A council may so make by-laws for enabling the council to exercise powers, authorities, and discretions conferred, and to comply with obligations imposed, upon the council by the provisions of this Act relating to works and undertakings, and for regulating the conduct and management of businesses and trading undertakings carried on under this Act by the council; and for authorising the council to apply the profits arising from conducting and managing businesses and trading undertakings in the interests of the municipality.

Inquiry
as to
licensing of
vehicles
may be
made.
Cr. M.C. Act,
s. 183.

254. (1) A member or officer of the council may on producing his written authority of the council to do so, examine a vehicle and demand from the person apparently in charge of it his name and address, and the name and address of the owner of the vehicle and whether the vehicle is licensed.

(2) A person who, on the demand and the production of the authority being made, refuses without lawful excuse to answer, or gives a false answer commits an offence.

Penalty: Five pounds.

Copies of
by-laws to
be exhibited
at bridges,
jetties,
reserves.
Cr. R.D. Act,
s. 207.

255. A council shall cause a copy of by-laws having special reference to bridges, jetties, piers, wharves and landing places, and reserves to be conspicuously displayed at each bridge, jetty, pier, wharf, landing place, and reserve to which the by-laws refer.

256. (1) A council shall cause—

- (a) copies of the by-laws of the municipality in force, to be available for sale at a price not exceeding the cost price for each copy, as determined by the Council to persons applying for them, at the office of the council; and
- (b) copies of all by-laws of the municipality in force to be available for inspection, free of charge, during office hours, at the office of the council.

Copies of
by-laws to
be on sale
Cf. R.D. Act,
s. 207.

(2) In this section by-laws which are made under this Act and which are in force in the district, are regarded as by-laws of the municipality.

Cf. Div. 2
and 3 of
this Part.

*Division 2.—Power of Councils to Adopt
Draft Model By-laws.*

Part VIII.
Div. 2.

257. In this Division—

Interpreta-
tion.

“draft model by-laws” means draft model by-laws which, under this Division, the Governor has caused to be prepared and published in the *Gazette*.

258. (1) In order to avoid unnecessary expenditure and delay and to conduce to uniformity a council may in accordance with this Division adopt draft model by-laws, with or without alterations.

Adoption
of draft
model
by-laws.
Cf. M.C. Act,
s. 208A.

(2) From time to time the Governor may cause to be prepared and published in the *Gazette* draft models of by-laws which a council may make under this Act.

(3) The adoption by a council under this Division of draft model by-laws with alterations, if any, is required to be confirmed by the Governor before the by-laws as so adopted are published in the *Gazette* and laid before each House of Parliament under subsection (5) of this section.

Cf. Subs. (5)
of this s.

(4) In order to adopt a draft model by-law with or without alterations, a council shall—

- (a) resolve to adopt the draft model by-law, specifying in the resolution the alterations, if any;
- (b) record the resolution in, or substantially in, the form of the Fourteenth Schedule by reference to the *Gazette* in which the draft model by-law is published and to the number of the by-law, and by setting out the full text of the alterations, if any, indicating by reference to lines and words of the draft model by-law where the alterations, if any, are to take effect, and cause the seal of the municipality to be affixed to the form;
- (c) cause notice of intention to submit the adoption for confirmation by the Governor, to be published once in a newspaper circulating in the district; and cause to be stated in the notice the purport of alterations, if any, to the draft model by-laws, and notification that the full text of the draft model by-laws intended to be so submitted and the alterations, if any, may be inspected by members of the public, free of charge at the office of the council;
- (d) cause a similar notice together with the full text of the by-laws, and the alterations, if any, intended to be so submitted to be posted and kept posted on the official notice board of the council for a period of twenty-one days commencing on the day of the first publication; and
- (e) after the publication cause the sealed form mentioned in paragraph (b) of this subsection to be delivered to the Minister who shall, if satisfied that the council has complied with the requirements of this subsection, present it to the Governor.

(5) If the Governor confirms the adoption the Minister shall, on payment of the cost of publication by the council, cause the adoption to be published in the *Gazette* and to be laid before both Houses of Parliament within the time prescribed by section thirty-six of the Interpretation Act, 1918, the provisions of which Act apply, as if the draft model by-laws so adopted with alterations, if any, were in fact made instead of being so adopted by the council and as if the full text of the by-law so adopted with alterations, if any, were set out in the adoption.

Cf. No. 30 of
1918, s. 35.

*Division 3.—Power of the Governor to
Make By-laws.*

Part VIII.
Div. 3.

259. (1) Where each of two or more councils has power under this Act to make by-laws in respect of a matter,

Cases where
the Governor
may make
by-laws.
Cf. R.D. Act,
s. 203.

which is of common interest to each of the municipalities but which is such, that by-laws if made in respect of the matter, would have effect outside or partly outside the districts of any or all of the municipalities,

but does not make by-laws in respect of the matter at all or does not make by-laws which are identical with those made by each of the others, and the Governor is of opinion that for effective local government by-laws should be made in respect of the matter, the Governor may make such by-laws as in his opinion are necessary or desirable for effective local government.

(2) Where a council has power under this Act to make by-laws in respect of a matter but does not do so, and the Governor is of opinion that for effective local government by-laws should be made in respect of the matter, the Governor may make the by-laws.

(3) Where a council has made a by-law, and the Governor is of opinion that the by-law wholly or in part is not conducive to effective local government the Governor may make a by-law amending or revoking it wholly or in part.

(4) Where there is repugnancy or inconsistency between a by-law made by a council and a by-law made under this Act by the Governor, the latter prevails.

(5) The Minister shall cause a by-law made by the Governor under this Division to be published in the *Gazette* and laid before each House of Parliament as required by section thirty-six of the Interpretation Act, 1918, but before doing so in the case of a by-law made by the Governor under subsection (3) of this section, the Minister shall cause at least forty-two days' written notice of his intention to do so to be served upon the council whose by-law is to be so revoked but where the council has its office in any area north of the twenty-sixth parallel of South latitude, ninety days' written notice of his intention shall be given.

Cf. No. 30 of
1918.

Cf. subs (3)
of this s.

Part VIII.
Div. 4.

*Division 4.—Effect on By-laws of Severance,
Annexation, Union, Etc.*

Continuance
of by-laws on
constitution
of new
muni-
cipality;
union; and
severance
and
annexation.
Cf. R.D. Act,
s. 12 and
M.C. Act
s. 198.

260. Where a district or part of a district is affected by the exercise of a power under section twelve, by-laws in force in the district or part when the power is exercised continue in force in the district or part until revoked.

Change of
status does
not affect
by-laws.

261. The change of the status of a municipality whether from that of a shire to that of a town, or from that of a town to that of a city, or otherwise, does not affect the operation of by-laws of the council of the municipality.

Saving of
regulations
and other
delegated
legislation.

262. The provisions of this Division relate only to by-laws made by a council and do not affect the force or operation of other delegated legislation.

Ss. 263, 264, 265.

*Division 5.—General.*Part VIII.,
Div. 5.Part IX.
Part VIII.
Div. 5.Saving of remedies
against
nuisances.
Cf. M.C. Act,
s. 203.

263. (1) Nothing contained in a by-law in force in a district exempts a person guilty of a nuisance under the provisions of an Act or at common law from prosecution or action, nor from the consequences of being convicted in respect of the nuisance.

(2) Nothing in a by-law relieves a person from a penalty, punishment, or action, to which he would otherwise be liable in respect of anything done or omitted to be done by him in breach of a by-law made under this Act; and the council may sue a person for damage done to a street, way, or other public place, vessel, building, structure, work, appliance, apparatus, or thing, the property of, or under the care, control, or management, of the council in addition to recovering the amount of a penalty for the contravention of a by-law or regulation.

Cf. R.D. Act,
s. 206.

264. (1) If a person desires to dispute the validity of a by-law made, adopted, or continued in force, under this Act, and pays into the Supreme Court the sum of twenty pounds as security for the costs of the proceedings, he may apply to the Supreme Court, upon an affidavit of the facts, for a rule calling upon the municipality to show cause why the by-law should not be declared invalid; and the Court may make the rule absolute, or discharge it with or without costs, as the Court thinks fit.

Mode of testing
validity of
by-law.
C.F. M.C. Act,
s. 207.

(2) A person is not precluded by the provisions of subsection (1) of this section from contesting the validity of a by-law made, adopted, or continued in force, under this Act, in proceedings other than those mentioned in that subsection, where the validity of the by-law is material.

Cf. subs. (1)
of this s.

PART IX.—LANDS AND PROPERTY OF MUNICIPALITIES
OR OF WHICH THE COUNCIL IS TRUSTEE.

Part IX.

265. A municipality may—

- (a) accept and hold real and personal property conveyed, transferred, assigned, given, devised, or bequeathed to it for a charitable or public purpose;

Municipality may
accept
trusts.
Cf. N.S.W.
L.G. Act,
s. 526.

- (b) act in the administration of the property for the purpose, and according to the trusts, for which it is so conveyed, transferred, assigned, given, devised or bequeathed.
- (c) with the approval, firstly of the electors of the municipality conferred at a special meeting of the electors convened for the purpose of considering, and if thought fit, granting the approval, and secondly of the Minister, a council may vary the trust upon which it holds the property and may apply the property subject to this Act, to any use in accordance with those approvals; and
- (d) accept a gift of any real or personal property and apply it, subject to this Act, to such purpose as the council thinks fit.

Power to
sell.
Cf. M.C. Act,
s. 210.

266. (1) A council may, with the consent of the Governor, sell, convey and transfer in fee simple, or for a lesser estate, land which is vested in or held by it and which is not, in the opinion of the council, required for the purposes for which the land was acquired, and which is not subject to a trust.

(2) Unless the Governor by Order otherwise directs a council may sell land under this subsection only to the highest bidder at public auction, or to the person who at public tender called by the council makes what is, in the opinion of the council the most acceptable tender, whether his tender is or is not the highest.

Power to
lease.
Cf. M.C. Act,
s. 211.
Cf. subss.
(2) and (3)
of this s.

267. (1) A council may, from time to time, but only if it observes the requirements of subsections (2) and (3) of this section, let land vested in or held by it including land vested in or held by it on a trust which does not preclude the municipality from so letting it, on lease for such term, at such rent, and under and subject to such conditions as, the council thinks fit.

Ss. 267, 268, 269.

(2) A council shall not let land under this section for a term exceeding five years without authorisation by or under an Act or by the electors of the municipality conferred at a special meeting of the electors convened for the purpose of considering and if thought fit conferring the authorisation, or the approval of the Governor.

Cf. ss. 318,
487, 512,
514 and
578 post.

(3) Unless the Governor by Order directs otherwise, a council may so let land only to the person who at public tender called by the council, makes what is, in the opinion of the council, the most advantageous tender, whether his tender is or is not the highest.

268. (1) A council may, if it first obtains the consent of the Minister and observes the requirements of subsection (2) of this section, let on lease for any term, and subject to any exceptions, reservations, covenants, and conditions, land which is within the district of the municipality and which is reserved for market purposes.

Power to
lease market
reserves.
Cf. M.C. Act,
s. 212.
Cf. subs. (2)
of this s.

(2) Unless the Governor by Order otherwise directs, a council may let land under this section only to the person, who at public tender called by the council, makes what is, in the opinion of the council, the most advantageous tender, whether his tender is or is not the highest.

269. (1) A council may accept appointment as trustee of a cemetery, and may accept property for the purposes of the cemetery, and may exercise the powers conferred, and carry out the trusts imposed, by law on the trustees of the cemetery.

Municipality
appointed
cemetery
trustee.
Cf. M.C. Act,
s. 213.

(2) A council may apply the ordinary revenue of the municipality towards the purchase, establishment, management and upkeep of a public cemetery, either within or outside its district and in or towards the provision of mortuaries and crematoria in connection with a public cemetery, or may subsidise another municipality or other municipalities with a view to the provision of one cemetery for the districts of the municipalities.

Part IX.

Ss. 270, 271.

Acquisition
and manage-
ment of
plants,
depots, etc.

270. A council may—

- (a) purchase, acquire, construct and hire such plant, equipment, machinery and materials;
- (b) erect such plant depots, and storage sheds;
- (c) engage, employ, and remunerate such workmen;

as the council considers necessary or convenient for carrying this Act into effect.

Sale of
halls,
plant,
trading
concerns,
etc.

271. (1) A council may in accordance with the provisions of this section appropriate to the case, sell halls, buildings, plant, machinery, and materials, for which it has no further use, and may so sell as a going concern a trading undertaking which it conducts.

(2) Where the value of the particular thing to be sold is entered in the council's inventory at a value of less than one hundred pounds, the council may sell it by private treaty.

(3) Where the value of the particular thing to be sold is entered in the council's inventory at a value of one hundred pounds or more, the council may sell it only—

- (a) after the council has caused notice of the intention to sell it to be published in a newspaper circulating the district;
- (b) after the sale has been authorised by an absolute majority of the council;
- (c) in the case of a hall, or a trading undertaking, after authorisation to sell it has been conferred at a special meeting of electors convened for the purpose of considering and if thought fit conferring the authorisation; and
- (d) to the highest bidder at public auction, or to the person who, at public tender called by the council makes what is, in the opinion

of the council the most advantageous tender, whether his tender is or is not the highest.

(4) The provisions of this Part do not apply to— Exemptions.

- (a) the supply of a thing by a council in the course of carrying on a trading undertaking under this Act; Cf. s. 503 post as to trading undertakings.
- (b) the sale or disposal by a council of stone and materials obtained from quarries belonging to the municipality or of bricks made by it, to a State or Commonwealth government department, agency or instrumentality, or other body authorised by Act to acquire the stone, materials, or bricks, or to any other person who requires the stone or materials for use in the construction, maintenance, or repair of streets, footpaths, ways or other public places in the district of the municipality, or to any other person who requires the stone, material or bricks; Cf. s. 512 (f) post as to sale of quarried material and bricks.
- (c) the letting of houses by a council to its employees; or Cf. s. 512 (h) post as to provision of homes for employees.
- (d) the letting or selling under contract by a council of houses erected, with the approval of the Governor on the recommendation of the Minister, by the council on land vested in or acquired for the purpose, to persons to whom the council is willing to let or sell the houses. Cf. s. 513 post as to provision of houses for letting or sale.

PART X.—CONTRACTS.

Part X.

272. (1) A council may, subject to the provisions of this Part, in the name and on behalf of the municipality, enter into contracts for the purposes of this Act but may make a contract or by agreement vary or discharge a contract only in such of the modes prescribed by this section as is appropriate.

Mode of entering into and effect of contracts.
Cf. M.C. Act, s. 214.

Part X.

S. 272.

Cf. s. 188
(2) ante and
s. 643 post.

(2) A contract which, if made between private persons, would be required by law to be in writing and under seal, a council may make in writing and under the common seal of the municipality, and in the same manner may by agreement vary or discharge it.

(3) A contract which, if made between private persons, would not be enforceable unless made in writing and unless signed, a council may make in writing, signed by—

- (a) the mayor or president of the council;
- (b) any two other members of the council; or
- (c) the clerk or an officer authorised in writing by the clerk so to do;

acting by the direction, whether general or specific, and on behalf of the council, and in the same manner may by agreement vary or discharge it.

Cf. S.A.
L.G. Act,
s. 377.

(4) A contract which, if made by private persons, would be valid in law although not reduced into writing, or which could be proved without writing, may be made with or without writing—

Cf. subss.
(2) and (3)
of this s.

- (a) in either of the two ways mentioned respectively in subsections (2) and (3) of this section; or
- (b) by the mayor personally, or president personally, or clerk personally, or personally by an officer authorised by the clerk;

when acting by the direction, whether general or specific, and on behalf of the council, and may by agreement be varied or discharged in the same manner as it was or could have been made.

(5) Only a contract to which a municipality is a party and which is made according to the appropriate provisions of this Part, is effectual and binding in law on the municipality and other parties to it, their successors, executors, or administrators, as the case may be, and in case of default in the execution of the contract, either by the council on

Ss. 272, 273.

behalf of the municipality, or by any other party to it, such actions may be maintained in respect of it, and damages and costs recovered by or against the municipality, or other parties failing in the execution of it, as might have been maintained and recovered had the contract been made between private persons only.

273. (1) A council may agree to pay for a purchase which it may lawfully make, or for the performance of work which it may lawfully undertake, by instalments extending over a period of years.

Extended
payment
contracts.
Cf. N.S.W.
L.G. Act,
s. 517.

(2) Before entering into a contract under this section, except a contract by the council to purchase land, the council shall cause notice of the proposed conditions of the contract to be published in a newspaper circulating in the district stating the purpose of the proposed contract, and inviting any person willing to undertake it to make proposals for that purpose to the council, within such time, not being less than seven days from the publication of the notice, as the council specifies in the notice.

Cf. Part XI.
post as to
land.

(3) The council may accept the proposal which, considering all the circumstances, is, in the opinion of the council the most advantageous, and may take security for the due and faithful performance of the contract, or the council may decline to accept any proposal.

(4) A council shall not enter into a contract under this section if the amount of the contract when added to the amount owing by the council as loans would exceed ten times the average ordinary revenue of the council for the two financial years next preceding the financial year, in which but for this subsection the contract would have been entered into, as that average is shown by the books of the council, or in the case of a council of a municipality which has not been constituted for that length of time, as estimated by the council to represent what would have been that average had the municipality been constituted for that length of time.

(5) A council shall not enter into a contract under this section where, if the amount which would be payable annually out of a particular fund of the municipality in respect of the contract, were added to the amount already payable annually out of that fund in respect of another contract or other contracts entered into by the council under this section, the total would exceed ten per centum of that fund during the year in which, but for this subsection, the council could have entered into the first mentioned contract.

Contracts
above £500
to be by
tender.
Cf. Vic.
L.G. Act,
s. 502.

274. (1) Except in cases of emergency, before entering a contract for the execution of work, or the furnishing of goods, to the amount of five hundred pounds or to a greater amount, a council shall cause notice to be published in a newspaper circulating in the district, stating the purpose of the proposed contract, and inviting any person willing to undertake it to make proposals for that purpose to the council, within such time, not being less than seven days from the publication of the notice, as the council specifies in the notice.

(2) The council may accept the proposal which considering all the circumstances, is, in the opinion of the council, the most advantageous, and may take security for the due and faithful performance of the contract, or the council may decline to accept any proposal.

Protection
of wages of
workmen or
contractors.
Cf. Vic.
L.G. Act,
s. 505.

275. (1) In this section —

“contractor” means a party to a contract with a council.

(2) Where a council enters into a contract with a contractor for the execution of work, the council, before making progress or final payment in respect of the contract, may require the contractor or a person on his behalf approved by the council to make and deliver to the council a statutory declaration

showing whether the employees employed by the contractor on the work have or have not been paid their wages in full in money to the latest practicable date at which the wages are due.

(3) If the contractor or approved person does not clearly and explicitly state in the declaration that the employees employed by the contractor on the work up to the date of the declaration have been so paid, he shall set forth in the declaration the names of the employees who have not been so paid and the amounts owing to each respectively.

(4) Until the declaration so required is made and delivered as required, the council may withhold payment of money that is due or may become due by the council to the contractor in respect of the contract.

(5) (a) If the declaration shows that the contractor has not so paid the wages of an employee, the council may out of money payable in respect of the contract pay to the employee the amount appearing by the declaration to be due to him in full, or *pro rata* according to the sum payable in respect of the contract and the number of unpaid employees and the amount of unpaid wages, and may deduct the amount so paid from money then payable or thereafter to become payable in respect of the contract; and the wages as between the contractor and the employees to whom wages appear so to be due abate accordingly.

(b) Money so paid by the council to a workman or labourer and deducted from the money payable in respect of the contract is to be regarded as having been duly paid to the contractor, and the council is discharged in respect of the payment accordingly.

(6) The provisions of this section are to be regarded as being included in contracts mentioned in this section, notwithstanding that they are not expressly so included, or that they are expressly or by implication excluded.

Part X.

Ss. 276, 277.

Composition
for breaches
of contract.
Cf. M.C. Act,
s. 215.

276. (1) In this section—

“contractor” means a party to a contract with a council;

“matter” means a dispute, difference, claim or action arising from or in respect of a contract.

(2) A council may agree with a contractor to compound a matter for such sum of money or such other consideration as the council thinks fit.

(3) Where a contractor and a council are unable to compound a matter, either of them may refer the determination of the matter to arbitration.

Cf. s. 679
post as to
compounding
and
arbitration
generally.

(4) This section does not affect the generality of section six hundred and seventy-nine.

Power to
contract
with other
municipalities,
departments
and
approved
public
bodies.
Cf. M.C. Act,
s. 216.

277. (1) A council may contract with one or more other municipalities, or with departments, agencies, and instrumentalities, of the Crown, whether in right of the Commonwealth or the State, or with public bodies approved by the Governor as public bodies with which a council may so contract, for or with respect to the doing and the control and management by any or all of the contracting parties of any matter or thing which the contracting parties are, or any of them is, by law, empowered to do, control, and manage, and to carry out the contract according to its tenor.

Cf. subs. (1)
of this s.

(2) A council may from time to time, contract upon such terms and conditions as it thinks fit, with the owner of land which is not drained of surplus water by a sufficient drain or channel communicating with a drain or channel used for the discharge of surplus water, for or with respect to the carrying out of work upon the land for the drainage of that land under this Act, whether by the council for the owner or by the owner for the council and to carry out the contract according to its tenor.

Cf. Part XIII.
post as to
power of
council in
respect of
work for
drainage.

Ss. 278, 279, 280, 281.

**PART XI.—POWER TO PURCHASE, TAKE ON LEASE OR
TAKE LAND FOR WORKS AND UNDERTAKINGS.**

Part XI.

278. A council, for the purpose of carrying out a work or undertaking which it is authorised by law to carry out, but not otherwise, may, in the name and on behalf of the municipality—

Power to purchase or lease land.
Cf. M.C. Act, s. 218.
Cf. s. 6 ante and No. 30 of 1918, s. 4, as to "land" and "estate."

- (a) purchase or otherwise acquire land from a person who is willing to sell it, and may pay the purchase money out of the municipal fund, or out of other money properly applicable for the execution of the work or undertaking, and may mortgage the whole or part of land so purchased to secure to the vendor payment of the purchase money, with interest;
- (b) take land on lease for any term and subject to such covenants and conditions as it thinks reasonable and may pay such rent, and such premium, if any, as is agreed upon, out of the municipal fund or any other money properly applicable.

279. A council may purchase or otherwise acquire land outside the district for effectuating a purpose for which it may purchase or acquire and hold land within the district.

Land may be acquired outside the district.
Cf. S.A. L.G. Act, s. 381.

280. With the approval of the Minister a council may purchase or otherwise acquire the fee simple in land and hold it in perpetuity for the purpose of letting it upon lease and paying the rent received into the municipal fund.

Power to acquire for perpetual endowment.

281. (1) A council, or a person authorised in writing sealed with the seal of the municipality to do so, may—

- (a) enter upon land within the district, not being or comprised in a garden, yard, vineyard, orchard, plantation, park, recreation

Council may take materials for road making and enter to inspect.
Cf. R.D. Act, s. 188.

ground, or cemetery, and whether fenced or unfenced, and take from the land such native growing or dead timber, earth, stone, sand, or gravel as, in the opinion of the council, is necessary for the purpose of making or repairing a street, bridge, culvert, fence, or gate, within the district, and within one mile of the land so entered upon;

- (b) deposit and leave on land adjoining a street such timber, earth, stone, sand, gravel, and other material, as, in the opinion of the council, is not required by persons engaged in so making or repairing a road, bridge, culvert, fence, or gate.

(2) Where a council has under consideration the carrying out of a work or undertaking or the doing of a thing, which, by law, it is authorised to carry out or do, and, in the opinion of the council, it is necessary or convenient for a purpose relevant to that consideration, that the council or a person so authorised should enter land, the council or a person so authorised may with such workmen, horses, vehicles and plant as the council considers necessary for the purpose, enter upon the land for the purpose, notwithstanding that at the time of the entry the land has not been acquired by the municipality.

(3) (a) The council or person so authorised shall not disturb or damage a building, fence, or other structure, upon the land, nor enter upon the land when fenced, except through the existing and usual openings in the fence; but if there is no opening convenient for the use of the council, or person so authorised, the council or person on giving three days' notice in writing of intention to do so to the owner or occupier of the land, may open the fence.

(b) If the council or person opens the fence, the council or person shall provide a swing gate at the opening, and except when using it shall keep the gate closed, but the owner of the land and the council may agree to use a motor traffic pass in place of a swing gate.

(c) A person who leaves the gate open commits an offence.

Penalty: Ten pounds.

(4) The council or person so authorised shall, when the gate is no longer required by the council or person, immediately remove the gate and make good the fence.

(5) The council shall make compensation to the owner of land granted in fee simple, or occupier thereof, as the case may be, or to the occupier of land held under lease or on conditional terms of purchase from the Crown, except for pastoral or timber purposes, for damage which the owner or occupier sustains through the exercise by the council or person so authorised of the powers conferred by this section, including compensation for the value of the material taken, except that taken for use in the construction or repair of that section of the road which abuts the land of the owner or occupier.

(6) A difference as to the amount of compensation is a question to be determined only on a reference to arbitration.

Cf. s. 684
post as to
arbitration.

(7) If the council, or person so authorised, in the exercise of a power conferred by this section, causes to be made a pit or hole in land, it shall if required by the owner or occupier to do so cause the pit or hole to be either filled, or securely fenced, or cause the sides of it to be sloped.

(8) A council or person so authorised shall not exercise the powers conferred by this section upon a reserve without the consent, in writing, of the Minister for Lands.

(9) The powers of entry upon land conferred by this section upon a council or a person so authorised are in addition to and not in derogation of the

Cf. No. 47 of
1902 as am.,
s. 82.

Part XI,
Part XII.,
Div. 1.

Ss. 281, 282, 283, 284, 285.

powers of entry conferred by any other provision of this Act or other law on councils or authorised persons.

Power to
take land
compulsorily.
Cf. M.C. Act,
s. 220.

282. A council may, with the consent of the Governor, take land within the district compulsorily under and subject to the provisions of the Public Works Act, 1902, for the purpose of carrying out a work or undertaking which it is authorised by law to carry out.

Omission of
offer by
council.
Cf. R.D. Act,
s. 210, and
No. 47 of
1902 as am.,
s. 46.

283. Where a council does not serve an offer of compensation upon a claimant for compensation under the Public Works Act, 1902, within the period limited for that purpose by that Act, the Minister may, at any time after the expiration of the period so limited, serve an offer on behalf of the municipality.

Offer by
Minister
deemed
made by
council.
Cf. s. 283
ante.

284. An offer served by the Minister under section two hundred and eighty-three is to be regarded as an offer duly made under that Act by the council of the municipality.

Part XII.
Div. 1.

PART XII.—STREETS, WAYS, BRIDGES, FERRIES, CULVERTS, WATERCOURSES, JETTIES, WORKS, SERVICES AND CONJOINT FUNCTIONS.

Division 1.—General.

Interpreta-
tion.
Cf. Vic. L.G.
Act, s. 3;
S.A. L.G. Act,
s. 342 (12);
s. 283 (1)
(b) and (3)
post; and
Div. 2 of this
Part.

285. In this Part, unless the context requires otherwise,

“private street” means a street, court, alley, lane, yard, passage, or thoroughfare,

- (a) which is not dedicated, whether under an Act or at common law, to use as such by the public; and
- (b) which forms a common access to lands, or premises, separately occupied; or

- (c) which is accessible from a street, court, alley, lane, yard, passage, thoroughfare, or public place, which is dedicated, whether under an Act or at common law, to use as such by the public.

286. (1) The absolute property in land reserved, declared, or otherwise dedicated, under this or another Act as a road, street, or highway, is by, but subject to the provisions of, this section revested in the Crown.

Property in streets.
Cf. No. 47 of 1902, as am., s. 85; and No. 5 of 1930, as am., s. 15.

(2) The provisions of subsection (1) of this section apply to land so reserved, declared, or dedicated, whether so reserved, declared, or dedicated, before or after the coming into operation of this Act, but do not affect the purpose or use for which the land is so reserved, declared, or dedicated.

Cf. subs. (1) of this s.

(3) Where the title to land revested in the Crown by subsection (1) of this section is not in the Crown, the municipality or other person, who has the title—

Cf. subs. (1) of this s.

(a) shall, if required to do so by the Minister for Lands, deliver up the documents of title to the appropriate registration authority who shall record the title in the Crown; but

(b) is not entitled to compensation because of the operation of that subsection.

(4) The operation of subsection (1) of this section does not affect—

Cf. No. 47 of 1902, as am., s. 15.

(a) rights, if any, to mines of coal or other minerals excepted from acquisition of land so reserved, declared or dedicated;

Cf. subs. (1) of this s.

(b) the powers and obligations of a council in respect of a street of which it has the care, control or management.

Governor's approval necessary before exercise by councils of certain powers relating to provision of streets.

Cf. R.D. Act, s. 148; No. 47 of 1902, as am. gen. and Part V, specif.; and No. 5 of 1930 as am. gen. and ss. 15, 24 and 28A specific.

Cf. subs. (5) of this s. and ss. 294, 295 (2) (b) and 301 (g) post as to powers.

Cf. ss. 292, 294, 301, and 333-335 as to temporary closure.

287. (1) (a) In order to conduce to co-ordination in the provision, care, control, and management, of streets throughout the State by the various authorities empowered by Act to undertake the provision, care, control, and management, of them, a council shall not exercise the power conferred upon it by this Act—

- (i) of providing a street for public use;
- (ii) of altering the course or length or width of a street dedicated to public use; or
- (iii) of closing, otherwise than temporarily, a street dedicated to public use;

unless the council has first requested and received the approval of the Governor to do so.

(b) A council shall not resolve to request the Governor's approval for the closure of a street until after the expiration of thirty-five days from publication in a newspaper circulating in the district of notice of the motion for the resolution, and has considered objections, if any, to the proposals in the notice.

(2) Where a council resolves to request approval of the Governor to the exercise by the council of a power mentioned in subsection (1) of this section, the council shall, in accordance with the regulations, prepare and deliver the request to the Minister for Lands, who shall, if satisfied that the council has complied with the requirement of paragraph (b) of that subsection and of the regulations, present the request to the Governor.

(3) The Governor may grant approval, or direct that the council be invited to reconsider the request having regard to such matters as he thinks fit to mention, in the direction, or may refuse the request.

Cf. subs. (1) of this s.

(4) The Governor shall not grant approval to a request—

Cf. M.C. Act,
s. 225; and
R.D. Act,
s. 146.

(a) for the provision of a street of a width, or the extension of a street to a width, of less than sixty-six feet measured at right angles to the course of the proposed street or extension, unless—

(i) the Minister for Lands certifies that in the particular circumstances of the case the request should be granted; or

(ii) the street is one set out in a town planning scheme that has been approved under the provisions of the Town Planning and Development Act, 1928, or the Metropolitan Region Town Planning Scheme Act, 1959; or

(b) for the provision, or alteration of the course or length, of a street elsewhere than in a city, town, or townsite, if the nearest part of the street will be within sixty-six feet of a permanently constructed building, unless the owner of the building agrees, or the council, or in the case of a proposal for a subdivision the person making the proposal, agrees to pay to the owner of the building such compensation as is agreed between the parties, or if not agreed as is determined only on reference to arbitration.

Cf. R.D. Act,
s. 147.

Cf. s. 684
post as to
arbitration.

(5) (a) Where a request for the Governor's approval of the exercise of a power mentioned in subparagraphs (ii) or (iii) of paragraph (a) of subsection (1) of this section has been granted to a council, the council may exercise the power by public notice.

Cf. R.D. Act,
s. 150.

(b) Where a council gives public notice of the alteration of the course of a street so much of the street as is not included in the course as altered is closed under this Act on the day of the publication of the notice.

Cf. subs. (1)
of this s.
Cf. subs. (5)
of this s. as
provision of
streets
mentioned
in subs. (1)
(a) (1) of
this s.

Declaration
of dedication
of public
streets.
Cf. M.C. Act,
s. 223.
Cf. s. 287
ante.

288. (1) In order to conduce to the co-ordination mentioned in section two hundred and eighty-seven, where in a district—

(a) land—

(i) is reserved, or acquired, for use by the public; or

(ii) is used by the public;

as a street, way, public place, bridge, or thoroughfare, under the care, control, and management of a council; or

Cf. M.C. Act,
s. 226

(b) land comprises a private street, constructed and maintained to the satisfaction of a council, and

(i) the owner applies to the council, requesting the council to do so; or

(ii) those owners of rateable property abutting the private street, the aggregate of the rateable value of whose properties is greater than one-half of the rateable value of all of the rateable property abutting the street, apply to the council requesting the council to do so,

the council may request that the Governor declare the land to be a public street, and if the council thinks fit, that the Governor declare the width of the carriage way and footpaths of the public street.

Cf. subs. (1)
of this s.

(2) Where a council resolves to make a request under subsection (1) of this section, the council shall, in accordance with the regulations, prepare and deliver the request to the Minister for Lands, who shall present it to the Governor.

(3) The Governor may grant the request, or may direct that the council be invited to reconsider the request having regard to such matters as he thinks fit to mention in the direction, or may refuse the request.

(4) The Governor shall not grant the request where the street, would, if the request were granted, be of a less width than sixty-six feet measured at right angles to the longitudinal course of the proposed public street unless—

Cr. M.C. Act,
s. 225; and
R.D. Act,
s. 146.

(a) the land the subject of the request is a surveyed street—

Cr. M.C. Act,
s. 225 (3);
and 64 Vict.
s. 221.

(i) which is of no less a width so measured, than twenty-five feet;

(ii) which was set out before the first day of January, one thousand nine hundred and seven;

(iii) abutting which, allotments have been laid out and sold; and

(iv) which has been in unrestricted public use for at least twelve months;

(b) the land the subject of the request was laid out before that day in extension of a street, which was of a less width than sixty-six feet so measured, and had no outlet at one end; and

Cr. M.C. Act,
s. 225 (4).

(c) the Minister for Lands certifies that in the particular circumstances of the case, the request should be granted; or

(d) the street is one set out in a town planning scheme that has been approved under the provisions of the Town Planning and Development Act, 1928, or the Metropolitan Region Town Planning Scheme Act, 1959.

(5) Where the Governor grants the request he shall by Order declare the land to be a public street.

(6) On and from publication of the Order in the *Gazette* the land is dedicated to the public as a public street, having, if specified in the Order, a carriageway and footpaths of the respective widths so specified.

Part XII.,
Div. 1.

Ss. 288, 289, 290.

Cf. subsec.
(1) (b) of
this s.

(7) If land comprising a private street, mentioned in paragraph (b) of subsection (1) of this section is so dedicated to the public as a public street, the owner of the land is not entitled to compensation because of the dedication.

Cf. M.C. Act,
s. 228.

(8) Where an order so dedicates to public use a street shown on a plan for a subdivision of land, whether the subdivision has been made before or after the coming into operation of this Act, and by the subdivision the owner of the land has reserved a strip of land of not more than five links in width along the side of, or across, the street, the Order may include the strip in the dedication, and where the Order includes the strip in the dedication, it becomes part of the street, without rendering the owner or any other person entitled to compensation unless he lawfully has improvements on the strip and loses them because of the dedication, in which case the council making the request for the dedication shall compensate him for loss of the improvements to the extent of their value to be determined by agreement between him and the council or if there is no agreement only on a reference to arbitration.

Cf. s. 684 post
as to
arbitration.

Regulations
relating to
requests.

289. The Governor may make regulations prescribing—

Cf. ss. 287
and 288 ante.

- (a) the manner in which requests may be made under sections two hundred and eighty-seven and two hundred and eighty-eight;
- (b) the particulars to be included in those requests; and
- (c) that requests made under each of those sections may be joined in one request, and how they may be joined.

Commence-
ment of
application
of certain
provisions
to private
streets.
Cf. M.C. Act,
s. 227.

290. As soon as land is set out as a private street the provisions of this and other Acts—

- (a) relating to the suppression of nuisances in streets, the cleansing of streets, and public health apply to the land so set out;

- (b) relating generally to streets apply to the extent to which they are capable of application to the land so set out,

and continue so to apply while the land so set out continues to be a street.

291. (1) Where for the purpose of providing a street a council takes portion of an area of land, the whole or part of which area is at the time of the taking enclosed by a fence which is intersected by both or one of the boundaries of the street, the council if it resolves, whether at or after the time of the taking, to open the street, shall within twenty-eight days of the passing of the resolution, cause notice of the resolution to be served on the owner or occupier of the area.

Council to provide fencing, gates, etc., in certain circumstances.
Cf. R.D. Act, s. 149.

(2) Within fifty-six days of the service upon the owner or occupier of the notice mentioned in subsection (1) of this section, he may serve on the council such requisition in writing as is mentioned in subsection (3) of this section and as is appropriate to the case.

Cf. subs. (1) of this s.

Cf. subs. (3) of this s.

(3) (a) If the area which is so enclosed or part of which is so enclosed by a fence, is held otherwise than under pastoral lease, or is held otherwise than for pastoral or grazing purposes only, the requisition may require the council to provide a fence along each boundary of the street, which boundary intersects the fence by which the area or the part of the area is enclosed, so as to join with the fence so intersected.

(b) If the area which is so enclosed or part of which is so enclosed by a fence is held under pastoral lease or for pastoral or grazing purposes only, the requisition may require the council to choose whether—

- (i) it will provide a fence along each boundary of the street, which boundary intersects the fence by which the area or part of the area is enclosed, so as to join with the fence so intersected; or

- (ii) it will provide gates across the street; or
- (iii) it will provide gates across or partially across the street and motor traffic passes adjacent to the gates;

and having made the choice, to provide the thing so chosen.

(4) Where a requisition is properly made in accordance with the provisions of this section and is served within the prescribed time, the council shall comply with the requirements of the requisition.

(5) The type of fence which a council is required to provide under this section, is that by which the area or the part of the area was enclosed at the time of the taking of the portion of the area for the road, if the whole of that fence was of a uniform type, but if the whole of the fence was not of a uniform type, the type which the council is so required to provide is that—

- (a) which is agreed between the council and the person making the requisition; or
- (b) if a type of fence is not so agreed, that which is determined only on a reference to arbitration.

*Of. s. 684 post
as to
arbitration.*

(6) A council may provide a motor traffic pass under this section, but only where the Commissioner of Main Roads has approved its design and description, the materials used in, and the manner of, its construction.

(7) The council shall bear the expense of complying with a requisition under this section, but for the purpose of so complying may take native timber, whether growing or dead, from the area of land which is so enclosed or part of which is so enclosed by a fence in respect of which the requisition is made, without being liable to pay compensation to the owner or occupier of the area.

(8) The owner or occupier of land on which a fence, gate, or traffic pass, is so provided by a council shall, at his own expense keep the fence, gate, or pass in thorough repair, but if he does not do so the council may do so at his expense and recover the amount of that expense from him in a court of competent jurisdiction.

(9) Where a council takes land for the purpose of altering the course of an existing street, the provisions of this section if they apply at all, apply only in respect of the land so taken.

292. (1) Where land in a district is intersected by a street under the care, control and management of a council, the owner of the land may apply to the council for permission to place a fence across the street and to maintain the fence until the permission is withdrawn.

Permission
for tem-
porary
closure of
streets by
fences.
Cf. R.D. Act,
s. 152.

(2) If the council is of the opinion that although the street should not be permanently closed it is not reasonably likely to be required immediately for traffic, the council shall refer the application with its opinion to the Minister for Lands.

(3) On receipt of the application and the council's opinion, the Minister for Lands may grant the permission sought.

(4) Where permission is so granted, the Minister for Lands shall notify the council and the applicant and cause public notice of the grant to be given, and the applicant may place the fence across the street in accordance with the permission.

(5) The Minister for Lands, of his own motion, or at the request of the council, may at any time withdraw permission so granted.

(6) Where the Minister for Lands so withdraws permission,

- (a) he shall notify the owner or occupier of the land intersected by the street, and the council of the withdrawal and cause public notice of it to be given; and
- (b) immediately on being notified of the withdrawal, the owner shall remove the fence, but if he does not do so the council may, but at the request of the Minister for Lands shall, do so and in either case may recover the amount of the expense of doing so from the owner in a court of competent jurisdiction.

Corners to
be located.
Cf. M.C. Act,
s. 229.

293. (1) The owner or occupier of land situated at the corner of a street or way within a district shall, before erecting, taking down, or altering a building, wall, fence, or post at or adjacent to the point of intersection of the lines forming the corner, give to the clerk of the council of the municipality fourteen days' notice in writing, of his intention to do so, and during the period of fourteen days, at his own expense, cause to be made by a licensed surveyor, by measurements, the necessary connections in order to define the true position of that point of intersection.

(2) If there is no survey peg indicating that point of intersection the surveyor shall measure from the corner as fixed by the Surveyor General, and shall, at a suitable distance from the corner, place two pegs, spikes, or marks, and shall measure to them, and shall notify the Surveyor General that he has done so, and lodge with the Surveyor General the measurements so made.

Cf. subs. (2)
of this s.

(3) No person shall remove pegs, spikes, or marks which have been placed as required by subsection (2) of this section, until a licensed surveyor has been authorised and engaged by the person to replace or renew the survey pegs, spikes, or marks, and has

made the measurements necessary to replace or renew them and the surveyor has lodged with the Surveyor General the measurements so made.

(4) Where a person removes pegs, spikes, or marks, in accordance with the provisions of subsection (3) of this section, he shall immediately on completion of the purpose for which they were removed, or sooner if required by the Surveyor General to do so, engage a licensed surveyor to replace them in accordance with the measurements so made, and when he has so replaced them the surveyor shall notify the Surveyor General that he has done so.

Cf. subs. (3)
of this s.

(5) If a person does not carry out the requirements of this section, the council may do so at his expense and may recover the amount of that expense from him in a court of competent jurisdiction, without affecting his liability to penalty.

294. (1) Where a street dedicated under an Act to use by the public as a street is closed under this Act otherwise than temporarily—

Closing of
streets.
Cf. s. 287
(1) (a) (iv)
and (5) ante
as to power;
and ss. 292
ante and
301 post
and ss. 333-
335 post as
to temporary
closure.
Cf. No. 47 of
1902, as am.,
s. 15.

- (a) the absolute property in the land comprising the street so closed is by this section revested in the Crown, freed from rights of passage by the public, but this paragraph does not operate so as to affect rights, if any, to mines of coal or other minerals in the land;
- (b) the Registrar of Titles, Registrar of Deeds, or other appropriate recording and registration authority shall record the closing and revesting;
- (c) the Governor may make such use of the land, or dispose of the land in such manner as he thinks fit;
- (d) the Governor may dispose of the land unconditionally, or subject to conditions, or for or without consideration, as one lot or several lots, at one time or from time to

time, and may give to any authority referred to in paragraph (b) of this subsection as is in the circumstances of the case the appropriate authority such instructions as he thinks fit and that authority shall give effect to the instructions, but the provisions of this paragraph do not derogate from the absolute discretion conferred by paragraph (c) of this subsection.

Cf. par. (c)
of this subs.

(2) (a) If the Governor sells land comprising a street, so closed, the Treasurer shall appropriate the balance of the proceeds of the sale remaining after deducting the expenses of and incidental to the sale in accordance with the provisions of such of the paragraphs of this subsection as are appropriate to the case.

(b) If the Governor is of opinion that prior to a street being so closed a municipality has expended its funds upon the provision of the street, or of another street in its stead, the Treasurer shall, if that balance is sufficient, reimburse the municipality the whole amount of that expenditure or if the balance is insufficient, pay the balance to the municipality in partial reimbursement of that expenditure.

(c) If the Governor is of opinion that two or more municipalities have so expended their funds, the Treasurer shall apply that balance in accordance with the provisions of paragraph (b) of this subsection but shall apportion it between those municipalities in the ratio which the funds so expended by each bears to the funds so expended by all of them.

Cf. par. (b)
of this subs.

(d) The balance of those proceeds, to the extent if any, that it is not required under this section to be paid to a municipality, constitutes public moneys and the Treasurer shall deal with them accordingly.

Cf. No. 12 of
1924, ss. 4
and 21 as to
public
moneys.

Notice of
subdivision
of land
required.
Cf. R.D. Act,
s. 157.

295. (1) Where a person who is the owner of land in the district of a municipality proposes to subdivide the land into lots for disposal, if the proposal

is to include in the subdivision a street or streets for use by the public, he shall not commence to put the proposal into effect until he has notified the council of the proposal in writing and delivered to the council with the notification a plan of the subdivision, and received the approval prescribed by the Town Planning and Development Act, 1928 to do so.

(2) A person shall not, without the consent in writing of the Minister for Lands set out or construct, or cause to be set out or constructed, any street unless the width thereof, to be ascertained by measuring at right angles to the course of the street from front to front of the boundary line on either side of it, is sixty-six feet, but any way shown on a subdivisional plan duly approved under this or any repealed Act shall be deemed to be lawfully set out and constructed.

(3) (a) Where a person so delivers a plan of a subdivision of land in a city, town, or townsite, and the proposed subdivision includes the provision of a street for use by the public, he shall also deliver to the council—

- (i) drawings showing longitudinal and cross sections of the proposed street;
- (ii) specifications of the proposed street;
- (iii) the name proposed to be given to the street; and
- (iv) such other information including information relating to levels, drainage, nature of soil, and physical features, as the council requires.

(b) The council may require the person so subdividing the land—

- (i) to amend the drawings or specifications or both;
- (ii) to assign a name to the proposed street or, if a name has already been assigned, to alter or change that name;

Cf. ss. 287
(1) (a) (iii),
and (5);
283 (1) (a)
ante; and
No. 39 of
1928 as am.
s. 20.

(iii) to assign a name to the area the subject of the proposed subdivision, or if a name has already been assigned, to alter or change that name; and

(iv) to comply with such further conditions as the council thinks fit to impose in respect of the proposed street.

(c) A person shall not assign a name to the area or the street unless the name is first approved by the Minister for Lands.

(d) Where a person is aggrieved by any requirement of the council made under paragraph (b) of this subsection, he may, within thirty days after the requirement is communicated to him, appeal in writing against the requirement to the Minister for Local Government.

(e) The Minister may dismiss or uphold the appeal subject to the requirement being modified in such manner as he thinks fit and the decision of the Minister is final and is not subject to appeal.

Unless streets are constructed and drained, disposal of land prohibited.
On 11th Feb., 1933, Act No. 35 of 1932 came into operation.
Cf. ss. 1 and 25 (c) of that Act, *Gaz.* of 10th Feb., 1933; and R.D. Act, s. 157 (4).
Cf. No. 39 of 1928 as am. s. 29 (4).
Cf. pars. (b) and (c) of this subs.

(4) (a) Where proposals for the subdivision of land in a district include the provision of streets for use by the public, and the proposals have been approved, on or after the eleventh day of February, one thousand nine hundred and thirty-three, whether under this or another Act, the owner of the land shall not, unless under paragraph (b) or (c) of this subsection, dispose of the land, or part of it, or an estate or interest in it, except to an authority which under an Act has power to take or resume it, until he has caused those streets to be constructed and drained to the satisfaction of the council.

Disposal with Governor's consent of land as one piece, notwithstanding non-compliance.

(b) Notwithstanding that he has not caused those streets or some of them to be so constructed and drained, the owner of the land may, with the consent of the Governor, dispose of the land as one piece, with the exception of such, if any, of the parts

of it, or estates or interests in it, as have been dedicated to public use, or have been disposed of to, or acquired by, an authority, which under an Act has power to take or resume it, and the Governor may grant his consent—

- (i) if of opinion that the owner is, for a good reason unable to carry out the proposals;
- (ii) if satisfied that the owner has not disposed of part of the land or an estate or interest in it, except as already mentioned in this paragraph; and
- (iii) if satisfied that the consent is sought in good faith and not for the purpose of evading or avoiding the prohibition imposed by paragraph (a) of this subsection.

Cf. par. (a)
of this subs.

(c) Notwithstanding that he has not caused all of those streets to be so constructed or drained, if he has caused one or more of them to be so constructed and drained, and there is access from the latter to lots in the subdivision as approved, the owner of the land may, with the consent of the council, dispose of those lots having that access, but the council shall not refuse its consent arbitrarily or capriciously, nor where drawings and specifications submitted with the proposals for the subdivision have been approved, if the streets constructed have been constructed and drained substantially in accordance with those drawings and specifications.

Disposal with
council's
consent of
allotments
served by
street
constructed
and drained.

(d) A person may appeal to the Minister for Local Government against the refusal of a council to grant a consent mentioned in paragraph (c) of this subsection, and, if of opinion that the owner has caused a street to be so constructed and drained, and that the street gives such access to lots in the subdivision, that the council should have granted the consent, the Minister may give his consent to the disposal of the lots and the decision of the Minister is final.

Appeal from
refusal of
consent by
council.
Cf. No. 39 of
1928 as am.,
s. 25.
Cf. par. (c)
of this subs.

(5) Where a plan of the subdivision is deposited in the Office of Titles and approved by any officer appointed to approve it, if a transfer of one or more lots, not being the whole of the land the subject of the plan, is registered, then as from the date of the registration of the transfer, any land delineated and shown on the plan as a new street shall become dedicated as a street and thereupon the council has the care, control and management of it; but no way not exceeding twenty feet in width shall be dedicated or be deemed to have become dedicated as a street by virtue of this subsection, subsection (5) of section one hundred and fifty-seven of the Road Districts Act, 1919 or any act repealed by that Act.

(6) (a) Where a person who is subdividing land is by the provisions of this Part required to construct and drain streets shown in the plan of subdivision he may—

(i) carry out or cause to be carried out the construction and drainage at his own cost and expense; or

(ii) arrange for the council to carry out the work on his behalf and at his cost and expense.

(b) Where the person does not make the arrangement with the council, he shall pay to it, on demand, an amount to cover the reasonable costs of the council in supervising the construction and drainage which amount shall be reckoned as follows:

(i) where the person has not engaged a consulting engineer and clerk of works to design and supervise the construction and drainage the amount shall be three per centum of the cost of the construction and drainage as estimated by the council;

- (ii) where the person has employed a consulting engineer and clerk of works to design and supervise the construction and drainage the amount shall be one and one-half per centum of the cost of the construction and drainage as estimated by the council.

(c) The council may require the person to employ a consulting engineer and clerk of works to design and supervise the construction and drainage and that person shall, when required to do so by the council, carry out the requirement.

Division 2.—Private Streets.

Part XII.
Div. 2.

296. (1) In this section, unless the context requires otherwise—

“owner” means the person whose name appears in the rate book as that of the owner of the land concerned at the date of the completion of the particular work mentioned in this Division.

Power of council, of its own motion to construct, repair and clear private streets.
Cf. S.A. L.G. Act, s. 343.
Cf. s. 285 ante as to private streets.

(2) A council may give public notice—

- (a) of its intention to remove an erection or obstruction which contracts the proper width of a private street or a part of a private street in the district;
- (b) where the forming, levelling, paving, kerbing, or draining of, or the forming or constructing of water-tables in, the roadway or footpath of a private street or a part of a private street in the district has not been carried out previously, of its intention to carry out in or on the private street or part of the private street, such of those works as have not been carried out previously;

Cf. pars. (a)
and (b) of
this subs.

- (c) to carry out work mentioned in paragraph (a) in conjunction with work mentioned in paragraph (b) of this subsection;

at the expense of the owners of rateable property abutting the private street or the part of the private street, as the case may be.

(3) The council shall before or within three days after giving the public notice, cause a copy of the notice to be served upon each of the owners and with the notice shall give to each owner an estimate of the total cost of the work and the estimated proportion of the cost which each owner shall be called upon to pay.

(4) After the expiration of thirty-five days from the giving of the notice or the service of the notice, whichever last happens and after consideration by the council of representations in writing, if any, made to the council by a person interested within the period of fourteen days from the publication of the notice, the council may carry out the work referred to in the notice.

(5) After the completion of the work referred to in the notice the council may, in the same manner as rates are recoverable under this Act, recover from the owners for the time being of rateable properties abutting the private street or part of the private street, the whole of the expenses incurred by the council in carrying out the work including the cost, if any, of supervision incurred by the council but not exceeding in respect of the supervision five per centum of the total expenses, proportionately in the ratio which the lineal measurement along the private street of each piece of land abutting the street bears to the total lineal measurement of all the pieces of land abutting the street.

(6) Each of the respective portions of the expenses so incurred by the council together with interest on it at the rate of six pounds per centum per annum calculated from three months after the date of the

completion of the work may be so recovered by the council, and until fully paid or recovered each is, from the date of completion, a charge upon the land in respect of which the respective proportion of the expenses with interest is due and payable under this section.

(7) A certificate purporting to have been signed by the mayor or president, or the clerk certifying the fact, is *prima facie* evidence—

- (a) that a work or part of a work carried out under this section has not been carried out previously;
- (b) that the work has been carried out;
- (c) of the expenses incurred by the council in carrying out the work;
- (d) of the proportion of the expense payable by each owner;
- (e) of the date of the completion of the work;
- (f) that the land on which the work was carried out was a private street, or part of a private street, as the case may be.

(8) Where property abutting the private street or part of the private street, is not rateable property, the property is for the purposes of this section to be regarded as rateable property and the council shall pay the proportion of the expenses payable in respect of the property out of the appropriate fund of the council.

(9) Where under this section a street is formed at the expense of the owners it becomes a public street and is under the care, control and management of the council.

Authority
of council
to construct
and repair
private
streets on
request.
Cf. S.A. L.G.
Act, s. 344
(a).

297. (1) In this section,

“private street” does not include a private street
which is more than twenty feet in width.

(2) If a request in writing is presented to the council and is signed by not less than three-fourths of the owners of rateable property abutting a private street or a part of a private street, requesting the council to form, level, pave, kerb, drain, or repair, the private street or the part, the council may carry out the work and may, in the same manner as rates are recoverable under this Act, recover from the owners for the time being of rateable property abutting the private street or the part, the whole of the expenses incurred by the council in carrying out the work, including the cost, if any, of supervision incurred by the council but not exceeding, in respect of the supervision, five per centum of the total expenses, proportionately in the ratio mentioned in subsection (5) of section two hundred and ninety-six.

Cf. s. 296 (5)
ante.

Cf. s. 296 (6)
ante.

(3) The provisions of subsection (6) of section two hundred and ninety-six apply in respect of the respective proportions of the expenses so incurred by the council as if those provisions were repeated in this subsection.

(4) A certificate purporting to have been signed by the mayor or president, or the clerk certifying the fact, is *prima facie* evidence—

- (a) that the work has been carried out;
- (b) of the expenses incurred by the council in carrying out the work;
- (c) of the proportion of the expenses payable by each owner;
- (d) of the date of the completion of the work;
- (e) that the land on which the work was carried out was a private street or part of a private street, as the case may be.

(5) Where property abutting the private street or part is not rateable property, the provisions of subsection (8) of section two hundred and ninety-six apply in respect of that property as if those provisions were repeated in this subsection.

Cf. s. 296 (8) ante.

*Division 3.—Appointment of Control of
Bridges and Ferries.*

Part XII.
Div. 3.

298. (1) Where a river, creek, or water course is so situated that any one place on its banks is within or adjoining a district but both of its banks are not within that district, the Governor may, with the consent of the councils of the municipalities in whose districts its banks are situated, by Order commit to all or any of those councils—

Power of Governor to commit control of bridge or ferry at boundary of municipal district.
Cf. M.C. Act, s. 233.

- (a) the care, control, and management, of a bridge or ferry across the river, creek or water course at that place, and the approaches to that place; and
- (b) the control of so much of either bank at that place as is necessary for the convenient construction and use of a bridge or ferry and proper approaches to the bridge or ferry.

(2) The Governor may, by subsequent Order, vary or revoke an Order so made.

299. (1) A bridge or ferry of which a council has the care, control, or management, is, notwithstanding that it is outside the district, to be regarded as being within the district.

Bridge or ferry managed regarded as being within municipal district.
Cf. M.C. Act, s. 234.

(2) A sea or river jetty, the approach to which is in a district is, if the Council consents and the Governor makes the necessary Order, to be regarded

When jetty regarded as being within district.
Cf. M.C. Act, s. 234A.

as being within that district, and if the jetty is a public jetty, and the council consents, and the Governor makes the necessary Order, it is committed to the care, control, and management of the council of that municipality.

*Division 4.—Making, Maintenance, and Management of
Streets, Ways, Bridges, Ferries, Culverts,
Water Courses and Jetties.*

300. A council has the care, control, and management of public places, streets, ways, bridges, culverts, fords, ferries, jetties, and drains, which are within the district, or, which although not within the district, are by this Act placed under the care, control, and management, of the council, or are to be regarded as being within the district, except where and to the extent that under an Act, another authority has that care, control, and management.

301. A council—

- (a) may make, form, alter, level, grade, pave, improve, repair, maintain, light, water, cleanse, and keep in good order and condition the streets, ways, and other public places, and bridges, culverts, fords, ferries, jetties, drains, water courses, and other things and places which are under the care, control, and management of the council, and do such acts and things as are necessary for or incidental to the proper care, control, and management of them;
- (b) may during such time as the whole or part of a street or other public place, is under repair or alteration, or during the making, altering, or repairing of a bridge, or drain, or other necessary work in a street or other public place, prevent the passing of vehicles and animals by causing such fences and barriers to be placed on or across the street or place as the council thinks fit; but so that during the time that the fences

or barriers continue to be so placed, the council shall cause them to be indicated every night from sunset to sunrise by such lights as are sufficient to warn persons using the street and where needed and practicable, shall cause passable and suitable side tracks to be provided;

- (c) shall observe such directions, as the Minister thinks fit to issue and is authorised by this paragraph to issue, for the purpose of preventing undue or avoidable restriction of traffic;
- (d) shall not in exercise of the power conferred by this section, close or cause a street to be closed to traffic for a longer period than twenty-eight days, or for periods aggregating more than twenty-eight days in any period of twelve months without the previous permission of the Minister;
- (e) may for the purpose of repairing a street, cause material intended for use in connection with street works to be placed in the street, clear of the made portion of the street, but so that the material does not obstruct other streets, whether public or private, intersecting or abutting the street to be repaired, or the entrance or approach to private land;
- (f) shall, if in the course of doing any of the things which the council is authorised by this Act to do, including the clearing of land in preparation for the making of a street, the council deposits or causes to be deposited felled trees or scrub or spoils or debris adjacent to a fence, remove them within a reasonable time, and until they are removed take such precautions as are necessary to prevent them from being a fire hazard or a harbour for vermin;
- (g) may, from time to time, in accordance with the provisions of this Act, provide and open new streets or ways, divert streets or ways,

Deposits of
material.
Cf. R.D. Act,
s. 160 (18).

New streets,
etc.
Cf. M.C. Act,
s. 237.
Cf. s. 282
ante.

alter or increase the width of streets or ways, or cause to be raised or lowered the ground or soil of streets or ways, except where the council is precluded from doing so because by the provisions of an Act the power to do so is conferred on another authority, or because of other provisions of an Act; and

Council
may use
mechanical
plant in
road con-
struction or
repairs.
Cf. M.C. Act,
s. 233.

- (h) may, in carrying out work under this section, use mechanically propelled plant and when doing so shall, if practicable, provide barriers at the ends or in sections of the streets and ways so as to prevent ingress or egress during the time the work is being carried out.

Extent of
liability of
municipality.
Cf. M.C. Act,
s. 240.

302. (1) A person is not entitled to recover damages against a municipality in respect of loss or injury sustained either to himself or to another person or to property by reason of a mishap upon or while using a portion of a street or way in the district of the municipality or under the care, control, and management of its council, which portion has not been interfered with by the council, merely because some other portion of that street or way, whether distant laterally or longitudinally, has been taken over or improved by the council.

Cf. subs. (1)
of this s.

(2) Subsection (1) of this section does not relieve a municipality from liability where the mishap is caused by the negligence of the council in the execution of works then in progress, or which have been completed by the council in a street or way.

Municipalities
relieved from
certain
actions.
Cf. M.C. Act,
s. 241.

303. No person may bring action against a municipality in respect of works carried out or constructed under or by virtue of this Part, or in respect of damage or injury arising out of the carrying out or constructing of those works, by reason only that the municipality carried out or constructed the works or caused them to be made or constructed, without exercising a power created or conferred by this Act.

304. The property in—

- (a) materials of, and matters and things appurtenant to, public streets, ways, and other public places, bridges, culverts, fords, ferries, wharves, jetties and drains;
- (b) buildings, fences, gates, posts, boards, stones and erections placed upon a street, way, bridge, culvert, ford, ferry, wharf, jetty, drain, or other public place by a person for the time being having the care, control, or management of the street, way, bridge, culvert, ford, ferry, wharf, jetty, drain or other public place; and
- (c) the scrapings, soils, sand, and materials of public streets, and ways and other public places,

Materials of streets, etc. may be alleged to be property of municipality. Cf. M.C. Act, s. 245; Vic. L.G. Act, s. 547; Crim. Code, 1913 as am. s. 584 (11); and No. 11 of 1902 ss am. s. 44. Cf. ss. 649 and 653 post.

in, or regarded under this Act as being in, a district may, in proceedings brought by the council of the municipality in relation to the property, be alleged to be the property of the municipality, and where so alleged may for the purposes of the proceedings be regarded as the property of the municipality.

305. (1) (a) A council may, through grounds adjoining part of a street, or way, or adjoining a bridge, or ferry which the council is making or repairing, other than grounds that are the site or curtilage of a house, or are a garden, lawn, yard, court, park, plantation, planted walk, avenue, or nursery for trees, make a temporary street or way, bridge, or ford, for use by the public as a highway but only while the making or repairing is being carried out; and

Temporary streets during repairs. Cf. M.C. Act, s. 247.

(b) The council shall compensate the owner and occupier of the grounds for damage, if any, which he sustains through the exercise by the council of the power conferred by this section.

(2) The council shall make such compensation as is agreed between the parties or, if there is no agreement, only as is determined on a reference to arbitration.

Cf. s. 684 post as to arbitration.

Powers of
council to
plant and
erect in
streets, etc.
Cr. M.C. Act,
s. 248.

306. (1) A council may, in or upon a street, or other public place in its district, but so as not unduly to obstruct the thoroughfares—

- (a) provide trees and shrubs and treeguards and kerbing to protect them;
- (b) provide flower gardens and kerbing to protect them;
- (c) erect statues, monuments, fountains, shelter sheds, and seats;
- (d) for the purpose of protecting passengers or regulating traffic along the street, or other public place, or on the footpaths, or for minimising danger at junctions and intersections of streets, erect, either permanently or temporarily, as the council thinks fit, posts, fences, lamp-posts, raised pavings, places of refuge or devices or places known as median strips, traffic islands and any traffic device for the regulation of traffic;
- (e) provide suitable buildings for the use, convenience, and shelter of passengers using public transport, and such other persons as the council permits to use them.

(2) A council may, in, under, or upon a street or other public place but not in, under, or upon a portion of a street, which portion is set aside for vehicular traffic, in proper and convenient situations but so as not unduly to obstruct the thoroughfares, provide telephone boxes, drinking fountains, closets, privies, urinals, and other conveniences for public accommodation.

(3) A council may maintain and from time to time remove anything erected or provided under this section.

(4) (a) A council may by appropriate notices indicate that a seat so provided is for the use only of persons of a particular sex.

(b) Where by notice a seat is indicated as being for the use of persons of a particular sex, a person, who not being of that sex, uses the seat, commits an offence.

307. (1) The Governor at the request of a council may, by Order, declare portion of a street or other public place to be a tree reserve, if the width of the portion of the street or public place including footpaths remaining available for traffic upon each side of the tree reserve is nowhere reduced by the tree reserve to less than fifty feet, and so that no section of the tree reserve is of a greater length than ten chains.

Power to
make tree
reserves.
Cf. M.C. Act,
s. 249.

(2) The Governor may, by subsequent Order, at the request of the council, revoke an Order so made.

(3) The council has the care, control, and management of tree reserves so declared, and may improve, fence, and plant them with trees and tend and cultivate them, and provide treeguards and kerbing.

308. A council may—

(a) fence in or otherwise enclose, level, drain, plant, and form, walks and carriage drives through and over commons, reserves, and public places under the care, control, or management of the municipality, and may construct dams and reservoirs for the retention and formation of sheets of water on them, or may otherwise improve and ornament them, and do such further acts and carry out such other measures as in the opinion of the council are conducive to the adaptation of them to the purposes of recreation, amusement, health and enjoyment;

(b) improve, whether by the erection of buildings or otherwise, reserves, recreation grounds, the sea shore, river foreshores, and

Power to
improve
park lands,
etc.
Cf. M.C. Act,
s. 250; and
R.D. Act,
s. 160 (14)
and (15).

other land, of which the council has the care, control or management, or which is vested in, or acquired by the municipality; and

- (c) acquire, provide, establish, maintain and improve parks, gardens and other places for the purposes of public recreation and enjoyment.

Power to
erect honour
boards or
war
memorials.

309. A council may erect and maintain honour boards, war memorials or other memorials whether of the same kind as, or a different kind from, those here specified.

Powers over
reserves.
Cf. R.D. Act,
s. 155; and
59 Vict. 30
as am.

310. Where a reserve, other than a common, is vested in, or is under the care, control, or management of a council, the council may, except to such extent as the Governor by Order otherwise orders, exercise, in respect of the reserve such powers and functions as would be conferred upon the council if it were a Board of Parks and Reserves to which the reserve had been committed under the Parks and Reserves Act, 1895.

Power to
construct or
permit
temporary
tramways.
Cf. R.D. Act,
s. 160 (2).

311. A council may—

- (a) with the consent of the Minister, construct or authorise the construction, temporarily, of tramways upon, over, or across a street or other public place, and use or permit the use of a tramway so constructed; and
- (b) for the purpose of protecting the public from danger, fill in, cover, or otherwise protect abandoned mining shafts, in or adjacent to streets, notwithstanding that the streets are under the care, control and management of another authority under an Act, and utilise its funds in so doing, or join with other councils in carrying out that work.

Mining
Shafts—
power to
protect
public from
danger of
abandoned.
Cf. R.D. Act,
s. 160 (2).

312. (1) A council may from time to time—

- (a) by public notice fix and appoint places in the streets or ways under the care, control, and management of the council, for use as public stands for licensed vehicles plying for hire;
- (b) by public notice alter, vary, cancel and remove a stand so appointed;
- (c) by public notice direct, order, and fix, the number and class of licensed vehicles to be allowed at any one time to ply for hire on a stand so appointed; and
- (d) by resolution of the council authorise the mayor or president for the time being as circumstances require, to fix and appoint temporary stands in those streets or ways, and to cancel them;

Stands for
vehicles
plying for
hire.
Cf. M.C. Act,
s. 251.

but a council, mayor, or president, shall not exercise a power conferred by this section in the metropolitan area, as defined by the regulations made under the Traffic Act, 1919 without first obtaining the written consent of the Commissioner of Main Roads or such other authority as for the time being is authorised by those regulations or by any law, to exercise in any manner, in the metropolitan area as defined by those regulations, any of the powers referred to in the paragraph (a), (b) or (c) of this subsection.

(2) Where a stand is so fixed and appointed, a person who uses the stand otherwise than for the purpose for which it is appointed commits an offence.

313. (1) At the intersections of streets and ways—

- in the districts of cities;
- in the districts of towns;

a council shall and

in townsites in the districts of shires,

Council may
paint or
affix names
of streets.
Cf. M.C. Act,
s. 253.

the council may cause the names of the intersecting streets and ways to be shown by and may maintain street-name signs.

(2) A council may provide and maintain traffic signs and notices for the direction of traffic on streets and ways in the district of a municipality but shall not exercise the powers conferred by this subsection in the metropolitan area as defined by the regulations made under the Traffic Act, 1919, without first obtaining the written consent of the Commissioner of Main Roads or, as the case may be, the other appropriate authority referred to in subsection (1) of section three hundred and twelve, and shall as and when required by the Commissioner or the appropriate authority, as the case may be, alter or remove a traffic sign or notice so provided by the council.

(3) In exercising the powers conferred by this section the council may, without being liable to compensate the owner of the property, provide and maintain street-name signs and traffic signs and notices on private property, and may remove them, or substitute others for them from time to time as occasion requires.

(4) The council may, from time to time, authorise a person to enter private property, for the purpose of providing, maintaining, removing, or substituting street names and traffic signs and a person so authorised may lawfully enter private property and act in accordance with the authorisation from time to time as occasion requires.

314. (1) A council may assign a number to each building or lot in the streets and ways in the district and may, from time to time, assign another number to a building or lot instead of that previously assigned.

Ss. 314, 315.

(2) The owner or occupier of the building or lot shall paint or affix and maintain the number upon a conspicuous place on the front of the building or on the fence or gate adjoining the street or on a notice on the lot, within fourteen days after a written requisition, signed by the mayor or president or clerk, has been served on him requiring him to do so.

(3) The council may, from time to time, authorise a person to enter the land on which there is a building or which is a lot to which a number has been assigned for the purpose of removing a number and replacing it by another number, and a person so authorised may lawfully enter the land and act in accordance with the authorisation from time to time as occasion requires.

315. Unless precluded from doing so because by the provisions of an Act the power to do so is conferred upon another authority or because of other provisions of an Act, a council—

Drains and
water-
courses.
Cf. R.D. Act,
s. 160 (11);
and M.C. Act,
s. 246.

- (a) may make and open in and through land such ditches, gutters, tunnels, drains, and water courses, as the council considers necessary, for the drainage of a street or other land under the care, control or management of the municipality, or of private land as the council thinks fit, and scour, cleanse, and keep them open, and for any of those purposes enter upon land; but the council shall make to the owners and occupiers of the land for damage, if any, which they sustain through the exercise of a power conferred by this paragraph, compensation as agreed between the parties, or if there is no agreement, only as determined on a reference to arbitration.

Cf. s. 684
post as to
arbitration.

- (b) shall not exercise a power conferred by this section in connection with or for the purposes of the drainage of private land, unless with the approval of the Governor;

Part XII.,
Div. 5.

Ss. 315, 316, 317.

Drainage
from streets.
Cf. R.D. Act,
s. 160 (12);
and M.C. Act,
s. 246.

(c) may drain water falling or flowing upon a street into land adjacent to the street, upon paying compensation so agreed or determined, except where the drainage follows the natural flow of the water, to the owner and occupier of the land; and

(d) may for those purposes, by its agents and servants and workmen lawfully enter upon land.

Part XII.
Div. 5.

Division 5.—Making, Maintenance and Management of Streets, Ways, Bridges, Ferries and Culverts on the Boundaries of Districts; Works, Services, Conjoint Functions and County and Regional Groups.

Council
may form
street at
boundary of
municipal
district and
outlying
land.
Cf. M.C. Act,
s. 256.

316. Where portion of the breadth of a street lying along the boundary of the district is outside the district, and is not within or adjoining the district of another municipality, the council of the former municipality may,

unless precluded from doing so because by the provisions of an Act the power to do so is conferred upon another authority or because of other provisions of an Act,

exercise in respect of the street, the powers which it is authorised to exercise in respect of a street which is within the district, and of which the council has the care, control and management.

Municipali-
ties bound
to unite
in making,
lighting or
repairing
road on
common
boundary.
Cf. M.C. Act,
s. 259.

317. Where a street, or way, following the common boundary between the districts of two municipalities, lies as to part of its breadth in one, and as to part of its breadth in the other, or as to the whole of its breadth in either district, the municipalities are bound and may be compelled under the provisions of this Division to unite in making or repairing or lighting the street or way to the extent that it follows that boundary.

318. A council may, with the approval of the Governor, lease for a period not exceeding thirty years, portions of land being the ends of the streets, or ways which are under the care, control, and management of the council and which abut a river, creek, water course, or stream, for the purpose of erecting and maintaining wharves and other landing places, if in the opinion of the council the portions of land may be so let without inconvenience to the public.

Council may lease ends of streets for wharves.
Cf. M.C. Act, s. 258.
Cf. s. 267 ante.

319. (1) Where in the opinion of the Minister it is necessary in order to drain a street, or other public place, or land whether the land is for use for public purposes or is privately owned, which street, place or land is in the district of a municipality, that a drain should be carried through portion of another district, the Minister may authorise the council of the firstmentioned district to construct and maintain a drain through and in that other district on such terms and subject to such conditions as he thinks fit, and the council of the firstmentioned district may act in accordance with the Minister's authority.

Authority of council to construct drain through another district.
Cf. R.D. Act, s. 174.

(2) Where the Minister has declared by public notice that it is necessary to drain land whether the land is for use for public purposes or is privately owned, which land lies partly in the district of one municipality and partly in the district of another, the municipalities are bound, and may be compelled, under the provisions of this Division, to unite in the construction of the necessary drain and in maintaining and repairing the drain when it is constructed.

Council to unite in construction and maintenance of certain drains.
Cf. R.D. Act, s. 176.

(3) Where a drain, or part of a drain, constructed or provided by a municipality follows the common boundary between the districts of two municipalities and lies as to part of its breadth in one of the districts and as to part of its breadth in the other, or as to the whole of its breadth in either of those districts, the municipalities are bound, and may be

Councils to unite in maintaining drain on common boundary.
Cf. R.D. Act, s. 177.

compelled, under the provisions of this Division, to unite in repairing and maintaining the drain or the part of a drain, when it is constructed.

Bridges and
ferries at
boundary of
municipality.
Cf. M.C. Act,
s. 257.

320. If at any place one bank of a river, creek, or water course, lies within the district of a municipality, or is at the common boundary of the districts of two or more municipalities, and the opposite bank is not within the district of those or another municipality, the council of any of those municipalities with the approval of the Governor may, for the purpose of constructing, establishing, or repairing at that place, a bridge, culvert, wharf, or ferry, and the approaches to the bridge, culvert, wharf, or ferry, exercise over the river, creek, or water course, and both banks the powers which it would be authorised by this Act to exercise if the whole breadth and both banks were within that district or those districts.

Municipali-
ties to
unite in
constructing
or main-
taining
bridge, etc.,
across river
on common
boundary.
Cf. R.D. Act,
s. 178; and
M.C. Act,
s. 260.

321. (1) Where portion of one bank of a river, creek, or water course follows part of the boundary of, or runs through, the district of a municipality, or the districts of two or more municipalities whose districts are declared by the Minister to be adjoining, and the opposite portion of the other bank follows part of the boundary of, or runs through the district of another municipality, or the districts of two or more other municipalities whose districts are declared by the Minister to be adjoining, the respective municipalities or such of them as the Minister thinks fit are, if the Minister makes a declaration to that effect and causes notice of the declaration to be served on them, bound and may be compelled under the provisions of this Division to unite in the construction, establishment or provision across the river, creek, or water course, between such places of such bridges, culverts, or ferry services, as the Minister specifies in the declaration, and to unite in the repair, maintenance, and lighting of bridges and culverts so constructed or provided and the maintenance of ferry services so established or provided.

(2) The liability under this section of the municipalities extends only to works and services which are within the combined area of their districts or which exist or are required for providing passage directly from one part of the combined area to another, but if the Minister declares that a bridge, culvert, or ferry, is necessary to provide that passage, and that the passage cannot be conveniently provided directly between places within the combined area, and declares a route or place outside or partly outside the combined area for the purpose of providing that passage, that liability of those municipalities extends to expenditure incurred in respect of the provision of that passage over that route or place.

(3) Where a river, creek or water course is at any place the common boundary of several municipal districts, and the place at which the boundary lines of those districts meet, is, in the opinion of the Minister, not suitable for the purpose of constructing, establishing, or providing a bridge, culvert, or ferry, the Minister may declare the place on the river, creek, or water course, whether within or outside those districts as that at which the bridge or culvert is to be so constructed or provided, or the ferry service established or provided.

Bridges, etc., may be constructed in certain cases at place not on boundary.
Cf. M.C. Act, s. 261.

322. (1) (a) Where a work or service is such that a municipality is bound and may be compelled under this Division to unite with another municipality or other municipalities in carrying out the work or providing the service, a council of a municipality so bound may serve on the councils of the other municipalities so bound a written notice specifying the work or service, containing proposals for carrying out the work or providing the service, and an offer to treat and agree in respect of the carrying out of the work or providing the service and of the maintenance and repair of the work when carried out, or the maintenance, repair, and continuance of the service when provided.

Agreement between municipalities relating to works before Ministerial notice.

Part XII,
Div. 5.

S. 322.

Cf. s. 277
ante.

(b) The councils may enter into agreements in respect of those matters.

Minister may
determine
that work
or services
be done or
provided.
Cf. R.D. Act,
s. 179.
Cf. subs. (1)
of this s.

(2) (a) Where satisfied that an agreement mentioned in subsection (1) of this section has not been entered into or is not likely to be entered into within what, in his opinion, is a reasonable time, or that an agreement so mentioned having been entered into, the work, maintenance, or repair, is not likely to be carried out or the service provided in what, in his opinion, is a reasonable time, the Minister may declare that the work, maintenance, or repair, shall be carried out or the service shall be provided, and cause to be served on the council or councils concerned notice of his declaration, with details of the work, repair, maintenance, or service.

Cf. subs. (3)
of this s.

Cf. s. 324
post.

(b) If within one hundred and five days of the last service of the notice, an agreement mentioned in subsection (3) of this section has not been entered into, or a magisterial order mentioned in section three hundred and twenty-four has not been made, or having been made has been set aside or invalidated, the Minister may make such further declaration regarding the subject matter of his former declaration as a stipendiary magistrate has authority to make by an order under this Division in respect of that subject matter on the application of a council, and the Minister shall cause notice of his further declaration to be served on the councils concerned.

Agreement
between
municipal-
ties relating
to works
after
Ministerial
notice.
Cf. R.D. Act,
s. 180;
M.C. Act,
s. 262; and
subs. (1) and
(2) of this s.

(3) The provisions of subsection (1) of this section relating to notice to treat and authority to enter into agreements apply in respect of councils served with notice of the Minister's declaration or further declaration mentioned in subsection (2) of this section, as if those provisions were with appropriate adaptations repeated in this subsection.

Ss. 323, 324, 325.

323. Where during a period of thirty-five days after service under subsection (1) or subsection (3) of section three hundred and twenty-two of a notice to treat the councils concerned do not agree in respect of the subject matter of the notice, any of those councils may, on complaint made under the Justices Act, 1902, that the notice to treat having been served on a council, no agreement has been reached, issue a summons calling on the other council or councils to show cause why the work or service mentioned in the notice should not be carried out or provided.

Magistrate may summon municipality failing to treat.

Cf. R.D. Act, s. 181; and M.C. Act, s. 263.

Cf. s. 322 (1) and (3) ante.

324. On the return of the summons, a stipendiary magistrate constituting a court of summary jurisdiction may, upon proof of service of the notice to treat, and upon the appearance of both or all parties, or if a party so summoned does not appear, upon proof of service of the summons upon that party—

Magistrate may apportion work and order execution.

Cf. R.D. Act, s. 182; and M.C. Act, s. 264.

- (a) hear and determine the matter in question;
- (b) by order apportion the work or service and expense between the councils, or direct one or some of them to carry out the whole of the work or provide the whole of the service, and the other or others of them to pay portion of the expense, or make periodical payments in respect of the expense of the carrying out of the work or the provision of the service; and
- (c) provide, similarly, for the future maintenance, repair and continuation of the work when carried out or the service when provided.

325. A council has power to do, provide, perform, maintain, repair, and continue works or services, in accordance with an agreement entered into, or a magisterial order made, or a declaration of the Minister notice of which has been served upon it, or permission of the Minister given, under this Division, and to bear the expense of doing so from its municipal fund.

Works may be executed accordingly. Cf. R.D. Act, s. 183.

Cf. s. 326 (2) post as to permission.

On omission,
Minister
or either
party may
execute and
recover
expenses.
Cf. R.D. Act,
s. 184; and
M.C. Act,
ss. 265, 266.

326. (1) If a council omits to do, provide, or continue a work or service which it ought to do, provide or continue pursuant to agreement so entered into or a magisterial order so made or a notice of the Minister's declaration so served, the Minister may cause the work to be done, or the service to be provided, or continued, and may authorise such acts and things to be done as are necessary for that purpose, and the council shall reimburse the Minister the amount of the expense incurred, from its municipal fund, but if it does not so reimburse that amount the Minister may recover it from the municipality in a court of competent jurisdiction.

(2) Any other council concerned may, with the permission of the Minister, do, provide, or continue anything which the Minister may cause or authorise to be done, provided, or continued under this section, and may recover the amount of the expense of doing so from the council in default in a court of competent jurisdiction.

Contribution
by other
municipal-
ities.
Cf. R.D. Act,
s. 185.
Cf. s. 321
ante.

327. (1) Where a council has carried out a work or provided a service, or maintains and repairs a work carried out or continues a service, which work or service is mentioned in section three hundred and twenty one, and the Minister is of opinion that the work or service is of benefit to a municipality which does not contribute or has not contributed to the expense of doing so at all or to an extent which the Minister considers just, the Minister may as often as is necessary declare that the Council of the latter municipality shall pay to the Council of the former either in a lump sum or by periodical payments such amount as the Minister considers a just contribution to that expense.

(2) If payment is not made in accordance with the declaration of the Minister, a municipality to which payment is due according to the declaration may recover in a court of competent jurisdiction the amount of the payment from the municipality from

Ss. 327, 328.

which the payment is due in accordance with the declaration as evidenced by a certificate purporting to be signed by the Minister.

(3) The Minister may—

- (a) make declarations and give permission, mentioned in this Division;
- (b) from time to time vary a declaration made or permission given by himself, or an order made by a stipendiary magistrate under this Division; and
- (c) by warrant signed by him authorise the Treasurer, out of money appropriated by Parliament for the purpose and placed by the Governor to the credit of a council in an account kept at the Treasury for general purposes, or as a municipal subsidy to the credit of a council, to satisfy wholly or in part the liability of the council under this Division.

Supplementary powers of the Minister.
Cf. R.D. Act, s. 186.

(4) Where under this Division the Minister makes a declaration or gives a permission or authorisation, or varies a declaration or magisterial order, it has effect according to its tenor as so made, given, or varied, as the case may be.

(5) A warrant issued by the Minister under paragraph (c) of subsection (3) of this section is conclusive as to the effect of matters stated in it, and has effect according to its tenor.

Cf. subs. (3) of this s.

328. (1) The respective councils of two or more municipalities may, from time to time, enter into and give effect to agreements relating to the carrying out and maintenance of works and the provision and maintenance of services, which works and services a council is authorised by this or another Part or under another Act to carry out or provide and maintain, whether the agreement is for the carrying out of the work or the provision of the service or the maintenance, in the district of any

Conjoint functions by two or more municipalities.
Cf. R.D. Act, s. 359.

Cf. s. 277 ante as to contracts with other municipalities, etc.

one of them or partly in the district of all or any of them, or in places which under this Act are regarded as being within those districts or any of them.

(2) In order that effect may be given to the provisions of this Act requiring or authorising the doing of a thing,

whether the giving of a notice, the making of or receiving a payment, the rendering of accounts, the supplying of information, the taking of proceedings, or any other thing, whether of the same kind as, or a different kind from, those here specified,

by, to, against, or in respect of a council, or other body or person, councils entering into an agreement under this section shall appoint and nominate in the agreement one of those councils as having the care, control, and management, of the work or service on behalf of all of them.

(3) The council so nominated shall, as soon as is reasonably practicable after the agreement has been made, give public notice of the making of the agreement and of its nomination in the agreement.

(4) Councils which are parties to an agreement so made may, from time to time, by further agreement vary the agreement, or may cancel it.

(5) Where councils enter into a further agreement varying a former agreement, the provisions of subsections (2) and (3) of this section apply in respect of the further agreement.

Of. subs. (2)
and (3) of
this s.

(6) Notwithstanding cancellation of an agreement, the council so nominated in the cancelled agreement at the time of cancellation, is regarded for the purposes mentioned in subsection (2) of this section, as the council having the care, control, and management of the work or service, until matters relating to the work or service are wound up and finalised.

Of. subs. (2)
of this s.

Ss. 328, 329.

(7) The nomination of a Council in an agreement under this section, is for the purposes of subsection (2) of this section and does not affect the rights and obligations of the councils between themselves under the agreement.

Cf. subs. (2)
of this s.

(8) Differences arising between councils which are parties to an agreement entered into under this section, are determinable only by the Governor.

329. (1) The Governor at the request made by the councils of two or more municipalities may, by Order constitute as a county district or as a regional district for local government purposes whether under this or another Part or under another Act, the whole or portion of the combined area of the district of those municipalities and may from time to time by Order alter the boundaries of a county district or of a regional district so constituted.

Counties or
regional
groups.
Cf. N.S.W.
L.G. Act,
Pt. XXIX.,
Divs. 1-4.

(2) (a) In an Order constituting a county district or regional district the Governor shall assign a name to the district and shall specify the number of members to be allotted to the district and shall specify the number of members to be nominated by each constituent council.

(b) The Governor may from time to time by Order alter that name and that number.

(3) The Governor may by Order dissolve a county district or a regional district and on a day specified in the Order may settle and adjust the accounts of the district.

(4) Local government in a county district or in a regional district is committed subject to this Act to a county council or regional council, as the case may be, consisting of the allotted number of persons appointed not later than the fifteenth day of June in each year for one year by each of the constituent councils.

(5) A county council and a regional council shall at a meeting of the county council or the regional council, as the case may be, to be held in the month of June in each year elect for one year a chairman from among its members.

(6) The provisions of this Act relating to the powers and duties of members of a council apply to the members of a county council and to the members of a regional council, and the provisions of this Act relating to the conduct of meetings of a council apply as far as practicable to meetings of a county council and of a regional district.

(7) A county or regional council is a body corporate.

(8) The chairman may resign his office by a written resignation signed by him.

(9) Where an extraordinary vacancy occurs in the membership of a county council or a regional council, the constituent council concerned shall at its next meeting held after the occurrence of the vacancy, appoint a person to fill the vacancy, and the person so appointed fills the vacancy accordingly.

(10) Where an extraordinary vacancy occurs in the office of chairman, the county council or regional council affected shall cause it to be filled at a meeting to be held for that purpose within fourteen days from the occurrence of the vacancy.

(11) A county or regional council shall exercise only such functions as are delegated to it by the constituent councils.

(12) For the purpose of carrying out its functions the county or regional council may delegate to a constituent council the right to carry out a duty or act on its behalf.

(13) A county or regional council shall furnish to each constituent council a full statement of its transactions during each financial year, together with a copy of its annual financial statements.

(14) A county council or regional council has and may exercise within its district the powers of the constituent councils in respect of the functions which have been delegated to it, except the power to impose a rate.

(15) A county or regional council not later than the twenty-third day of June in each year shall prepare and adopt estimates for the financial year then next following, showing on the one side the total estimated expenditure for the year, and on the other side the estimated receipts other than from rates.

(16) If it is necessary that a rate be imposed to make good a deficiency revealed by the estimates, the county or regional council shall calculate the amount required from each constituent council in the form of rates, using for the purpose of the calculation the valuation of each of the constituent councils based on the unimproved value of land or the annual value of land in accordance with whichever method is adopted by each constituent council, and serve on each of them not later than the thirtieth day of June in each year a precept calling upon the constituent council to pay to the county or regional council the sum specified in the precept.

(17) The constituent councils, on receipt of a precept from the county or regional council, shall include in their estimates of expenditure a sum equal to the amount of the precept, and shall include in their general rate imposed under this Act a sum sufficient to raise the amount of the requirement of the precept.

(18) Each constituent council shall pay to the county or regional council the amount of the precept in four quarterly instalments the first of which is payable not later than the first day of September in each year.

(19) A county or regional council may borrow money for the purposes of carrying out its functions only if the power to borrow is specifically conferred in the delegation of functions, and then only with the prior approval of a majority of the constituent councils and the approval of the Minister, but its power to borrow is not otherwise limited.

(20) (a) Where the terms of the delegation of functions do not specifically confer on a county or regional council the right to borrow money, the county or regional council may issue a precept for the sum it requires upon each constituent council which shall then proceed to raise a loan to the amount and on terms required by the county or regional council, and until the sum is received by it, the regional or county council may borrow money on overdraft of its current account from a bank.

(b) If a poll is demanded in any of the constituent districts and on being taken results in the council in whose district the poll is taken being forbidden to borrow the necessary money, but in a majority of the constituent districts no poll is demanded, or, if demanded, when taken has resulted in a majority of the constituent councils being authorised to proceed to raise a loan, the county or regional council shall refer the matter to the Minister, who, notwithstanding the decision of a poll to forbid the raising of the loan, may authorise the loan to be raised by the council on such terms as he thinks fit.

(21) The provisions of this Act relating to the keeping and audit of the accounts of a municipality apply to county and regional councils but the accounts shall, unless the Minister directs otherwise, be audited by a Government Inspector of Municipalities nominated by the Minister.

(22) Where a county or regional council is formed to exercise functions which have previously been exercised in their districts by any of the constituent councils, the Governor may settle accounts between them in respect of assets and liabilities, if any, taken over by the county or regional district, and may take such action as he considers necessary to preserve the rights of officers affected.

(23) The Governor may make regulations to control the formation of county or regional districts, and the functions of their councils.

(24) Differences arising between a county or regional council and its constituent councils are determinable only by the Governor.

*Division 6.—Obstruction of Streets, Ways,
Watercourses, Etc.*

Part XII.
Div. 6.

330. A person who unless by authority of an Act displaces, takes up, or makes an alteration in the soil, pavement, flags, sods, or other material of a street, way, path, or footpath, or a public place or public reserve, under the care, control, and management of a council, or a fence thereon, or removes any scrapings thereof or sand thereon without the consent in writing of the council, commits an offence.

Displace-
ment, etc.,
of materials
of streets.
Cf. M.C. Act,
s. 267.
Cf. s. 665
post.

Penalty: Fifty pounds, and also a further penalty not exceeding ten shillings for every square foot of pavement, flags, sods, or other materials of the street, way, path or footpath, exceeding one square foot so displaced, taken up, or altered.

331. (1) The council of a city or a town shall in the city or town, and the council of a shire shall in townsites in the shire, open and keep open for public use and free from obstruction surveyed and reserved streets or ways declared under this or any other Act as being required for public traffic, unless precluded from doing so because by the provisions of an Act the power to do so is conferred on another authority, or because of other provisions of an Act.

Streets to be
opened and
kept open by
councils.
Cf. M.C. Act,
s. 268.

(2) A street or way is to be regarded as being required for public traffic unless the council and the Minister decide otherwise.

(3) The Minister shall cause notice of a decision so made and the cancellation of a decision so made to be published in the *Gazette*, and the decision or cancellation takes effect according to its tenor when the notice is so published.

Part XII.,
Div. 6.

Ss. 332, 333.

Penalty for
obstructing
street.
Cf. R.D. Act,
s. 337.

332. (1) A person who—

- (a) wilfully and unlawfully obstructs a street or way;
- (b) having unlawfully obstructed a street or way, neglects or refuses to remove the obstruction when lawfully required so to do by the council; or
- (c) when a street or way has become obstructed by a tree or portion of a tree which has fallen from its position on or over land owned or occupied by him, neglects or refuses to remove the obstruction when required so to do by the council,

commits an offence.

Penalty: Fifty pounds, and in addition the costs incurred by the council in removing the obstruction.

(2) A person who by erecting a building, fence, or other structure, unlawfully encroaches upon a street or way or who unlawfully permits a tree, shrub, or hedge to encroach upon a street or way commits an offence.

Penalty: Fifty pounds and in addition a further penalty not exceeding two pounds for every day during which the offence continues after he is given written notice by the council of the encroachment.

Removal of
obstruction
or encroach-
ment.
Cf. M.C. Act,
s. 269.

(3) The council shall cause to be served on the person who owns the thing so obstructing or so encroaching, a written requisition requiring him to remove it immediately, and if he does not do so the council may cause it to be removed and may recover from him the amount of the expense of doing so in a court of competent jurisdiction.

Temporary
closing of
street by
means of
unlocked
swing gate.
Cf. M.C. Act,
s. 270.
Cf. ss. 292,
294, 301,
ante,
and ss. 334,
335, post as
to temporary
closure.

333. (1) Where the temporary closing of a street, or way, under the care, control, and management, of the council of a city or town by means of unlocked swing gates will not be injurious to the public, or where the traffic is so slight that the temporary closing of the street or way would not create inconvenience to the public, the Governor may, on

application of the council, from time to time by Order authorise the council to grant to the owner, or occupier, of land abutting the street or way, a license to close it with unlocked swing gates or a fence and motor traffic pass for a period specified in the license, and may whether on the application of the council or his own motion, by further Order at any time cancel the Order or license.

(2) A council shall not resolve to apply for an Order under subsection (1) of this section, until the expiration of thirty-five days from publication in a newspaper circulating in the district of a notice of the motion for the resolution, specifying the situation of the street or way and the period during which it is proposed that the street or way is to be so closed, and has considered objections, if any, to the proposals in the notice.

(3) Where by authority of an Order made under subsection (1) of this section the council so closes a street or way the council shall cause notice of the period during which the street or way is closed to be similarly published.

(4) A council making application under this section shall cause the application and a copy of its resolution to make the application, to be delivered to the Minister who, if satisfied that the council has complied with the requirements of subsection (2) of this section, shall present them to the Governor.

(5) The power conferred upon the Governor to cancel an Order authorising a council to grant a license under this section may be exercised during the period specified in the license and on cancellation of the Order the license is cancelled and no person is entitled to compensation because of the cancellation.

Power temporarily to close streets not in use. Cf. M.C. Act, s. 271. Cf. ss. 287, 292, 301, 333 ante and s. 335 post as to closure.

334. (1) Where, in the opinion of the Governor, a street or way under the care, control, and management of the council of a city or town is not required as a public thoroughfare and that its closure will not inconvenience the public, the Governor, on the application of the council, may by Order temporarily close the street or way.

Cf. subs. (1) of this s.

(2) (a) Before the council passes a resolution to make application for an Order under subsection (1) of this section it shall cause

notice of the motion for the resolution, of the situation of the street or way, and of the period during which it proposed that street or way is to be closed, and stating that a person who desires to object to the closure may deliver written grounds of his objection to the council,

to be published in the *Gazette* and in a newspaper circulating in the district, and to be served on the owners and occupiers of land abutting the street or way.

(b) In the notice the council shall state that the period within which objections may be so made,

(i) is in the case of publication of the notice, thirty-five days from the date of the last publication;

(ii) in the case of service of the notice, thirty-five days from the date of service.

(3) If the council passes the resolution it shall send the application, a copy of the resolution, and the objections it has received, if any, to the Minister, who, if satisfied that the council has complied with the requirements of subsection (2) of this section, shall present them to the Governor with the Minister's recommendation regarding the application.

(4) (a) If the Governor makes an Order closing the street or way the council with the consent of the Minister may let the land comprised in the street or way.

(b) The council shall not without the prior consent of the Governor let the land, otherwise than by public tender.

(c) If the council lets the land, it shall let it from week to week only, and shall pay the rental and other money, if any, received into the municipal fund.

(5) The Governor may by subsequent Order cancel an Order so closing a street, to take effect on the expiration of a week for which the land is let, if it is let, or at any time if it is not let and no person is entitled to compensation because of the cancellation.

335. (1) A person desiring to place or maintain a gate and a motor traffic pass, or a gate only, or a motor traffic pass only or a fence and a motor traffic pass across a street or way under the care, control, and management of the council of a shire, may apply to the council for permission to do so.

Gates across
streets.
Cf. R.D. Act,
s. 189.
Cf. ss. 287,
292, 301, 333,
and 334 ante
as to closure.

(2) The council may grant or refuse permission and may, before dealing with the application, require the applicant to publish notice of the application in such manner as the council thinks fit.

(3) The council may grant permission to place a gate and a motor traffic pass, or a gate only, or a motor traffic pass only, or a fence and a motor traffic pass across the street or way, as the case may be, and if granted the permission authorises the placing and maintenance of the gate and motor traffic pass, or the gate or the motor traffic pass, or the fence and motor traffic pass as the case may be, for one year, and the council may renew permission for it to remain so placed for one year only at a time.

(4) Where a person has applied for permission for a gate only, the council may, as a condition of the granting of the permission, require that in addition to the gate, the person shall construct and maintain,

during the period for which the permission is granted or renewed, a motor traffic pass of such design and description with such material and in such manner as the Commissioner of Main Roads approves and requires, and if the person fails in any respect to comply with a requisition made by the council under this subsection the council may immediately cancel the permission.

(5) Where a person has been granted permission for a gate only he may at any time, with the permission of the council, construct and maintain across the road during the period for which the permission is granted or renewed, in addition to the gate, a motor traffic pass of such design and description with such material and in such manner as has first been approved by the Commissioner of Main Roads.

(6) (a) Where a person is granted permission to construct and maintain a gate and a motor traffic pass or a motor traffic pass only, he shall cause the motor traffic pass to be constructed and maintained in accordance with such design and description, with such material and in such manner as is approved and required by the Commissioner of Main Roads.

(b) If the motor traffic pass as constructed and maintained fails in any respect to comply with the requirements of the Commissioner, the council may and shall if so required by the Commissioner immediately cancel the permission granted by the council.

(7) The council shall keep a register of gates and motor traffic passes constructed in combination, and of gates only, and of motor traffic passes only, and of fences and motor traffic passes permitted to be constructed and maintained under this section, and of gates permitted to be constructed and maintained under a repealed Act, and shall provide for the annual registration of those gates and motor traffic passes, and of those gates only, and of those motor traffic passes only and of those fences and motor traffic passes respectively, and shall charge a

fee not exceeding ten shillings or such other sum as is prescribed by the regulations and not less than two shillings and sixpence, or such other sum as is so prescribed for each gate to be paid by the person to whom the permission is granted.

(8) The council may at any time withdraw a permission granted under this section, or a permission granted under a repealed Act, and may require the gate and motor traffic pass, or the gate, or the motor traffic pass, or the fence and motor traffic pass as the case may be, permitted under this section, or permitted under a repealed Act to be removed by the person by whom it is being maintained, and if the requisition of the council is not complied with, the council may remove the gate and motor traffic pass, or gate, or motor traffic pass, or the fence and motor traffic pass, as the case may be, and recover the expense of the removal from the person failing to comply with the requisition in a court of competent jurisdiction.

(9) A person who leaves a gate open, or who damages a gate or a motor traffic pass during the period of its registration under this section, commits an offence but this subsection does not prejudice a right of action for damages which the owner of the gate or motor traffic pass has against that person.

(10) (a) The Governor may require a council to give notice and remove a gate or to exercise a power conferred by subsection (8) of this section, and the council shall forthwith proceed to act in accordance with the requisition.

*Cr. subs. (8)
of this s.*

(b) If the council does not do so the Minister may carry the requisition into effect, and for that purpose may exercise the powers of the council.

(11) (a) The council may from time to time impose such conditions as it thinks fit as to the erection and maintenance of a gate across a street.

Cf. par. (a)
of this subs.

(b) Without affecting the generality of the power conferred by paragraph (a) of this subsection, a council may require the gate to be of a specified size, and that the gate be equipped with wing fences.

(c) A person shall not erect a gate across a street unless he complies with the conditions imposed by the council.

(d) A person who erects a gate across a street or holds a license for the gate shall maintain the gate in accordance with conditions so imposed and shall place and keep on the gate, conspicuously marked in black letters not less than four inches high the words, "Public Road".

(12) (a) Where land abutting a street across which gates registered under this section are maintained is fenced on the abutting boundary, the owner for the time being of other land, if and during such time after the seventeenth day of December, one thousand nine hundred and nineteen, as he, or any tenant of his, makes use of or avails himself of the whole or part of the fence in connection with that other land, is liable to pay to the owner for the time being of the firstmentioned land interest on half the value for the time being of so much of the fence as he or his tenant so makes use of or as he or his tenant so avails himself of at the rate of five pounds per centum per annum, and also half the cost of repairs if any effected during that time to so much of the fence as he or his tenant makes use of or avails himself of.

(b) In the absence of agreement to the contrary, an amount so paid by an owner of land who is not in occupation of it, is recoverable from his tenant of the land, unless the fence was being so used or availed of before the tenancy, or the tenant holds under a lease or agreement made after the seventeenth day of December, one thousand nine hundred and nineteen.

(c) The provisions of this subsection apply whether the land was fenced or the gates erected before or after the coming into operation of this Act.

On 17th Dec.,
1919, Act No.
38 of 1919
came into
operation.

336. (1) If there is an excavation in a street or way, or in land adjoining a street or way in or adjoining the district of a municipality and the council of the municipality is of opinion that the excavation is dangerous, the council may—

Council may require excavation to be filled in or fenced.
Cf. R.D. Act, s. 190.

- (a) fill in or fence the excavation; or
- (b) cause notice in writing to be served on the owner or occupier of the land, requiring him to fill in or securely fence the excavation.

(2) If the owner or occupier has not within seven days after service of the notice, or such extended time as the council allows, complied with the requirement to the satisfaction of the council, the council may fill in or fence the excavation and recover the amount of the expense of doing so from the owner or occupier in a court of competent jurisdiction without affecting his liability to penalty.

(3) An occupier of property upon whom, under the provisions of this section, a penalty is imposed, or who is put to the expense, may sue for and recover the amount of the penalty and expense and costs ordered against him in connection with the penalty or expense from the owner of the property in a court of competent jurisdiction but if the owner proves an agreement by the occupier to carry out the work in respect of which the penalty or expense has been incurred, the agreement is a good defence to the owner in the proceedings brought against him by the occupier.

337. (1) Unless by authority of an Act, no person shall without the consent of a council mine under a street whether public or private in or adjoining the district of the municipality.

Restriction of mining under streets, etc.
Cf. Eleventh Schedule, M.C. Act, para. 36.

(2) The Local Court held nearest the offices of the council may, upon application being made to it by or on behalf of a council make orders restraining persons from mining, unless by authority of an Act, under a street whether public or private in

or adjoining the district of the municipality, and may make such orders as to costs of and incidental to applications so made as the Court thinks fit and orders made under this subsection are enforceable as orders of Local Courts under the Local Courts Act, 1904.

(3) A council by its agents, servants and workmen may enter in and upon land which is in or adjoining the district of the municipality and which adjoins a street whether public or private and fill in a mine made under the street if the mine has been sunk after the first day of January, one thousand nine hundred and seven, without the consent of the council or without authority of an Act, and may recover the amount of the expense of doing so in a court of competent jurisdiction from the person sinking the mine, or the person on whose behalf the mine is sunk.

On 1st Jan.,
1907, Act No.
32 of 1906
came into
operation.
See s. 1.

Obstruction,
etc., of water-
courses, etc.
Cf. M.C. Act,
s. 272.

338. (1) A person who, unless authorised to do so by a council or by an Act, alters, obstructs, or interferes with a ditch, creek, gutter, drain, watercourse, tunnel, or bridge after it has been made by or taken under the care, control, or management of the council, commits an offence.

Obstruction
of water-
courses by
trees, logs,
etc.
Cf. M.C. Act,
s. 273.

(2) A person who wilfully or negligently causes or permits loose trees, logs, timber or brushwood which is growing, or which has been growing on land occupied by him, to fall into a stream, river, or watercourse, commits an offence.

(3) The council may require a person who makes or causes to be made the alteration, obstruction or interference, to reinstate, remove the obstruction from, repair, and make good, the ditch, creek, gutter, drain, watercourse, tunnel, or bridge, and if he does not comply with the requirement, the council may do so, and may for the purpose of doing so, lawfully enter upon land by its agents, servants, and workmen, and carry out necessary work, and may recover

Ss. 338, 339, 340.

the amount of the expense of doing so from him in a court of competent jurisdiction without affecting his liability to penalty.

339. (1) A person who, unless authorised to do so by the council or by an Act, alters, obstructs, or interferes with the natural flow of surface water on, through, or across, a street, way, or land, so as to cause a street or way under the care, control, and management of the council, to be injuriously affected by water commits an offence.

Obstruction,
etc., of
flow of
water.
Cf. Vic. L.G.
Act, s. 616.

Penalty: Twenty pounds.

(2) The council may require a person who makes or causes to be made the alteration, obstruction, or interference, to reinstate, repair and make good the street or way and to remove the cause of the obstruction, and do what is necessary to restore the natural flow of the surface water and if he does not comply with the requirement, the council may do so, and may for the purpose of doing so, lawfully enter upon land by its agents, servants, and workmen and carry out necessary work, and may recover the amount of the expense of doing so from him in a court of competent jurisdiction without affecting his liability to penalty.

340. (1) Where land, which adjoins or abuts a street or other public place within a city, town, townsite or portion of a district of a municipality, which portion is prescribed by the council of the municipality in a by-law made by the council as a portion to which this section applies, is not fenced in or enclosed to the satisfaction of the council, or is overgrown with underwood or bushes, or the fence of which has been allowed to fall into disrepair the council may, from time to time, by written notice served on the owner of the land, require him to clear the land, and so far as it adjoins or abuts the street or public place enclose the land with a substantial fence of such description and materials and within such time as is specified in the notice.

Council
may compel
owner to
clear and
fence land.
Cf. M.C. Act,
ss. 274 and
275.

(2) In order to prevent drift sand, soil, or other refuse from drifting or being carried from land on to a street or other public place to the obstruction or annoyance of the passers-by or others, the council may by written notice served on the owner of the land, require him to enclose the land with a close and substantial fence of such description and materials and within such time as is specified in the notice.

(3) If the owner served with notice of a requisition under subsection (1) or subsection (2) of this section does not comply with the requisition, the council may do so at his expense, and for the purpose of doing so may by its agents, servants and workmen lawfully enter upon land and carry out necessary work, and the expense of doing so is recoverable by the council from the owner for the time being of the land in the same manner as rates are recoverable under this Act, and until recovered is a charge upon the land.

Overhanging
gutters or
eaves.
Cf. M.C. Act,
s. 276.

341. (1) A council may by written notice require the owner or occupier of a building, balcony, shop front, verandah, or other property abutting a street, or other public place, in the district of the municipality, to so construct the roof-flats, or gutters of the building, balcony, shop front, verandah or other property, and to so provide gutters and pipes that no water from the roof-flats or gutters drips upon or runs over any part of the street, or public place, and may by the notice also require him to cause the water from the roof-flats or gutters to be conducted through a pipe or trunk under the footpath, if any, to the gutter or drain of the street, or public place, in such manner as the council approves.

(2) An owner or occupier who does not comply with the requisition within fourteen days from the service of the notice upon him commits an offence.

(3) The council may cause to be done anything necessary to effect such alteration or improvement as is required, at the expense of the owner or occupier, and may lawfully enter land, by its agents, servants, and workmen, and carry out necessary work, and may recover the amount of the expense of doing so from him in a court of competent jurisdiction without affecting his liability to penalty.

(4) An occupier of property upon whom, under the provisions of this section, a penalty is imposed, or who is put to the expense, may sue for and recover the amount of the penalty and expense and costs ordered against him in connection with the penalty or expense from the owner of the property in a court of competent jurisdiction but if the owner proves an agreement by the occupier to carry out the work in respect of which the penalty or expense has been incurred, the agreement is a good defence to the owner in the proceedings brought against him by the occupier.

342. A council may provide temporary or permanent fences for preventing the access of cattle, horses, or vehicles to footpaths, and for the general safety of foot passengers and the prevention of accidents, and from time to time may paint, repair, remove and replace fences so provided.

Council
may fence
footpaths.
Cf. M.C. Act,
s. 277.

343. The owner or occupier of land adjoining a street, way, or footpath, shall keep the street, way and footpath, clear from trees, roots, grass, weeds, seedlings, suckers, or off-sets, growing or spreading from the land, but if he does not do so, the council may cause written notice to be served on the owner, requiring him to remove them within fourteen days of service of the notice, and if he does not comply with the requisition the council may cause them to be removed, and may for the purpose lawfully enter upon land, by its agents, servants, and workmen and carry out necessary work, and may recover the amount of the expense of doing so from him in a court of competent jurisdiction.

Owners
to keep
hedges, etc.,
from
spreading
over street.
Cf. M.C. Act,
s. 278.

Channels
from mines.
Cf. R.D. Act,
s. 200.

344. A council may require a person engaged in mining operations or other operations connected with mining to construct, fence, or otherwise protect and maintain, to the satisfaction of the council, and in accordance with the by-laws, if any, made under this Act, proper channels and culverts to carry away cyanide or other water discharged upon a street or other public place from land used for or in connection with mining or other operations connected with mining, or the council may itself construct, fence, or otherwise protect and maintain the channels and culverts, and for the purpose of doing so, may lawfully enter land, by its agents, servants, and workmen and carry out necessary work, and may recover the amount of the expense of doing so in a court of competent jurisdiction from the person so discharging waters.

Trees
obstructing
or injuring
streets.
Cf. M.C. Act,
s. 279.

345. (1) If a council is of opinion that a street, or way under its care, control, and management, is obstructed or otherwise prejudicially affected by a tree situated on land adjoining the street or way, a court of petty sessions may on complaint to that effect by the council, after a summons has been served on the owner and occupier, or upon the occupier only if the owner cannot be found, of the land on which the tree is situated, make an order for the removal of the tree or part of the tree by the owner or occupier as the court thinks fit.

(2) In default of compliance with an order so made within eight days after a copy of the order has been served on the owner or occupier, the owner or occupier, as the case may be, is liable to a penalty not exceeding fifty pounds, and the council may remove the tree or part of it at the expense of the owner or occupier, and for the purpose may lawfully enter land, by its agents, servants, and workmen and carry out necessary work, and may recover the amount of that expense from him in a court of competent jurisdiction without affecting his liability to penalty.

(3) An occupier of property upon whom, under the provisions of this section, a penalty is imposed or who is put to the expense, may sue for and recover the amount of the penalty and expense and costs ordered against him in connection with the penalty or expense from the owner of the property in a court of competent jurisdiction but if the owner proves an agreement by the occupier to carry out the work in respect of which the penalty or expense has been incurred, the agreement is a good defence to the owner in the proceedings brought against him by the occupier.

Division 7.—Levels of Streets.

Part XII.
Div. 7.

346. In this Division unless the context requires otherwise—

Interpreta-
tion.
Cf. Vic. L.G.
Act, s. 562.

“street” means street or portion of the street,
as the case requires.

347. (1) This Division applies—

Application
of this
Division.
Cf. Vic. L.G.
Act, s. 561.

(a) in the districts of cities and towns;

(b) in

- (i) the districts of shires;
- (ii) parts of districts of shires;
- (iii) land adjoining districts or parts of districts of shires;

to which the Governor, by Order, declares
this Division to apply; and

(c) in townsites.

(2) The Governor may make Orders mentioned
in subsection (1) of this section.

Cf. subs. (1)
of this s.

348. (1) Unless precluded from doing so, because by the provisions of an Act, the power to do so is conferred upon another authority, or because of other provisions of an Act, the council may—

Council has
power to fix
levels of
streets.
Cf. Vic. L.G.
Act, s. 561.

(a) fix the levels of the streets in the district
of the municipality;

(b) provide for two or more traffic lanes at different elevations in the streets, and fix the levels of the traffic lanes; and

(c) fix the levels of footpaths in the streets.

Retrospec-
tivity.

Cf. subs. (1)
of this s.

(2) Councils are to be regarded as always having had the power conferred by subsection (1) of this section.

Cf. subs. (4)
of this s.

(3) Where a council constructs a street having two or more traffic lanes, the council, unless exempted from doing so under subsection (4) of this section—

(a) shall provide access from a higher lane to a lower lane at intervals of not less than—

(i) five chains for pedestrians; and

(ii) ten chains for vehicles; and

(b) shall, in order to conduce to safety, provide and maintain a fence along the side of the higher lane, between the places where those accesses are provided.

(4) Where, having regard to the particular circumstances of the case, the Governor is of opinion that it is impracticable or unnecessary for a council to comply with all or some of the requirements of subsection (3) of this section, the Governor may by Order wholly or partly exempt the council from complying with those requirements as he thinks fit, in the particular case.

Cf. subs. (3)
of this s.

Prohibition
of laying out
and making
new street
or way
unless levels
first fixed
by council.
Cf. M.C. Act,
s. 281.

Cf. subs. (6)
of this s.

Cf. subs. (1)
of this s.

349. (1) No person, unless authorised by Act to do so, or unless exempted under subsection (6) of this section, shall lay out or make a new street or way in the district of a municipality, unless the council has first fixed the levels of the street or way.

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence.

(3) Without affecting his liability for punishment for the offence, a person who contravenes those provisions, shall pay to the council the amount of expenses incurred by the council and compensation,

if any, payable by the council, in consequence of the council subsequently fixing for the street or way levels different from those laid out or made in contravention of those provisions.

(4) A person who is not so authorised and who desires to lay out or make a new street or way, may serve on the council a plan showing the proposed situation of the street, and an application in writing signed by him requesting the council to fix the levels of the proposed street or way.

*Cf. M.C. Act,
s. 280.*

(5) On so being served with a plan and application the council unless exempted from doing so by subsection (6) of this section shall in accordance with the requirements of this Division, take the necessary steps to fix the levels.

*Cf. subs. (6)
of this s.*

(6) Where having regard—

- (a) to the general state of development of the locality in which the applicant proposes to lay out or make the street or way;
- (b) to the state of development of streets, and of drainage in the locality; and
- (c) to such other circumstances of the case as he considers material;

the Governor is of opinion that it is not practicable at that time to fix levels for the proposed street or way, he may, by Order, exempt the council from taking steps under subsection (5) to fix the levels, and exempt the applicant from the operation of subsections (2) and (3) of this section.

*Cf. subs. (2),
(3) and (5)
of this s.*

350. (1) Where a council proposes, whether of its own motion, or on being required under subsection (5) of section three hundred and forty-nine to do so, to fix the levels of a street or way or a proposed street or way it shall—

*Notice by
council or
intention to
fix levels.
Cf. Vic. L.G.
Act, ss. 562
and 563.
Cf. s. 349 (5)
ante.*

- (a) cause to be available for inspection by persons who desire to inspect them, plans showing the situation of the street or way, or proposed street or way, and drawings showing the proposed levels; and

(b) cause to be published in a newspaper circulating in the district a notice stating—

- (i) the name, if any, and the situation of the street or way, or proposed situation of the proposed street or way;
- (ii) that the plans and drawings may be inspected by persons who desire to inspect them, at a time and place specified in the notice;
- (iii) that persons who desire to do so may make representations to the council relating to the proposals at a place and a time and on a day not being less than thirty-five days from the publication of the notice.

(2) The council shall meet at the time and place specified in the notice for the hearing of representations relating to the proposals and shall hear persons who desire to make representations.

(3) The council shall consider representations so made and after a consideration of them may decide—

- (a) to abandon the proposals;
- (b) to give effect to the proposals unaltered; or
- (c) to give effect to the proposals with alterations.

(4) The council having made a decision shall cause notice of the decision to be published in a newspaper circulating within the district but shall not give effect to the decision—

- (a) until after the expiration of at least fourteen days from publication of the notice; nor
- (b) if there is an appeal under subsection (5) of this section against the decision, until the appeal is determined.

(5) Within fourteen days of publication of notice of the decision, a person who is dissatisfied with it may in accordance with the regulations appeal against the decision to the Local Court held nearest the offices of the council.

(6) Local Courts have jurisdiction to hear and determine appeals mentioned in subsection (5) of this section and may make such orders confirming, quashing, or varying, the decisions of the council, and as to payment of the costs of and incidental to the appeal as the Court thinks fit, and orders so made are enforceable as orders made under the Local Courts Act, 1904, and are not subject to appeal.

Cf. subs. (5)
of this s.

351. (1) Where a council alters the levels of a street or way after having so fixed them, the council shall make full compensation to a person having an estate or interest in land which is injuriously affected by the alteration for that injurious affection, except to the extent that he has aggravated the injurious affection by building upon, or otherwise using his estate or interest in, the land after the levels were so fixed, without due regard to the levels as so fixed.

Municipality
liable for
compensation
for
altering
fixed levels.
Cf. Vic. L.G.
Act, s. 564.

(2) Where for at least twelve months before the coming into operation of this Act the surface or part of the width and length of the surface of a street has been formed in such manner, whether by paving, or grading, or otherwise, as to justify a reasonable belief in a person having an estate or interest in land abutting or adjacent to the street or portion so formed, that the levels of the street have been permanently established, and the council fixes levels different from those of the street as so formed, the council shall make compensation to him for injurious affection, if any, to his estate or interest resulting from the fixing of the levels.

(3) Where a council has altered the levels so fixed of a street, the council is not bound as one continuous operation to carry out construction work on the street in order to bring the surface of the

Cf. Vic. L.G.
Act, s. 564.

street into conformity with the levels as so altered, but may, from time to time, raise or lower, as the case may be, the surface of the street to a less degree than is necessary to achieve that conformity, without the municipality being liable to make compensation to anyone in consequence of doing so.

(4) (a) A person who desires to claim compensation under this section shall, within twelve months of the alteration or fixing of the levels in consequence of which he claims to be entitled to compensation, serve written notice stating the particulars of his claim upon the council.

(b) The compensation is that agreed by the parties, or if there is no agreement that determined only on a reference to arbitration.

Cf. s. 684
post as to
arbitration.

Before
altering
level of a
street,
council to
give notice
to owners,
and must
bear expense
of altering
position, of
waterpipes,
gaspipes, etc.
Cf. Vic. L.G.
Act, s. 565.

352. (1) If after so fixing the levels of a street in or under which anything, whether a pipe, main, conduit, works, or other thing whether of the same kind as or a different kind from those here specified, is lawfully laid, the council decides to raise, lower or otherwise alter the level of the street, the council shall from time to time as occasion requires by notice in writing require the person to whom the thing belongs to cause forthwith, or as soon as conveniently may be, the thing to be raised or lowered or otherwise altered in position in accordance with the altered level of the street.

(2) The council shall pay the expenses of altering the position of the thing and shall make to the owner of it for damage, if any, done to it, and to a person who sustains loss through altering its position full compensation as agreed between the parties, or if there is no agreement, as determined only on a reference to arbitration.

Cf. s. 684 post
as to
arbitration.

If owner
does not
alter
position of
pipes, etc.,
council may.
Cf. Vic. L.G.
Act, s. 566.

(3) If the person to whom the thing belongs does not proceed forthwith, or as soon as conveniently may be after the receipt of the notice, to cause it to be raised lowered or altered in such manner as the council requires, the council may itself cause it to be raised, lowered or altered as the council thinks fit.

353. (1) Where an authority, which is authorised by Act to erect, construct, or lay anything in or under a street, gives notice in writing to a council that it proposes, in or under a street under the care, control, and management, of the council, or shown on a plan of subdivision lodged in the Land Titles Office, to erect, construct, or lay the thing, the council shall forthwith, in accordance with the provisions of this Division, fix the levels of the street so far as necessary and to the extent to which the levels have not already been fixed.

On notice from statutory authority, council to fix levels.
Cf. Vic. L.G. Act, s. 567.

(2) Where a council proposes to fix the levels of a street, whether a notice has been so given or not, an authority so authorised, if dissatisfied with the proposal, has a right to make representations or to appeal similar to that which is conferred by section three hundred and fifty and a right to claim and receive compensation similar to that which is conferred by section three hundred and fifty-one.

Cf. ss. 350 and 351 ante.

Division 8.—Footpaths and Crossing Places.

354. A council—

Part XII.
Div. 8.

Council may pave footpaths.
Cf. M.C. Act, s. 284.

- (a) from time to time may cause the footpath or a part or parts of the footpath in a street or way of which the council has the care, control, and management to be paved, kerbed, or guttered in such manner as the council thinks fit; and may pay the expense incurred in doing so out of the general revenue of the municipality or out of loan moneys;
- (b) where the paving, kerbing and guttering is so provided by the council for the length of frontage of land on which there are buildings, owned or occupied by or on behalf, or under the control or management, of the Crown in right of the State, or a department, agency, or instrumentality of the Crown in right of the State, may recover

from the Crown in right of the State one-half of the amount of the expense of doing so, in a court of competent jurisdiction, unless on appeal brought within such time as is prescribed by the regulations against the application of this paragraph in respect of the building, by the Minister of the Crown having the administration of the Act under which the building is owned, occupied, controlled, or managed, or by such other person as is prescribed by the regulations, to the Minister, the latter decides otherwise.

Streets to be defined and width of footpaths determined.
Of. M.C. Act, s. 285.

355. A council—

- (a) may cause streets, ways, and other public places, of which the council has the care, control, and management to be correctly defined, and may determine the width and levels of the footpaths in the district of the municipality; and
- (b) shall, on request of an owner of land in the district or of his agent, furnish for his inspection a plan of those levels and alignments.

Footpaths in streets to be same width and level.
Of. M.C. Act, s. 286.

356. A council may cause the footpaths, of which it has the care, control, and management, to be made as nearly as practicable of the same width and level; and, for the purpose, may remove or reduce any paving, steps, unevenness of surface, or whatever obstructs, renders uneven, or contracts the footpaths, or any of them.

Crossing places over footpaths.
Of. M.C. Act, s. 287.
Of. s. 359 post.

357. A council may, having regard to the provisions of section three hundred and fifty-nine, fix places where crossings for vehicles and animals may be constructed from the paved portions of the carriage ways of streets and ways of which it has

Ss. 357, 358, 359.

the care, control, and management, to the common boundaries of the streets or ways and land abutting the streets or ways.

358. Upon the application of the sole owner, or of the majority in number of the owners, if more than one, of land, who require a communication with a street or way by means of a crossing, the council may, subject to the provisions of section three hundred and fifty-nine

Owner of property requiring communication with street.
Cf. M.C. Act, s. 288; and R.D. Act, s. 195.
Cf. s. 359 post.

- (a) permit the crossing to be constructed, under the superintendence and to the satisfaction of the council; or
- (b) construct the crossing and recover one-half of the expense of constructing it from that owner or, where there are more owners of the land than one, recover the one-half of the expense from those owners proportionately to the value of the interest of each in the land, in a court of competent jurisdiction.

Cost may be recovered by council.
Cf. R.D. Act, s. 195.

359. (1) In this section "main road" means a road proclaimed to be, or deemed to have been proclaimed, a main road for the purposes of the Main Roads Act, 1930, a Government road within the meaning of the Traffic Act, 1919, or a road declared to be a Government road under the provisions of the Public Works Act, 1902.

Approval of Commissioner of Main Roads necessary for construction of certain crossings.
Cf. No. 5 of 1930 as amended ss. 13 and 14; No. 60 of 1919 as amended s. 4; and No. 47 of 1902 as amended s. 86 (2).

(2) A person shall not construct a crossing for vehicles over a footpath into a main road from land on which premises other than premises used primarily for residential purposes are constructed, or on which premises other than premises intended to be so used are about to be constructed unless he first—

- (a) deposits with the Commissioner of Main Roads a plan and specifications showing clearly the place of the proposed crossing, the area to be occupied by it, the position of the crossing place and describing it, and

(b) obtains the approval of the Commissioner of Main Roads to construct it.

(3) Where the Commissioner of Main Roads refuses his approval, any person aggrieved by the decision of the Commissioner of Main Roads may appeal in writing against the decision to the Minister who may uphold, reverse or vary the decision, and the order of the Minister on appeal is final and is not subject to appeal.

(4) Where after the coming into operation of this Act a crossing is constructed contrary to the provisions of this section, the Commissioner of Main Roads may in such manner as he thinks fit close it and make good the footpath or verge affected by the closure and may recover in a Court of competent jurisdiction the expense incurred in doing so from the person for or on whose behalf it was constructed.

Council
may require
owners
and
occupiers
to make and
repair
crossings.
In default,
council may
act and
recover cost.
Cf. M.C. Act,
s. 289; and
R.D. Act,
s. 195.
Cf. s. 359
ante.

360. (1) A council may, having regard to the provisions of section three hundred and fifty-nine, from time to time, by notice in writing—

- (a) served on the owner or occupier of land abutting a street or way in the district of the municipality, require him to construct, subject to those provisions, or repair a crossing from the common boundary of the land and a street or way to the paved position of the carriage way of the street or way, and unless within twenty-one days after the service of the notice upon him he shows cause to the satisfaction of the council why he should not be so required to construct or repair the crossing or unless within that time he constructs or repairs the crossing to the satisfaction of the council, the council may construct or repair the crossing, and charge the owner or occupier with one-half of the expense of doing so; or
- (b) served on the owners or occupiers who have the right to use or who commonly do use, and whose land abuts, a way or private

way, require them to construct, subject to those provisions, or repair a crossing from the way or private way to the paved portion of the carriage way of an adjoining street or way, and unless those owners or occupiers, within twenty-one days after the service of the notice show cause to the satisfaction of the council why they should not be so required to construct or repair the crossing, or unless within that time they construct or repair the crossing to the satisfaction of the council, the council may construct or repair the crossing, and charge one-half of the expenses of doing so against the owners or occupiers in such proportions as the council determines.

(2) If after the expiration of fourteen days from the delivery to an owner or occupier of an account of money which has become payable by him under this section, the money, or part of it remains unpaid, the council may recover the amount unpaid from him in a court of competent jurisdiction.

Division 9.—New Building Lines.

Part XII.,
Div. 9.
Cf. No. 11 of
1925.
Acquisition
of land for
and in
connection
with streets.
Cf. No. 11 of
1925, s. 2.

361. In the acquisition by a municipality of land for the purpose of providing a new street, or extending, diverting, altering, or increasing the width of, an existing street, the council may in addition to such land as is actually necessary for the purpose, acquire land to such depth as the council thinks fit on both sides or either side of the proposed new street, or of the existing street as proposed to be extended, diverted, altered or increased in width.

362. A council may in respect of land so acquired by it—

Dealing
with land
when
acquired.
Cf. No. 11 of
1925, s. 3.

- (a) demolish or repair buildings or works on the land;
- (b) construct new buildings or erections on the land;

- (c) close, alter, widen, extend, or divert, an existing public way on the land;
- (d) construct and open new public ways on the land;
- (e) alter the levels of the land, and alter existing drains, and construct new drains and stormwater sewers on the land;
- (f) generally alter, remodel, and improve the land and buildings in such manner as the council thinks fit;
- (g) sell the whole or a portion of the land, in one or more lots, on such terms and conditions, including power where the whole of the purchase price is not paid at one time to take securities for the balance, as the council thinks fit; and
- (h) let or lease the whole or a portion of the land for such periods, notwithstanding the provisions of section two hundred and sixty-seven, and on such terms and conditions, as the council thinks fit.

Cf. s. 267
ante.

Power
to widen
streets.
Cr. No. 11 of
1925, s. 4.

363. (1) In addition to, and without limiting or otherwise affecting other provisions of this Act, the council may widen streets in accordance with the provisions of this section.

(2) The council may widen the carriage way of a street by including in the carriage way part or the whole of the space occupied by footpaths, and may provide footpaths in the street.

(3) The council may acquire for the purpose of footpaths, land abutting a street, and may limit the acquisition to a limited distance only, above and below or above or below the ground level or the intended level of the footpath.

(4) The council may so acquire land for footpaths on conditions reserving to the owners of the land—

- (a) rights to the continued possession, use, and occupation of existing cellars or rooms below the level of the new footpaths;

- (b) rights to the continued possession, use, and occupation, of existing buildings above the new footpaths;
- (c) rights of erecting, possession, using, and occupying, buildings above the new footpaths; and
- (d) rights of support for those buildings.

(5) The council may construct the footpaths on land so acquired and for that purpose may carry out such structural alterations of existing buildings as are in its opinion necessary and may for the purpose of doing so, lawfully enter upon land, by its agents, servants and workmen and carry out necessary work.

(6) The council shall pay for damage or injury caused by the exercise of the powers conferred upon it by this section such compensation as is agreed by the parties, or if there is no agreement, as is determined only on a reference to arbitration.

Cf. s. 684
post as to
arbitration.

364. (1) A council may by by-law prescribe a new building line for a street or part of a street.

Power to
prescribe
new building
lines.
Cf. No. 11 of
1925, s. 5.

(2) Where the council so prescribes a new building line, it shall, immediately the by-law is no longer liable to be disallowed by Parliament, cause written notice of the new building line to be served on the owners of land affected by the new building line, and cause notice of the by-law to be served on the Registrar of Titles and the Registrar of Deeds.

Cf. No. 30 of
1918, s. 36
(2), as to
disallowance.

(3) (a) In this subsection "building operation" means constructing, building, placing, reconstructing, rebuilding, replacing, extending, enlarging, adding to, or otherwise altering or repairing, a building or work or portion of a building or work.

(b) An owner of land or of a building or work affected by the new building line shall not, except with approval mentioned in paragraph (c) of this subsection, commence or carry out a building operation upon the land between the old alignment and

the new, except for the purpose of completing a building operation already commenced at the time of the prescribing of the new building line.

(c) The building surveyor, subject to directions which the council may give, may approve the execution of minor but not substantial repairs in order to permit of the reasonable preservation of an existing building or work.

(4) (a) On the day on which land between the old and the new building lines is cleared of buildings and other obstructions, the land subject to rights, if any, reserved under subsection (4) of section three hundred and sixty-three is by virtue of this subsection—

Cf. s. 363
(4) ante.

(i) dedicated to use as part of the existing street; and

Cf. s. 286
ante.

(ii) revested in the Crown under section two hundred and eighty-six.

(b) The revesting mentioned in subparagraph (ii) of paragraph (a) of this subsection takes effect notwithstanding that the new building line has been prescribed under subsection (1) of section five of the City of Perth Act, 1925, or of the City of Fremantle Act, 1925, and notwithstanding subsection (4) of section five of either of those Acts.

Cf. Nos. 11
and 19 of
1925, s. 5 (1)
and (4).

(5) The council shall pay to persons who, because the land is so dedicated, lose or suffer depreciation to estates or interests in the land, compensation for the loss or depreciation, but the compensation payable to the owner of the remainder of the land is limited to the amount by which the remainder of the land is depreciated in value at that time by the setting back of the building line.

(6) If a question arises as to the amount of the compensation or the day on which the buildings, works, and other obstructions, have been cleared from the land, the question is determinable only on a reference to arbitration.

Cf. s. 684
post as to
arbitration.

(7) Immediately land has been revested under subsection (4) of this section, the council shall cause written notice of the revesting to be served

on the Registrar of Titles, if the land is subject to the provisions of the Transfer of Land Act, 1893; or

on the Registrar of Deeds if the land is not subject to the provisions of that Act;

and the Registrar of Titles or the Registrar of Deeds, as the case may be, shall record the revesting in appropriate manner.

PART XIII.—SURPLUS WATER AND OTHER DRAINS.

Part XIII.

365. (1) A council may cause to be made under the streets or ways in the district such surplus water drains as are necessary.

Construc-
tion of
drains, etc.
Cf. M.C. Act,
s. 290.

(2) Where in order to complete surplus water drains it is necessary to carry them into or through land other than streets or ways in the district, or land outside the district of the municipality, whether streets, or ways, or not, the council may carry them into or through that land.

(3) The council may cause surplus water drains to communicate with and empty themselves into the sea, or may cause the effluent from such drains to be conveyed by a channel to the most convenient site for its collection and disposal.

(4) Where in order to exercise a power conferred by this section, acquisition of land under the Public Works Act, 1902, is necessary, this section does not authorise the exercise of the power without the acquisition of the land.

366. (1) In this section—

“unauthorised” means not authorised by an Act.

Unlawfully
making
branch
drains, etc.
Cf. M.C. Act,
s. 291.

(2) A person who—

(a) makes an unauthorised drain into;

- (b) causes unauthorised damage to; or
- (c) causes an unauthorised stoppage or obstruction of ;

a surplus water or other drain under the care, control, and management of a council, commits an offence.

(3) Where an unauthorised drain has been made, the council may cause it to be altered or to be remade.

(4) Where an unauthorised stoppage or obstruction has been caused, or unauthorised damage has been done, to a drain under the care, control, and management of a council, the council may cause the stoppage or obstruction to be removed, or the damage to be repaired, and may recover the amount of the expense of doing so in a court of competent jurisdiction from the person responsible for the unauthorised stoppage, obstruction or damage without affecting his liability to penalty.

Laying
drains, etc.,
from private
tenements.
Cf. M.C. Act,
s. 292.

367. Where a building
in the district of a municipality
is not drained

to the satisfaction of the council by a sufficient
drain or pipe communicating with a surplus
water drain or with the sea,
and there are means of drainage
satisfactory to the council within one hundred
feet of the building,

the council may construct or lay from the building,
a drain or pipe

of such materials, of such size, at such levels,
and with such fall as it thinks necessary for the
drainage of the building,
and may recover

the amount of the expense of doing so in the
same manner as rates are recoverable under this
Act from the owner for the time being of the

Ss. 367, 368.

house or building, and until recovered the amount is a charge against the land on which the house or building is erected.

368. (1) (a) Where land
in the district of a municipality
is not drained

Council
may drain
or fill up
land in
certain
cases.
Cf. M.C. Act,
s. 293.

to the satisfaction of the council, of surplus water by a sufficient drain or channel communicating with a surplus water or other drain or channel used for the discharge of surplus water,

the council may construct or lay

at and along the natural outfall of the water as the outfall is shaped by the intervention of buildings, and through land lying between the firstmentioned land and the nearest surplus water or other drain, or channel,

an open drain or an open channel,

paved or otherwise secured, and suited for drainage of surplus water from the firstmentioned land and from the intermediate tenements,

but so that

the open drain or open channel does not pass through or under a building

and so that

at the desire and request of an owner of land through which it is designed to pass

the open drain or open channel, is if the council thinks fit so provided that it descends and falls into a drain or channel which is already upon the land, and is available for the drainage of surplus water from the land, and which is along the natural outfall.

(b) Where a council so constructs or lays an open drain or an open channel over or through land, the owner of the land, or each of the owners of the

several pieces of land if more than one, over or through which the council constructs or lays it shall pay to the council the expense incurred by the council in constructing or laying it over or through his land.

Cf. subs. (1)
of this s.

Cf. par. (b)
of this subs.

(2) (a) Instead of carrying out works authorised by subsection (1) of this section the council, as an alternative but only with the consents or at the requests mentioned in paragraph (b) of this subsection, may raise the level of land which requires drainage of surplus water, by filling in the land with sand or other suitable material to a height sufficient to free the land from surplus water.

Cf. par. (a)
of this subs.

(b) The council shall not exercise the power conferred by paragraph (a) of this subsection where the land is privately owned except at the request or with the consent in writing of the owner of the land, and, in the case of land the property of the Crown except at the request or with the consent of the Minister for Lands.

Cf. par. (a)
of this subs.

(c) The council may recover the amount of the expense incurred by the council in exercising its power under paragraph (a) of this subsection, from the owner for the time being of the land in the same manner as rates are recoverable under this Act, and until recovered the amount is a charge upon the land, unless the land is the property of the Crown, in which case the amount is recoverable from the Minister for Lands in a court of competent jurisdiction.

Provision
for recovery
of cost of
drainage
works by
council.
Cf. R.D. Act,
s. 169.

369. (1) Where a council has constructed works under the power conferred by this Act in connection with or for the purpose of the drainage of private land, the amount of the expenses incurred by the council in constructing, maintaining, and repairing the works, including the amount of compensation, if any, paid by the council to owners of land through or upon which the works are constructed, but excluding amounts which owners are liable to pay to the council under paragraph (b) of subsection (1) of

Cf. s. 368 (1)
(b) ante.

Ss. 369, 370.

section three hundred and sixty-eight, is payable in accordance with the provisions of this section, to the council by the owners of the land which is drained by the works.

(2) (a) When that cost has been ascertained the council shall apportion the amount of it between those owners, in such amounts as are, in the opinion of the council proportionate to the value of the benefit derived by each of them from the works.

(b) If a question arises between a person and the council as to whether that person derives a benefit or as to the value of the benefit, the Minister shall decide the question and cause notice of the decision to be served upon the parties, but if either party is dissatisfied with the Minister's decision, the dissatisfied party may within twenty-eight days of being served with the notice of the decision require the question to be determined by reference to arbitration, and it shall be so determined but on such a reference only, and in no other manner.

Cf. s. 684
post as to
arbitration.

(3) The apportioned amount for which a person is liable, and the amount, if any, for which he is liable under paragraph (b) of subsection (1) of this section,

- (a) are debts due by that person and, until paid in full, by every subsequent owner in succession of the same land, to the council;
- (b) are recoverable by the council in the same manner as rates imposed in respect of the land are recoverable under this Act; and
- (c) until paid, are a charge against the land.

370. If land is substantially and permanently increased in value by drainage works undertaken by the council on a street or other land under the care, control and management of the council—

Provision
in case land
increased in
value by
drainage
works
undertaken
by Council.
Cf. R.D. Act,
s. 161.

- (a) the council may serve written notice on the owner of the land requiring him to contribute annually towards the expenses of the

works, whether defrayed out of borrowed money or otherwise, such amount for such term of years as the council thinks fit; but the owner of the land may, within twenty-eight days of service of the notice upon him, require the questions whether the land has been increased in value, and the annual amount and duration of the contribution to the expenses, to be determined by reference to arbitration, and they shall be so determined, but on such a reference only, and in no other manner;

Cf. s. 684
post as to
arbitration.

Cf. para. (a)
of this s.

- (b) a contribution under paragraph (a) of this section is imposed when pursuant to a resolution of the council entered in the minute book, the council causes notice of the imposition to be served on the owner, and each annual amount payable is recoverable by the council from the owner of the land for the time being and is a charge on the land as if it were a rate lawfully imposed under this Act by the council.

Part XIV.

PART XIV.—PROTECTION OF WORKS IN
PROGRESS.

Precautions
to be taken
as to works
in progress.
Cf. M.C. Act,
s. 295.

371. (1) The council shall, during the construction, alteration, or repair of the streets, ways, drains, and other works, whether of the same kind as, or a different kind from, those here specified, by or on behalf of the municipality, take proper precautions for guarding against mishap, by protecting adjoining houses, and cause such bars or chains to be fixed across the streets or ways to prevent the passage of persons, vehicles, carriages, and animals while those works are carried on, as to the council seems proper.

(2) The council shall during the construction, alteration, or repair of works, cause them to be well and sufficiently lighted every night from sunset to sunrise to prevent mishaps.

(3) A person who not being authorised by an Act or by the council to do so, takes down, alters, removes, or interferes with, bar or chain, or

Ss. 371, 372.

removes, extinguishes, or interferes with a light provided under this section, commits an offence, but this subsection does not affect his liability, if any, in damages for injury or damage to a person or property.

372. (1) A council within its district and within any other portion of the State in which it is authorised to supply gas or water may—

- (a) open and break up the soil of and pavement on a street, or other public place;
- (b) open and break up sewers, mains, and tunnels within or under streets and other public places;
- (c) lay down under streets, and other public places, pipes and other works;
- (d) place along, over, or across streets, and other public places, pipes, and other works;
- (e) from time to time renew, repair, alter, or remove, those works;
- (f) make and repair sewers that may be necessary for carrying off the wastage or waste liquids that may arise in making gas;
- (g) provide and set up against or attach to a building, apparatus necessary for supplying gas or water to that or another building, or for measuring and ascertaining the extent of the supply.

Powers of council to break up streets, etc., for gas or water supply.
Cf. S.A. L.G. Act, s. 496.

(2) The provisions of subsection (1) of this section do not authorise a council—

- (a) to lay down or place a pipe, or apparatus or work through, under, or against a building or land without the consent of the owners and occupiers of the building or land, but without that consent the council may from time to time as occasion requires lawfully enter upon land by its agents, servants, and workmen, and lay or place a new pipe, apparatus or works in the place of an existing pipe, apparatus, or works;

Owners to consent to works on private land.
Cf. subs (1) of this s.

**Part XIV.,
Part XV.,
Div. 1.**

Ss. 372, 373.

Consent of
Minister for
Metropolitan
Water
Supply
necessary
before water
pipes or
sewers
altered.
Cf. S.A. L.G.
Act, s. 497.
Cf. No. 43
of 1909 as
amended
s. 19.

- (b) without the consent of the Minister for Metropolitan Water Supply, to break open a sewer, main, tunnel, or other work, the property of that Minister; or
- (c) to break open a sewer, main, or tunnel, or other work, or to remove or displace a pipe, main, cable, wire conduit, service line, or other work which is the property of or under the control of another council or person, without the consent of that other council or person.

Notice to
be given
by council
to other
council
before works
carried out.
Cf. S.A. L.G.
Act, s. 498.

(3) (a) Before the council proceeds to open or break up a street, or other public place which is not under the care, control, and management of the council, the council shall give to other councils which, or persons who, have the care, control, and management of the street, or other public place, notice of its intention not less than three days before beginning work, except in cases of emergency, in which case the council shall give the notice as soon as is possible after the beginning of the work or the necessity for the work has arisen.

(b) Except in the case of emergency the council shall not open or break up the street or other public place unless under the superintendence of the council to which or person to whom the notice has been given.

Part XV.

PART XV.—BUILDINGS.

Div. 1.

Division 1.—Application of this Part.

Application
of this Part,
Cf. M.C. Act,
s. 296; and
R.D. Act,
s. 208.

373. (1) (a) Subject to the provisions of subsections (2) and (4) of this section, this Part applies to each district in the State.

(b) The Governor may, by Order, apply all or any of the provisions of this Part to any district or to portion of a district, and except while their operation is suspended under subsection (2), or except as provided otherwise by subsection (4), of this section, the provisions apply in accordance with the Order but not otherwise.

Cf. subs. (2)
of this s.

(2) At the request of a council the Governor may by Order, from time to time suspend the operation of all or any of the provisions of this Part in its district or any portion thereof to which they apply for such period as he thinks fit.

(3) Where all or any of the provisions of this Part apply in a district or part thereof, the municipality shall appoint a building surveyor.

Cf. R.D. Act,
Second
Schedule.

(4) Notwithstanding that an Order is so made, the provisions of this Part shall not apply to buildings owned or occupied by, or under the control or management of the Crown in right of the State, or a department, agency, or instrumentality of the Crown in right of the State.

Cf. M.C. Act,
s. 339.

(5) During the operation of an Order so made, the provisions of this Part apply, subject to subsection (4) of this section, to a building, notwithstanding that its roof or covering has been removed or has fallen in, that the building has not been completed, or, having been completed part of the building has wholly or in part been demolished, removed, or become ruinous or that the building is a building of a type that has not a roof or covering.

Cf. M.C. Act,
s. 325.

Division 2.—Submission of Plans, Installation of Electricity for Lighting, Depositing of Materials, Protective Hoardings.

Part XV.
Div. 2.

374. (1) No person shall—

- (a) lay out for building, or commence or proceed with a building on, land in a district; or
- (b) in respect of the structure of a building already erected on land in a district, amend, alter, extend, or enlarge, or commence or proceed with the amendment, alteration, extension, or enlargement of the structure of the building,

Plans of
buildings to
be approved
by council.
Cf. M.C. Act,
s. 298.

until he has caused to be submitted to the council, and the council has approved a copy of the specifications of, and a plan showing clearly, the building or the buildings proposed to be built, or the

amendment, alteration, extension, or enlargement proposed to be made, as the case may be, and the area of land to be occupied by each building, or by the amendment, alteration, extension or enlargement of the existing buildings, as the case may be, and the position of the privies and drains.

Penalty: Maximum penalty of one hundred pounds and in addition a maximum daily penalty of four pounds for each day during which the offence continues; minimum penalty of five pounds and in addition a minimum daily penalty of four shillings for each day during which the offence continues.

(2) A person who is dissatisfied with the refusal of the council to approve the plan and specifications may appeal in writing from the refusal to the Minister, who may uphold, reverse, or vary the decision of the council and make such order as he thinks fit and the order of the Minister is final and not subject to appeal.

Penalty for
contra-
vention.
Cf. subs. (1)
of this s.

(3) A person who, having contravened any of the provisions of subsection (1) of this section, occupies or uses or permits a person to occupy or use a building or part of a building before the plans and specifications mentioned in that subsection relating to the building or to an amendment, alteration, extension or enlargement of the building, have been approved by the council, commits an offence.

Penalty: Maximum penalty, one hundred pounds and in addition a maximum daily penalty of four pounds for each day during which the offence continues.

Statement
of purpose
for which
building is
erected to
be deposited
with council.
Cf. M.C. Act,
s. 299.
Cf. subs. (1)
of this s.

(4) (a) When a plan and specifications in respect of a building proposed to be built are submitted to the council for its approval in accordance with the provisions of subsection (1) of this section, the person causing them to be submitted shall also deposit with the council, which shall retain it, a statement in writing signed by the person for whom the building, to which the plan and specifications

S. 374, 375.

relate, is to be built, setting forth the purpose or purposes for which the building is intended to be used, and if particular parts of it are intended to be used as distinct from other parts and for purposes different from those for which another part is intended to be used, setting forth the purpose or purposes for which each particular part is to be used.

(b) After the statement has been so deposited with the council no person shall use, or permit the use of, the building or part for a purpose other than that set forth in the statement in relation to the building or part, except by the written authority of the council, or of the Minister on appeal under paragraph (c) of this subsection.

Cf. para. (c)
of this subs.

Penalty: Maximum penalty, one hundred pounds and in addition a maximum daily penalty of four pounds for each day during which the offence continues.

(c) A person who has applied for and been refused the authority by the council may appeal in writing to the Minister against the refusal of the council to grant the authority and the Minister may grant the authority in the name of the council, and the Minister's decision is not subject to appeal.

375. (1) No person shall commence to build, take down, amend, alter, extend, enlarge, add to, or repair a building, or in connection with doing any of those things commence to make an excavation, or to do anything by which a street, way or other public place in a district may be obstructed or rendered dangerous or inconvenient to persons passing over or near it, unless he has given three days' previous notice in writing to the council of his intention to commence the building or work or do the thing, and has put up a proper hoarding or fence, to the satisfaction of the council or the building surveyor of the municipality, as a protection to those persons, and also a platform and handrail to serve as a footway for those persons, if required to do so by the

Notice to
be given
before
commencing
to build or
alter a
building.
Cf. M.C. Act,
s. 300.

Ss. 375, 376.

council or building surveyor, in such place and in such manner as the council or the building surveyor directs.

Penalty: Maximum penalty, one hundred pounds and in addition a maximum daily penalty of four pounds for each day during which the offence continues.

Cf. R.D. Act,
s. 159 (2).

Cf. subs. (1)
of this s.

(2) Where in a city, town, or townsite, a person intends to take down a building in the course of demolishing or removing it, under such circumstances that a notice under subsection (1) of this section is not required, or intends to remove the building without taking it down, he shall before commencing the demolition or removal give to the council seven days' notice of his intention to do so.

Council
may compel
installation
of electricity
where
available.
Cf. M.C. Act,
s. 300A; and
R.D. Act,
s. 208B.

376. (1) Where a building used or intended to be used for the purpose of human habitation is within one hundred yards of an electricity main supplying electric current capable of being used for lighting purposes, and electricity supply from the main is available from the supply authority, the council may, if requested by an occupier of the building or a part of it, cause written notice to be served on the owner of the building requiring him within one hundred and five days to instal in, and equip, the building with proper wiring and apparatus so that lighting by electricity will, upon the wiring and apparatus being connected to the electricity main, become available in all of the rooms or other parts of the building which rooms or parts in the opinion of the council are being or are likely to be used for the purpose of habitation.

(2) A person who does not comply with the requirements of the notice commits an offence.

Penalty: Ten pounds and in addition a penalty not exceeding two pounds for each day the offence continues.

377. (1) No person shall deposit stones, bricks, lime, rubbish, timber, iron, or other materials on a street, way, or other public place, nor make an excavation on land abutting or adjoining a street, way, or other public place, unless authorised to do so by an Act or unless he has first obtained from the council in whose district the street, way, public place, or land is situated a license in writing for that purpose, nor unless, in the case of an excavation he has securely fenced off the place where it is to be made from the street, way, or other public place, nor unless he complies with the conditions, if any, of the license.

No materials
to be
deposited on
streets
without
license.
Cr. M.C. Act,
s. 301.

Penalty: Maximum penalty, one hundred pounds and in addition a maximum daily penalty of four pounds for each day during which the offence continues.

(2) The council shall state in the license the purpose for which and the conditions upon which it is granted, and may grant the license subject to the condition that the licensee shall erect, for the safety and convenience of the public, such hoardings or fences at such places, and of such form, character, and dimensions as the council or building surveyor thinks fit.

(3) The council may fix, charge, and recover the fees to be paid for the license.

(4) The council may, before granting the license, require the applicant to deposit with the council a sum sufficient in the opinion of the building surveyor to cover the cost of repairing damage caused by the licensee to the street, footpath or kerb, to be retained by the council until the damage, if any, is made good by the licensee, and if the work of repair is not done within such time as the council thinks reasonable, the council may do the work and deduct the cost from the deposit, or if the deposit is insufficient to meet the cost apply the deposit in part payment of the cost, and recover the balance in a court of competent jurisdiction.

Cf. Div. 19
of this Part.

(5) If the council refuses to grant the license or in granting the license imposes conditions, a person dissatisfied with the refusal or the conditions may within fourteen days of the refusal or the granting of the license as the case may be, appeal under Division 19 of this Part in the manner prescribed by the regulations, against the refusal, or against the imposition of all or any of the conditions, as the case may be.

Maintenance
and lighting
of hoardings
and fences.
Cf. M.C. Act,
s. 302.

(6) A person who so erects a hoarding or fence shall keep and maintain it with the platform and handrail, if any, standing and in good condition, to the satisfaction of the council, during such time as the council thinks necessary for the public safety and convenience.

Penalty: Maximum penalty, one hundred pounds and in addition a maximum daily penalty of four pounds for each day during which the offence continues.

(7) A person erecting, or causing to be erected, a hoarding, fence, or other obstruction in a street, way, or other public place, or in connection with an excavation—

- (a) shall cause it to be well and sufficiently lighted every night from sunset to sunrise to prevent mishaps; and
- (b) shall remove it and if he has made an excavation shall fill in the excavation and shall repair damage he has done to the street, footpath, or kerb, within a reasonable time after being required in writing to do so by the council.

Penalty: Maximum penalty, one hundred pounds and in addition a maximum daily penalty of four pounds for each day during which the offence continues.

*Division 3.—Removal of Hoardings and Filling
of Excavations.*

378. (1) If a person—

- (a) erects or sets up in or on a street, way, or other public place in a district, a hoarding, fence, or scaffold, or an enclosure;
- (b) makes an excavation on land abutting or adjoining a street, way, or other public place except where the excavation is securely fenced off from the street, way, or other public place;
- (c) deposits stone, bricks, lime, rubbish, timber, iron, or other materials in or on a street, way, or other public place—
 - (i) without a license from the council of the municipality; or
 - (ii) having obtained a license does so otherwise than in accordance with the license,or permits any of those things to remain beyond the time stated in the license; or
- (d) fails to keep a hoarding, fence, platform, or handrail in good repair,

Hoardings erected and materials deposited otherwise than as permitted by license may be removed and sold.
Cf. M.C. Act, s. 304.

the council may cause the excavation to be filled in, and the council may order the amount of the expenses of doing so to be paid by the person and may cause the hoarding, fence, scaffold, or enclosure to be pulled down, and the materials comprising it and also stone, bricks, mortar, lime, or other building materials, and other matters and things contained within the enclosure to be removed and deposited in such place as the council thinks fit, and to be kept until the amount of the expenses of the pulling down and removal are paid to the council.

(2) If the materials, matters, and things are not claimed and the amount of those expenses are not paid within eight days next after being so removed and deposited, the council may direct them to be

sold, and by and out of the net proceeds of the sale pay those expenses and account for and pay the surplus, if any, to the owner or other person by law entitled to it; but if the proceeds of the sale are insufficient to meet the amount of those expenses and the expenses of and incidental to the sale, the deficiency shall be repaid by the owner of the materials, matters, or things, to the council on demand, and may be recovered from him by the council in a court of competent jurisdiction.

(3) There is no right of appeal against a direction so made but a person who is dissatisfied with the amount realised as the proceeds of the sale or the amount of the surplus paid or payable to him, may within fourteen days of service upon him of the account relating to payment of the surplus, appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the matter with which he is dissatisfied.

Cf. Div. 19
of this Part.

Damage
done to
footpaths,
drains, etc.,
to be made
good.
Cf. M.C. Act,
s. 305.

379. (1) A person who in erecting or setting up in a street, way, or other public place in the district of a municipality, a hoarding, fence, or scaffolding, injures or destroys a footpath or roadway of the street, way, or other public place, or a kerb, water-table, or drain, shall make good the injury or destruction to the satisfaction of the building surveyor of the municipality.

(2) If the person who owns or erects the hoarding, fence, or scaffold does not, to the satisfaction of the building surveyor, make good and repair the footpath, roadway, kerb, water-table, or drain, the council of the municipality may cause the repairs and reinstatement to be done, and by written notice served on him require the person to pay to the council the expenses of doing so, together with such further costs, charges, and expenses, if any, as are incurred by reason of the omission, and may recover them from him in a court of competent jurisdiction.

Ss. 380, 381, 382.

Part XV.,
Divs. 4
and 5.
Part XV.,
Div. 4.

Division 4.—Protective Covering of Footpaths.

380. (1) Where a builder or other person erects in the district of a municipality the ground floor of a building abutting a footpath of a street, way, or other public place, or where plastering, painting, or decorating operations are in progress above the ground floor of a building abutting a footpath of a street, way, or other public place, the builder or other person, or the plasterer, painter, or decorator shall, if required by the building surveyor of the municipality to do so, by notice in writing served upon him, cause the footpath to be so covered, and kept so covered to the satisfaction of the building surveyor, until the completion of the work then in progress, that there is no danger from falling materials, or inconvenience to the public.

While
building is
in progress
footpath to
be covered.
Cf. M.C. Act,
s. 306.

(2) A builder, plasterer, painter or decorator, or other person who does not comply with the notice, commits an offence.

(3) A person who is dissatisfied with the requisition of the building surveyor may within fourteen days of service of the notice upon him appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the matter with which he is dissatisfied.

Cf. Div. 19
of this Part.

Division 5.—Roofing and Ventilation.

Part XV.
Div. 5.

381. No person shall use for covering the roof of a building in a district of a municipality, a material other than slate, tiles, metal, glass, artificial stone, cement, fire resisting shingles, or other material approved by the council as suitable for the purpose.

Materials
for roofs.
Cf. M.C. Act,
s. 307.

382. (1) No person shall build a building intended to be or capable of being used as a dwelling-house higher than the floor level of the ground floor, until the builder has satisfied the council or the building surveyor of the municipality in whose

Ventilation
of ground
floors.
Cf. M.C. Act,
s. 308.

district the building is being built, that the ground floor is so constructed, or is raised to such a height, as to admit a free current of air passing under that floor and has received from the building surveyor or council a certificate that he or it is so satisfied.

(2) (a) Where a building, intended to be, or capable of being, used as a dwelling-house or for offices, or for occupation by persons for such periods as in the opinion of the council render filling desirable, is built or is about to be built, or is being built, in a low or damp situation, the council or the building surveyor may by written notice served upon him, require the owner to fill up the space between the surface of the ground and the ground floor level of the building with sand, cement, or other suitable material to such height, and within such time, as is specified in the notice.

(b) A person who does not comply with the requirement of the notice commits an offence.

(3) A person who is dissatisfied with the refusal of the certificate, or with a requirement in the notice may within fourteen days of the refusal of the certificate, or of the service upon him of the notice, as the case may be, appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the matter with which he is dissatisfied.

Cf. Div. 19
of this Part.

Part XV.,
Div. 6.

Rights of
owners of
adjoining
land in
respect of
erection of
walls on
line of
junction.
Cf. Building
Act, 1923,
S.A., as am.
s. 33; and
M.C. Act,
s. 309.

Division 6.—Party Walls and Underpinning.

383. (1) Where lands of different owners adjoin and are unbuilt on at the line of junction, and either owner is about to build on the line of junction or a part of it, the provisions of this Division apply.

(2) If the building owner desires to build a party wall on the line of junction, he may serve notice of his desire on the adjoining owner, describing the intended wall.

(3) If the adjoining owner consents to the building of a party wall, the building owner may build the wall half on the land of each of the two owners, or in such other position as is agreed between them.

(4) The building owner shall defray the expense of building the party wall, and from time to time, as and when the adjoining owner makes use of the wall, he shall pay to the building owner such portion of that expense as is proportionate to the use which he makes of the wall.

(5) If the adjoining owner does not consent to the building partly on his land of a party wall, the building owner shall not build a party wall, but may build an external wall placed wholly on his own land.

(6) Where a party wall is built in pursuance of the provisions of this Division, the owner of land upon which it is built shall grant an easement of support in respect of the wall over that land and appurtenant to the other land upon which the party wall is built, and shall cause the easement to be registered upon the certificate of title relating to his land, if the land is subject to the provisions of the Transfer of Land Act, 1893, or shall cause the easement to be registered in the Register of Deeds, if the land is not subject to the provisions of that Act and the building owner shall bear the expenses of and incidental to the preparation, stamping and registration of the necessary documents.

384. When lands of different owners adjoin and a party wall is at the time of the coming into operation of this Act on the line of junction or a part of it and either owner is about to build and use the wall, the owner of the land upon which the party wall is erected, shall grant an easement of support in respect of the wall over the land and appurtenant to the other land upon which the party wall is built, and shall cause the easement to be registered upon the certificate of title relating to the land, if the land is subject to the provisions of the Transfer of Land Act, 1893, or shall cause the easement to be registered in the Register of Deeds, if the land is not subject to the provisions of that Act, and the building owner shall bear the expenses of and incidental to the preparation, stamping and registration of the necessary documents.

Right to
acquire
easement
for party
wall.
Cf. Building
Act, 1923,
S.A., as am.,
s. 33a.

Rights of
building
owner.
Cf. Building
Act, 1923,
S.A., as am.,
s. 34.

385. (1) The building owner, in addition to and without prejudice to rights, if any, which he has irrespective of this Division, has—

- (a) the right to make good, underpin, or repair a party wall which is defective or out of repair;
- (b) a right to pull down and rebuild a party wall which is so far defective or out of repair as to make it necessary or desirable to pull it down;
- (c) a right to pull down a timber or other partition which divides buildings and which does not conform with the provisions of this Act, and to build instead a party wall conforming with those provisions;
- (d) a right to raise and underpin a party wall permitted by this Act to be raised or underpinned, upon condition of making good the damage occasioned by doing so to the adjoining premises or to the finishings and decorations of the adjoining premises, and of carrying up to the requisite height the flues and chimney stacks belonging to the adjoining owner on or against the party wall;
- (e) a right to pull down a party wall which is of insufficient strength for a building intended to be built and to rebuild it of sufficient strength for that purpose, upon condition of making good the damage occasioned by doing so, to the adjoining premises or to the finishings and decorations of the adjoining premises;
- (f) a right to cut into a party wall upon condition of making good the damage occasioned to the adjoining premises by doing so;
- (g) a right to cut away a footing or chimney breasts, jambs, or flues projecting, or other projections, from a party wall in order to erect an external wall against the party

wall or for any other purpose, upon condition of making good the damage occasioned to the adjoining premises by doing so;

- (h) a right to perform any other necessary works incident to the connection of a party wall with the premises adjoining it; and
- (i) a right to raise a party fence wall or to pull it down and rebuild it as a party wall.

(2) The rights mentioned in paragraphs (a) to (h) both inclusive of subsection (1) of this section are subject to this qualification, that a building which was built previously to the coming into operation of this Act is to be regarded as conforming with the provisions of this Act, if it conformed with the provisions of Acts regulating buildings at the time the building was erected.

Cf. subs. (1)
of this s.

386. Where a building owner proposes to exercise any of the rights mentioned in paragraphs (a) to (i) both inclusive of subsection (1) of section three hundred and eighty-five, the adjoining owner may by notice require the building owner to build on the party wall such chimney copings, jambs, or breasts, or flues, or such piers or recesses, or other similar works, as may fairly be required for the convenience of the adjoining owner, and are specified in the notice, and the building owner shall comply with the requisition unless the execution of the required works will be injurious to the building owner, or cause him unnecessary inconvenience or unnecessary delay in the exercise of his right.

Rights of
building
owner.
Cf. Building
Act, 1923,
S.A., as am.,
s. 35.
Cf. s. 385 (1)
(a) to (i)
ante and s.
387 (5) post.

387. (1) A building owner shall not, except with the consent in writing of the adjoining owner and of the adjoining occupiers, or, in cases where a party wall is dangerous, in which case the provisions of this Part relating to dangerous buildings apply, exercise any of his rights under this Division in relation to a party wall, or party fence wall, unless at least forty-two days before doing so he has served on the adjoining owner a party wall notice stating

Rules as to
exercise of
rights by
building and
adjoining
owners.
Cf. Building
Act, 1923,
S.A., as am.,
s. 35.
Cf. s. 403
post as to
dangerous
buildings.

the nature and particulars of the proposed work, and the time at which he proposes to commence the work.

(2) When a building owner in the exercise of any of his rights under this Division lays open a part of the adjoining land or building, he shall, at his own expense, make and maintain for a proper time a proper hoarding and shoring of temporary construction for the protection of the adjoining land or building and the security of the adjoining occupier.

(3) A building owner shall not exercise a right given to him by this Division in such manner or at such a time as to cause unnecessary inconvenience to the adjoining owner or to the adjoining occupier.

(4) A party wall notice is not available for the exercise of a right unless the work to which the notice relates is begun within six months after it has been served and the work is prosecuted with due diligence.

(5) Within fourteen days after the receipt of the notice or at any time before building operations are commenced, the adjoining owner may serve on the building owner a notice requiring him to build on the party structure works to the construction of which he is entitled under section three hundred and eighty-six.

Cf. s. 386
ante.

(6) The adjoining owner shall specify in his notice the works required by him for his convenience, and shall, if necessary, serve with it explanatory plans and drawings.

(7) If either owner does not within fourteen days after the service on him of notice express his agreement to comply with the requirements of the notice, he is regarded as having disputed the necessity of the requirements and a difference is to be regarded as having arisen between the building owner and the adjoining owner.

Cf. s. 389
post as to
settlement of
differences.

388. The building owner, in addition to and without prejudice to rights, if any, which he has irrespective of this Division, has a right to cut away or take down such parts of a wall or building of an adjoining owner, as is necessary, in consequence of that wall or building overhanging or encroaching upon the ground of the building owner, in order to erect an upright wall against it, on condition of making good damage sustained by the wall or building by reason of the cutting away or taking down.

Right of building owner to cut away or take down overhanging or encroaching wall.
Cf. No. 10 of 1946, S.A., s. 7.

389. Where between a building owner and an adjoining owner a difference arises in relation to a work in respect of which notice has been given under this Division, the difference is determinable only by referees mentioned in Division 19 of this Part, who have power, by their award, to determine the right to execute, and the time and manner of executing the work, and generally to determine such other matters as arise out of, or are incidental to the difference; but the referees shall not, unless the parties agree otherwise, appoint for the commencement of the work, a time before the expiration of the period which by this Division is prescribed for the notice in the particular case.

Settlement of difference between building and adjoining owners.
Cf. Building Act, 1923, S.A., as am., s. 37.
Cf. Div. 19 of this Part.

390. A building owner, his agents, servants, and workmen, may, at the usual times of working, enter and remain on premises of another person for the purpose of executing, and may execute work which he has become entitled to execute or is required under this Division to execute, and may remove furniture or do such other things as are necessary for the purpose; and if the premises are closed, may, if accompanied by a member of the Police Force of the State, break open fences or doors in order to effect entry; but before so entering on premises the building owner shall, except in the case of emergency, give fourteen days' notice of his intention to do so to the occupier and owner, and in case of emergency shall give such, if any, notice as is practicable.

Power of building owner to enter premises.
Cf. Building Act, 1923, S.A., as am., s. 38.

Building owner to underpin adjoining owner's building.
Cf. Building Act, 1923, S.A., as am., s. 39.

391. (1) Where a building owner intends to erect within ten feet of a building belonging to an adjoining owner a building or structure any part of which within the ten feet extends to a lower level than the foundations of the building belonging to the adjoining owner, he may, and, if required by the adjoining owner, shall, underpin or otherwise strengthen the foundations of the building of the adjoining owner to such extent as is necessary.

(2) The building owner shall give at least thirty-five days' notice in writing to the adjoining owner, stating his intention to build within the ten feet and whether he proposes to underpin or otherwise strengthen the foundations of the adjoining owner's building and with the notice shall serve a plan and sections showing the site of the proposed building and the depth to which he proposes to excavate.

(3) If the adjoining owner within fourteen days after being served with the notice gives a counter notice in writing that he disputes the necessity of, or that he requires, the underpinning or strengthening, a difference is to be regarded as having arisen between the building owner and the adjoining owner.

(4) The building owner is liable to compensate the adjoining owner and occupier for inconvenience, loss, or damage, if any, which results to them by reason of the exercise of the powers conferred by this section.

(5) This section does not relieve the building owner from liability to which he would otherwise be subject in case of injury caused by his building operations to the adjoining owner.

Security to be given by building and adjoining owners.
Cf. Building Act, 1923, S.A., as am., s. 40.
Cf. Div. 19 of this Part.

392. (1) An adjoining owner may if he thinks fit serve notice in writing on the building owner requiring him before commencing work which he is authorised by this Division to execute, to give such security as is agreed upon, or in case of difference,

is settled by the referees mentioned in Division 19 of this Part, for the payment of such expenses, costs, and compensation, in respect of the work as may be payable by the building owner.

(2) The building owner may, if he thinks fit, after service on him of a party wall requisition by the adjoining owner and before beginning a work to which the requisition relates but not afterwards, serve a counter requisition on the adjoining owner requiring him to give such security for payment of the expenses, costs and compensation for which he is or will be liable as may be agreed upon, or in the case of difference, may be settled as mentioned in subsection (1) of this section.

Cf. subs. (1)
of this s.

(3) If the adjoining owner does not within thirty-five days after service of the counter requisition give security accordingly he ceases to be entitled to compliance with his party wall requisition and the building owner may proceed as if no party wall requisition had been served on him by the adjoining owner.

393. (1) As to expenses to be borne jointly by the building owner and the adjoining owner—

Rules as to
party
expenses.
Cf. Building
Act, 1923,
S.A., as am.,
s. 41.

(a) if a party wall is defective or out of repair the building owner and the adjoining owner shall bear the expense of making it good, underpinning, or repairing it, proportionately, regard being had to the use that each owner may make of the structure;

(b) if a party wall is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull it down the building owner and the adjoining owner shall bear the expense of the pulling down and rebuilding proportionately, regard being had to the use that each owner may make of the structure;

- (c) if a timber or other party wall dividing a building is pulled down in the exercise of the right conferred by this Division upon a building owner and a party wall is built in its stead the building owner and the adjoining owner shall bear the expense of the pulling down and of building the party wall and also of building additional party walls, if any, that may be required by reason of the partition having been pulled down, proportionately, regard being had to the use that each owner may make of the party wall and to the thickness required for support of the respective buildings parted by it.

(2) As to expenses to be borne by the building owner—

- (a) if a party wall or an external wall built against another external wall is raised or underpinned in pursuance of the power by this Division conferred on a building owner, the building owner shall bear the expense of raising or underpinning it, and of making good damage occasioned by doing so, and of carrying up to the requisite height flues and chimney stacks belonging to the adjoining owner on or against the party wall or external wall as are required by this Division to be made good and carried up;
- (b) if a party wall which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull it down, is pulled down and rebuilt by the building owner, the building owner shall bear the expense of pulling it down and rebuilding it, and of making good damage required by this Division to be made good, and the building owner shall also make a fair allowance in respect of the disturbance and inconvenience caused to the adjoining owner;

- (c) if a party wall is cut into by the building owner, the building owner shall bear the expense of cutting into it and of making good damage required by this Division to be made good;
- (d) if a footing, chimney breast, jamb, or floor, or a projection, is cut away under powers conferred by this Division upon a building owner, the building owner shall bear the expense of the cutting away and of making good damage required by this Division to be made good;
- (e) if a party fence wall is raised for a building, the building owner shall bear the expense of raising it; or
- (f) if a party fence wall is pulled down and built as a party wall the building owner shall bear the expense of pulling down the party fence wall and building it as a party wall;

but if at any time the adjoining owner makes use of a party wall, so raised or underpinned, or a part of it, or of a party fence wall so pulled down and built as a party wall, or a part of it, beyond the use made of it by him before the alteration, the adjoining owner shall from time to time bear a proportion, regard being had to the use that the adjoining owner makes of it from time to time, of the expense of—

- (i) raising or underpinning the party wall or external wall, and of making good such damage occasioned by doing so to the adjoining owner, and of carrying up to the requisite height such flues and chimney stacks belonging to the adjoining owner on or against a party wall or external wall, as are required by this Division to be made good and carried up; and
- (ii) pulling down and building the party fence wall as a party wall.

Part XV.,
Div. 6.

Ss. 394, 395, 396.

Building
owner to
render
account to
adjoining
owner.
Cf. Building
Act, 1923,
S.A., as am.,
s. 42.

394. Within thirty-five days after the completion of work which a building owner is by this Division authorised or required to execute, and the expense of which is in whole or in part to be borne by an adjoining owner, the building owner shall deliver to the adjoining owner an account in writing of the particulars and expense of the work, specifying deductions, if any, to which the adjoining owner is entitled in respect of old materials, or in other respects, estimating and valuing the work at fair average rates and prices, according to the nature of the work and the locality and the market price of materials and labour at the time.

Disputed
account.
Cf. Building
Act, 1923,
S.A., as am.,
s. 43.

395. (1) Within thirty-five days of the delivery of the account, the adjoining owner, if dissatisfied with it, may declare his dissatisfaction to the building owner by notice in writing, specifying his objection to it, and unless the parties settle the account by agreement, a difference for determination under Division 19 of this Part, is to be regarded as having arisen between them.

Cf. Div. 19
of this Part.

(2) If within the period of the thirty-five days of the delivery of the account to him the adjoining owner does not so declare his dissatisfaction with the account, he is to be regarded as having accepted it, and shall on demand by the building owner pay to him the amount shown due by the adjoining owner, and if he does not do so, the building owner may recover from him the amount shown as due in a court of competent jurisdiction.

Structure
belongs to
building
owner until
contribution
paid.
Cf. Building
Act, 1923.

396. Where the adjoining owner is liable to contribute to the expenses of building a party wall, until the contribution is paid, the building owner at whose expense it was built stands possessed of the sole property in the structure.

397. The adjoining owner is liable for expenses incurred on his requisition by the building owner, and if he does not pay them, the building owner may recover the amount of them from him in a court of competent jurisdiction.

Adjoining owner liable to expenses incurred on his requisition.
Cf. Building Act, 1923, S.A., as am., s. 45.

398. This Division does not authorise interference with an easement of light or other easement in or relating to a party wall, or take away, abridge, or prejudicially affect a right of a person to preserve or restore a light or other thing in or connected with a party wall in case of the party wall being pulled down or rebuilt.

Saving easements of light, etc., in party walls.
Cf. Building Act, 1923, S.A., as am., s. 46.
Cf. 1 and 2 Edw. VII., No. 29, 1902, as am. by No. 26 of 1922.

Division 7.—Prohibition, except in Certain Circumstances, of Use of Inflammable Materials in Walls, Partitions, Ceilings, Verandahs and Balconies.

Part XV.,
Div. 7.

399. (1) Except where authorised to do so by a license under paragraph (a), or a consent under paragraph (b), of subsection (4) of this section or under a by-law of the municipality, no person shall erect on land within the district, a building having external walls wholly or in part of wood, canvas, thatch, or other inflammable material, or having internal partitions or ceilings consisting either wholly or in part of calico, canvas, paper, or other inflammable material, nor roof a verandah or balcony of a building with canvas or other inflammable material.

Buildings, partitions, ceilings and verandahs of inflammable materials prohibited except under certain conditions.
Cf. M.C. Act, s. 311.
Cf. subs. (4) (a) and (b) of this s.

(2) If a building, partition, ceiling, verandah, or balcony is erected or constructed of material contrary to the provisions of this section, the council may at any time cause written notice to be served upon the owner or occupier of the building, requiring the removal of it or such part of it as is erected or constructed of material contrary to the provisions of this section, within such time as the council thinks fit, and specifies in the notice.

(3) (a) Upon proof of the service of, and non-compliance with, the notice, a court of petty sessions may order the building, roof, verandah, or balcony, ceiling, or partition to be forthwith removed, either wholly or in part, as the case requires, under the superintendence of the building surveyor and at the expense of the owner, and make such order as to the costs of and incidental to the proceedings as the court thinks fit, and an order so made is not subject to appeal.

(b) Where a court of petty sessions orders payment of the amount of the expenses by the owner, and it is not competent or convenient to the council to enforce payment of the amount under the Justices Act, 1902, the council may sue on the order in a court of competent jurisdiction for recovery of the amount.

(4) Notwithstanding anything to the contrary contained in this or another Act or in by-laws made by a council under this or another Act, the council may—

- (a) by written license permit the erection of a building under such restrictions or for such time as the council specifies in the license; and
- (b) give its consent to the erection of a building if the external walls of the building are to be constructed wholly of wood, or partly of wood and partly of a fire-resisting material, if the council is of opinion that the standard of the design of the building when erected, will be in conformity with the general standard of design of buildings in the locality, in which it is proposed to be erected.

(5) A person who is dissatisfied with the refusal of the council to give a license or consent mentioned in subsection (4) of this section may appeal from the refusal to the Minister, who may uphold, reverse, or vary the decision of the council, and make such other order as he thinks fit, and the decision of the Minister is not subject to appeal.

*Division 8.—Prohibition, except in Certain Circumstances,
of Encroachments.*

400. (1) (a) Without permission of the council granted only with the approval of the Minister, no person—

Encroach-
ment over,
on, or under
street.
Cf. M.C. Act,
s. 312.

(i) shall erect a building so as to encroach on, over, or under a street, way, or other public place, in its district;

(ii) shall rebuild an existing building which encroaches on, over, or under a street, way, or other public place in the district, so as to encroach on, over, or under a street, way, or other public place in the district.

(b) The council shall not grant its permission and the Minister shall not give his approval unless each is of opinion that having regard to the size of the building, and the circumstances of the case it is necessary for the stability of the building that the permission should be granted and the approval should be given.

(c) The council with the approval of the Minister may grant the permission subject to such conditions as the council and the Minister think fit.

(d) A person who so erects or rebuilds a building in purported pursuance of permission so granted but does not observe the conditions, if any, on which it is granted, is to be regarded as having erected or rebuilt the building without the permission of the council.

(2) Notwithstanding the provisions of subsection (1) of this section, a person with the permission of the council and in accordance with plans and specifications settled and approved by the council may—

(a) place in front of his building, an awning or verandah, at least nine feet above the footpath in a street, way, or other public place, in its district, and if posts are used for the support of the awning or verandah,

so that the posts are placed in such positions close to the outer edge of the footpath as the council directs;

- (b) place in front of his building a balcony of cantilever type having a framework constructed of iron securely fixed with iron brackets or other supports to the satisfaction of the building surveyor of the municipality, at least nine feet above the footpath in a street, way, or other public place in its district and so that it does not encroach over the street, way, or public place to a greater distance than—

- (i) two feet six inches if the street is in a city; or
- (ii) the outer edge of the footpath or such lesser distance as is prescribed from time to time by by-laws in operation in the district if the street is in a shire or a town;

but permission granted under this subsection does not relieve a person from complying with by-laws operating in the district and relating to awnings, verandahs, or balconies, generally or to their removal in particular.

Justices
may after
notice,
cause en-
croachment
to be
removed.
Cr. M.C. Act,
s. 313.

(3) If, within thirty-five days after written notice by the council to remove a building or part of a building or an awning, verandah, or balcony which is not erected, rebuilt, placed, or provided in conformity with the requirements of this section, or to alter it so that as altered it will conform with those requirements, has been served on the owner or occupier of the building, it is not removed or so altered, a court of petty sessions may grant a warrant to the council, authorising the council forthwith to cause the building or the awning, verandah, or balcony, to the extent to which it so encroaches, to be taken down or altered to comply with those requirements and may make such order as to the costs of and incidental to the proceedings as the court thinks fit, and the council, by its agents, servants and workmen may

by authority of a warrant so granted lawfully enter the land on which it stands and take down, and remove it, accordingly at the expense of the owner or occupier, and the council may recover the amount of the expense of doing so from the owner or occupier in a court of competent jurisdiction, and a warrant so granted or an order so made is not subject to appeal.

(4) An occupier of property upon whom, under the provisions of this section, a penalty is imposed, or who is put to the expense, may sue for and recover the amount of the penalty and expense and costs ordered against him in connection with the penalty or expense from the owner of the property in a court of competent jurisdiction but if the owner proves an agreement by the occupier to carry out the work in respect of which the penalty or expense has been incurred, the agreement is a good defence to the owner in the proceedings brought against him by the occupier.

Division 9.—Notice of Required Alteration.

Part XV.
Div. 9.

401. (1) A council may, during or after the erection of a building in its district, give to the builder or owner of the building written notice of anything, in the construction of the building—

Notice of
required
alterations.
Cf. M.C. Act,
s. 314.

- (a) which tends to render the building unsafe or prejudicial to the public interest;
- (b) which is not in compliance with, or is a departure from, the plans and specifications for the building, of which plans and specifications the approval of the council has been obtained as required by this Act; or which is a contravention of this Act; or
- (c) which, where permission of the council is required for carrying it out, has been carried out without that permission;

and requiring him to pull down or so alter the building as to remove the cause of the objection and on being served with the notice the builder or owner

Cf. Div. 19 of
this Part;
and subs. (2)
and (3) of
this s.

shall comply with the requisition, unless where he has a right of appeal against the requisition, he exercises the right with due diligence, and the referees mentioned in Division 19 of this Part or the Minister, as the case may be, quash the requisition on appeal.

Cf. subs. (1)
(a) of this s.

(2) Where a person is given notice under this section to pull down or alter a building, in order to remove a ground of objection, mentioned in paragraph (a) of subsection (1) of this section, he may within thirty-five days of the service of the notice upon him, if dissatisfied with the requisition in the notice, appeal under Division 19 of this Part, in the manner prescribed by the regulations, against the requisition.

Cf. Div. 19 of
this Part.

Cf. subs. (1)
(b) and (c)
of this s.

(3) Where a person is given notice under this section to pull down or alter a building in order to remove a ground of objection mentioned in paragraph (b) or paragraph (c) of subsection (1) of this section, he may within thirty-five days of the service of the notice upon him, if dissatisfied with the requisition in the notice, appeal to the Minister in the manner prescribed by the regulations, and the Minister may decide the appeal and his decision is not subject to appeal.

(4) When a building has been constructed, amended, altered, extended, enlarged or added to, whether pursuant to a notice from the council or not, the builder or owner of the building shall on completion of the construction, amendment, extension, enlargement, addition, or alteration serve written notice of the completion upon the building surveyor of the municipality.

(5) If, after inspection and survey, the building surveyor is satisfied that the building has been constructed, amended, extended, enlarged, added to or altered, in conformity with the notice, the surveyor

shall, on payment of the fee prescribed by the by-laws of the municipality give in the form so prescribed a certificate in writing signed by him to that effect to the builder or owner from whom he has received the notice mentioned in subsection (4) of this section.

Cf. subs. (4)
of this s.

(6) The certificate given by the building surveyor under subsection (5) of this section is admissible in evidence and is *prima facie* proof of the particulars contained in it.

Cf. subs. (5)
of this s.

(7) Where the builder or owner has been served with a notice under subsection (1) of this section and does not within thirty-five days of the service of the notice proceed with due despatch to comply with the requisitions in the notice, or has not appealed under this section against the requisitions, or having appealed his appeal has been dismissed and he does not within fourteen days of the dismissal proceed with due despatch to comply with the requisitions, the council by its agents, servants, and workmen, may lawfully enter upon the land on which the building is erected or is in course of being erected and give effect to the requisitions and may, in a court of competent jurisdiction, recover the expense of doing so from the owner or builder on whom the notice was served.

Division 10.—Chimneys of Factories.

Part XV.,
Div. 10.

402. (1) No person shall construct a chimney shaft of a building which is a mill, manufactory, or other similar building unless to such height, and in such a manner, as not to cause a nuisance or annoyance to persons dwelling in the neighbourhood of the building.

Chimneys of
manufac-
tories to be
so con-
structed and
used so as
not to be a
nuisance.
Cf. M.C. Act,
s. 315.

(2) No person shall so use a chimney shaft of a building which is a mill, manufactory, or other similar building as to cause a nuisance or annoyance to those persons.

Part XV.,
Div. 11.

S. 403.

Part XV.,
Div. 11.

Division 11.—Dangerous Buildings.

Survey to be
made of
dangerous
buildings.
Cf. M.C. Act,
s. 316.

403. (1) Where a council has reason to suspect that a building in its district is in a dangerous state, the council may direct a survey of the building to be made by the building surveyor of the municipality, or by another competent person.

Cf. subs. (1)
of this s.

(2) Where the building surveyor receives information that a building is in a dangerous state, whether as the result of a survey mentioned in subsection (1) of this section or otherwise, he shall report the information to the council.

(3) Upon the completion of his survey, the building surveyor, or other competent person, who carried out the survey, shall certify to the council his opinion as to the state of the building.

(4) If the certificate is to the effect that the building is not in a dangerous state, the council shall not take further proceedings in respect of it; but if the certificate is to the effect that the building is in a dangerous state, the council may cause it to be shored up or otherwise secured and a proper hoarding or fence to be put up for the protection of the public from danger, and shall cause written notice to be served on the owner or occupier of the building requiring him forthwith to take it down, secure, or repair it as the case requires.

(5) The council shall after causing the notice to be served on the owner or occupier, cause a copy of the notice to be published once in the *Gazette* and once in a newspaper circulating in the district.

Cf. Div. 19
of this Part.

(6) A person who is dissatisfied with the requisition of the council may within fourteen days of the day on which the notice is last published, appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the requisition.

Notice to
owner, etc.,
in case of
danger.
Cf. M.C. Act,
s. 317.
Cf. s. 403 (4)
ante.

404. If the owner or occupier

on whom notice mentioned in subsection (4) of
section four hundred and three has been served

does not

within thirty-five days of that on which the
notice is served upon him,

comply

with the notice,

a court of petty sessions

on complaint by the council that he has not so
complied with all or any of the requisitions in
the notice and that none of the requisitions in
the notice is the subject of appeal under Division
19 of this Part,

Cf. Div. 19
of this Part.

may

unless all or any of the requisitions in the notice
are the subject of an appeal under that Division,

order the person

on whom the notice has been served to take
down, repair, or otherwise secure to the satis-
faction of the building surveyor of the munici-
pality, the building or such part of it as appears
to the court to be in a dangerous state, within
a time to be fixed by the order,

and the court may

make such order as to the costs of and incid-
ental to the proceedings relating to the order as
the court thinks fit,

and if the order is not complied with

by the person to whom it is directed, within the
time so fixed,

the council may cause the building, or so much of
it as is in a dangerous condition, to be taken down,
repaired or otherwise secured in such manner as is
necessary, and an order so made is not subject to
appeal.

Part XV.,
Div. 11.

Ss. 405, 406.

Expenses,
Of. M.C. Act,
s. 318.
Of. s. 404
ante.

405. (1) The owner of the building shall on demand by the council pay the costs and expenses incurred by the council in, and incidental to, the obtaining of the order under section four hundred and four, in respect of the dangerous building, and in carrying the order into effect, but this section does not prejudice the right, if any of the owner to recover them from a person liable to pay to him the expense of repairs of the building.

Power of
sale.

(2) If the owner does not pay the costs and expenses on demand, the council, after serving on him thirty-five days' notice of its intention so to do, may sell the building; but shall, after deducting from the proceeds of the sale the costs and expenses so incurred and the expenses of and incidental to the sale and the amount of rates then due in respect of the premises, account for and pay the surplus, if any, to the owner on demand.

Removal.

(3) When a dangerous building is so sold for payment of the costs and expenses so incurred in respect of it by the council, the purchaser, his agents, and servants, may enter upon the land on which the building is situated for the purpose of taking down the building and of removing the materials of which it is constructed.

Recovery of
expenses.

(4) If the materials are not sold by the council, or if the proceeds of the sale are insufficient to defray the costs and expenses, the council may recover the costs and expenses or the unsatisfied balance of them and the costs of and incidental to the proceedings for recovery from the owner of the building in a court of competent jurisdiction.

Power to
remove
occupants
from
dangerous
building.
Of. M.C. Act,
s. 319.

406. When a building has been certified by the building surveyor or other competent person carrying out a survey of it to be dangerous to occupants of it, a court of petty sessions may, upon the complaint of the council to that effect, if satisfied of the correctness of the certificate, by order direct the occupants of the building to quit the building and may issue a warrant directed to a member of the

Police Force of the State authorising and commanding him to remove them from the building if the order of the court is not obeyed and he shall execute the warrant according to its tenor, and an order so made or a warrant so issued is not subject to appeal.

Division 12.—Neglected Buildings and Dilapidated Buildings.

Part XV.
Div. 12.

407. In this Division—

Interpreta-
tion.

“neglected building” means a building which is ruinous, or so dilapidated as to be unfit for use or occupation, or which is from neglect or otherwise in a structural condition prejudicial to property in, or to inhabitants of, the neighbourhood in which it is situated.

408. (1) Where a council is of opinion that a building in its district is a neglected building it may cause written notice to be served on the owner or occupier of the building requiring him immediately—

Removal of
neglected
buildings.
Cf. M.O. Act,
s. 320.

- (a) to put the building or part into such state of repair and good condition as is to the satisfaction of the council;
- (b) to fence to the satisfaction of the council the land upon which the building stands;
or
- (c) to take the building down.

(2) The council shall after causing the notice to be served on the owner or occupier, cause a copy of the notice to be published once in the *Gazette* and once in a newspaper circulating in the district.

(3) A person who is dissatisfied with the requisition of the council may within fourteen days of the day on which the notice is last published, appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the requisition.

Cf. Div. 19
of this Part.

(4) If the owner or occupier
on whom the notice is served
does not

Cf. Div. 19
of this Part.

within thirty-five days of the service of the
notice upon him, unless the requisitions in the
notice are the subject of appeal under Division
19 of this Part,

comply

with the requisitions in the notice,
a court of petty sessions,

on complaint by the council that he has not so
complied with the requisitions and that the
requisitions in respect of which the complaint
is made are not the subject of appeal under that
Division,

may order

Cf. subs. (1)
(a), (b) and
(c) of this s.

the owner or occupier on whom the notice is
served to do such of the things mentioned in
paragraphs (a), (b) and (c) of subsection (1)
of this section, as the court thinks fit within a
time to be fixed in the order,

and the court may make such order as to the costs
of and incidental to the proceedings relating to the
order as the court thinks fit, and an order so made
is not subject to appeal.

(5) If the order is not obeyed, the council may by
its agents, servants, and workmen enter upon the
neglected building or land on which it stands and
execute the order.

(6) When the order directs the taking down of a
neglected building, or a part of it, the council in
executing the order may cause the materials to be
removed to a convenient place, and, unless the
expenses of the council in relation to the building
are paid to the council within fourteen days after
the removal, cause the materials to be sold.

(7) The council shall deduct from the proceeds of the sale, the costs and expenses incurred by the council in relation to a neglected building, and also the amount of rates then due in respect of the premises, and shall account for and pay the surplus, if any, to the owner of the building on demand.

(8) If the neglected building, or part of it, is not taken down, and the materials are not sold by the council, or if the proceeds of the sale are insufficient to defray the costs and expenses, the council may recover the costs and expenses, or that insufficiency, and the costs of and incidental to the proceedings for recovery from the owner of the building in a court of competent jurisdiction but this subsection does not prejudice the right, if any, of the owner to recover them from a person liable to pay to him the expenses of repairs of the building.

Cf. s. 412
post.

409. (1) Where the council is of opinion that a building in its district is so dilapidated in appearance as to be out of conformity with the general standard of appearance of the other buildings in the district or in the locality in which it is situated, it may cause written notice to be served on the owner or occupier of the building requiring him immediately to cause the appearance of the building to be brought into conformity with the general standard of appearance of the buildings either in the district or that locality.

Power to
compel
renovation
of
dilapidated
buildings.
Cf. R.D. Act,
Second
Schedule,
s. 32A.

(2) The council shall after causing the notice to be served on the owner or occupier, cause a copy of the notice to be published once in the *Gazette* and once in a newspaper circulating in the district.

(3) A person who is dissatisfied with the requisition of the council may within fourteen days of the day on which the notice is last published, appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the requisition.

Cf. Div. 19
of this Part.

Cf. Div. 19
of this Part.

(4) If the owner or occupier on whom the notice is served does not within thirty-five days of the service of the notice upon him, unless the requisitions in the notice is the subject of appeal under Division 19 of this Part, comply with the requisition in the notice, a court of petty sessions on complaint by the council that he has not so complied and that the requisition is not the subject of appeal under that Division, may order the owner or occupier on whom the notice is served to comply with the requisition within a time to be fixed in the order, and if the order is not complied with by the owner or occupier to whom it is directed within the time so fixed the council may do what he is directed by the order to do, and an order so made is not subject to appeal.

Cf. subs. (4)
of this s.

(5) The owner of the building shall on demand by the council pay the costs and expenses incurred by the council in relation to the obtaining of an order under subsection (4) of this section relating to the dilapidated building and in the carrying of the order into effect, but this section does not prejudice the right, if any, of the owner to recover them from a person liable to pay to him the expense of repairs of the building.

(6) If the owner does not pay the costs and expenses to the council on demand, the council, after serving on him thirty-five days' notice of its intention so to do, may cause the building to be sold; but shall, after deducting from the proceeds of the sale the costs and expenses so incurred and the expenses of and incidental to the sale and the amount of rates then due in respect of the premises, account for and pay the surplus, if any, to the owner on demand.

Cf. s. 412
post.

(7) If the proceeds of the sale are insufficient to defray the costs and expenses, the council may recover the costs and expenses or the balance of them and the costs of and incidental to the proceedings for recovery from the owner of the building in a court of competent jurisdiction.

*Division 13.—Recovery of Expenses Incurred
by Council.*

410. (1) Where a council has incurred costs or expenses in respect of a dangerous, neglected or dilapidated building, and has not been paid or has not recovered them, a court of petty sessions, on complaint to that effect by the council, may make an order fixing the amount of the costs and expenses and the cost of the proceedings before the court, and declaring the amount already paid or recovered, if any, and directing that no part of the land upon which the building stands or stood shall be built upon, until after payment to the council of the amount or the balance of the amount so fixed, as the case may be; and thereupon and until payment to the council of that amount or balance no person shall build upon the land or part of the land, and an order so made is not subject to appeal.

Provision
for enforcing
repayment
of expenses
incurred by
council.
Cf. M.C. Act,
s. 322.

(2) The council shall keep a register of orders made under the provisions of this section, and shall keep it open for inspection.

411. (1) When a person has been convicted of an offence of commencing to build, or of constructing, erecting, adapting, extending, raising, amending, altering, enlarging, adding to, uniting, or separating a building, or part of a building, in contravention of the provisions of this Act, the council may serve written notice on the person requiring him to bring the building into conformity with those provisions.

When
council may
demolish
buildings
and sell
materials
and recover
expenses.
Cf. M.C. Act,
s. 323.

(2) The council shall after causing the notice to be served on the person, cause a copy of the notice to be published once in the *Gazette* and once in a newspaper circulating in the district.

(3) A person who is dissatisfied with the requisition of the council may within fourteen days of the day on which the notice is last published, appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the requisition.

Cf. Div. 19
of this Part.

(4) If the person

on whom the notice is served

does not

within fourteen days of that on which the notice
is served upon him

comply

with the requisition in the notice,

a court of petty sessions,

on complaint by the council that he has not
complied with the requisitions in the notice
and that the requisitions in respect of which the
complaint is made are not the subject of appeal
under Division 19 of this Part,

Cf. Div. 19
of this Part.

may,

unless the requisitions are the subject of appeal,
make an order

authorising the council by its agents, servants,
and workmen to enter upon the building and
the land on which it stands, and to demolish
or alter the building or part of it, so far as it
has been adjudged to be in contravention of this
Act, and to do whatever is necessary for the
purpose of bringing it into conformity with
those provisions, and to remove the materials
resulting from the demolition or alteration to
a convenient place, and if the council thinks fit,
sell the materials in such manner as the council
think fit, and an order so made is not subject
to appeal.

(5) Expenses incurred by the council in demolish-
ing or altering the building or the part of it, and in
doing whatever is necessary for the purpose of
bringing it into conformity with the provisions of
this Act, together with the costs, or the balance of
those expenses and costs, after deducting the pro-
ceeds of sale of the materials, if the council thinks
fit to sell them, may be recovered from the person
committing the offence in a court of competent
jurisdiction.

(6) If the proceeds of the sale are more than sufficient to defray those expenses and costs, the council shall, on demand, account for and pay the surplus of the proceeds, after deducting the amount of those expenses and costs, and also the amount of rates then due by the owner of the building, to him.

412. Where by this Act the surplus of the proceeds of the sale of buildings or materials is made payable to the owner and no demand is made by a person entitled to the payment within one year after the receipt of the proceeds by the council, the council shall pay the amount of the proceeds into the Supreme Court, and the amount of the proceeds shall then be subject to the control of the Supreme Court, and may be paid out to the person who proves he is entitled to them.

Payment of
surplus
proceeds
into court,
Cf. M.C. Act,
s. 324.

Division 14.—Fire Escapes.

Part XV.
Div. 14.

413. (1) If a council is of opinion that a building is so constructed that there would in case of fire be a danger to persons using it because of the lack of adequate provision of fire escapes, it may serve upon the owner of the building a written requisition to instal or erect in or on the building fire escapes to the number and specification set out in the requisition.

Fire
Escapes.

(2) A person so served with a requisition to instal or erect fire escapes, if dissatisfied with the requisition may, within thirty-five days of the service upon him of the requisition, appeal to the Minister, who may confirm or disallow the requisition, and the decision of the Minister is not subject to appeal.

(3) If the person so served with the requisition does not so appeal to the Minister, or if the Minister confirms the requisition, the person shall, within twelve months after the service upon him of the requisition, instal or erect in or on the building fire escapes to the number and specification set out in the requisition.

(4) Before commencing the installation or erection of fire escapes under this section, the owner of the building shall submit to the council plans and specifications in accordance with the provisions of this Part.

414. In this Division—

“public building” means a hospital, benevolent or other asylum; theatre, opera house, concert rooms, music or assembly hall, whether forming part of or appurtenant to premises licensed under the Licensing Act, 1911, for sale of intoxicating liquor or not; a school, church, chapel, and meeting house; and includes any other building, structure, tent, gallery, enclosure or platform in or upon which numbers of persons are usually or occasionally assembled or which is provided for the assembly of numbers of persons.

415. (1) If the Minister is of opinion, whether as the result of a report by the building surveyor or another person, or otherwise, that a public building in a district, is improperly constructed so as not to afford rapid and easy exit from the building, or that it is not of sufficient stability as to its floors, galleries, staircases, or other parts the Minister may cause a notice to be served upon the owner or occupier of the building, to the effect that it is not fit to be used as a public building and stating in what particulars the building is not fit to be so used, and when a notice is so served it is the absolute duty of both the owner and the occupier to ensure that the building is not used by the public or for public purposes until it has been made fit to be so used nor until the Minister has granted a certificate to that effect.

(2) On each occasion that a public building is used by the public or for a public purpose after a notice mentioned in subsection (1) of this section has been served upon the owner or occupier of the

building, and before a certificate that the building is fit for use as a public building has been so granted, the owner and the occupier severally commit an offence, to which absence of criminal intention is not a defence.

Penalty: Fifty pounds.

(3) If the Minister causes a notice to be served or grants a certificate under the provisions of this section he shall cause a copy of the notice and a copy of the certificate to be published in the *Gazette* and in a newspaper circulating in the district.

Division 16.—Removal of Inflammable Buildings.

Part XV.
Div. 16.

416. (1) Where a council is of opinion

that, for the protection of the public from the danger of fire,

a public or other place

within its district

should be brought under the operation of this Division, the council,

with a view to the removal of buildings having external walls wholly or partially of wood, or roof coverings wholly or partially of thatch, canvas, or other inflammable material,

may,

either separately or in conjunction with insurance companies or other persons,

cause the public or other place to be surveyed by three competent surveyors or architects, of whom

one shall be the building surveyor of the municipality;

one shall be nominated by the Minister; and

the third shall be nominated by all or any of the fire insurance companies established within or nearest to the district;

Inflam-
mable
buildings
in public or
other places
rendered
liable to
removal.
Cf. M.C. Act,
s. 329.

but if the nomination of the third person is not so made within seven days after the Minister has so nominated a surveyor or architect, the third shall be a person appointed by the council.

(2) If the surveyors and architects unanimously report that it is desirable for the public safety that the public or other place, or a part or parts of it should be brought under the operation of this Division, the Governor, at the request of the council, made on the application of three or more ratepayers, being owners or occupiers of land in the public or other place, may by Order, declare the whole or a part or parts of the public or other place to be under the operation of this Division.

Inflam-
mable
buildings
may be
ordered to
be removed.
Cf. M.C. Act,
s. 330.

417. (1) If a building within a district is constructed wholly, or the external walls or roof of it are constructed wholly or partially of wood, thatch, canvas, or other inflammable material, and the building is either internally or externally in such a state as to be readily ignitable in the event of contact with fire, the council may cause immediate written notice to be served on the owner or occupier of the building notifying him that the building is dangerous by reason of its liability to ignite, and requiring him to remove the building or the portion specified in the notice as dangerous, within such time as the council specifies in the notice.

(2) The council after causing the notice to be served on the owner or occupier shall cause a copy of the notice to be published once in the Gazette and once in a newspaper circulating in the district.

(3) A person who is dissatisfied with the requisition of the council may within fourteen days of the day on which the notice is last published, appeal under Division 19 of this Part in the manner prescribed by the regulations in respect of the requisition.

Cf. Div. 19
of this Part.

(4) The referees mentioned in Division 19 of this Part shall, within thirty-five days after a notice mentioned in subsection (1) of this section has been served on the owner or occupier, or within such further time as the referees appoint in writing, unless the amount of compensation for the injury which the owner or occupier will sustain by that removal is agreed, assess the amount under that Division.

Compensation to be ascertained by referees. Cf. M.C. Act, s. 331. Cf. ss. (1) of this section; and Div. 19 of this Part.

(5) The appeal and assessment of compensation may, if the referees mentioned in that Division think fit, be dealt with at the same time.

418. On the complaint of the council that the requisition in a notice served under section four hundred and seventeen has not been carried out and that the requisition in the notice is not the subject of an appeal under Division 19 of this Part, and on proof of the service of the notice and requisition, a court of petty sessions may make an order authorising and directing the council to cause the building or the portion of it specified by the order to be removed immediately, and the council shall immediately carry out the direction, and an order so made is not subject to appeal.

In default of compliance with notice, justices may order removal. Cf. M.C. Act, s. 417 ante; and Div. 19 of this Part.

419. After the removal, the persons entitled shall be paid by the council, out of its municipal fund, the compensation as assessed by the referees under Division 19 of this Part, or as agreed between the parties, as the case may be, together with the costs of the inquiry, if awarded to them, and, if it is not paid by the council, they may recover the amount of the compensation and costs from the municipality in a court of competent jurisdiction.

Compensation to be paid from general revenue. Cf. M.C. Act, s. 332; and Div. 19 of this Part.

Division 17.—Power of Entry and Inspection.

420. (1) The Minister or the building surveyor or a person authorised in writing by either of them, may at reasonable times enter and inspect buildings, (whether completed or not) and land mentioned in this Part, and as to which a duty is imposed by this Act upon them or either of them.

Part XV.
Div. 17.

Buildings may be entered and inspected. Cf. M.C. Act, s. 333. Cf. ss. 661 and 663 post as to obstruction of authorised persons.

Part XV.,
Divs. 18
and 19.

Ss. 420, 421, 422, 423.

(2) A person, other than the Minister, entering a building or land under the provisions of this section, shall on demand by the builder, owner or person apparently in charge thereof, produce his authority to so enter to the person demanding it.

Part XV.
Div. 18.

*Division 18.—Safety of Platforms and Viewpoints
on Public Occasions.*

Safety of
platforms,
etc., entered
or used on
public
occasions.
Cf. M.C. Act,
s. 334.

421. No person shall use, or let for use, or permit, whether for reward or not, the use of, the roof of a building, a platform, balcony, or other structure, for the purpose of affording sitting or standing accommodation for a number of persons on the occasion of a show, entertainment, public procession, open-air meeting, or other similar event, unless the roof, platform, balcony or structure is safely constructed or secured to the satisfaction of the council.

Part XV.
Div. 19.

*Division 19.—Referees for the Determination of
Appeals, Disputes and Other Matters.*

Referees.
Cf. Vic. L.G.
Act, 16th
Sched.

422. Where under this Part provision is made for—

- (a) an appeal;
- (b) the reference of a dispute or difference for determination;
- (c) the reference of a question of compensation for assessment;

under this Division, the appeal or reference may be made and determined only—

- (i) by two referees appointed under this Division; and
- (ii) in accordance with the provisions of this Part and the regulations.

Appoint-
ment of
referees.

423. (1) Of the two referees,
the Governor shall appoint one; and
the council concerned shall appoint the other.

Ss. 423, 424, 425, 426.

(2) A person is not eligible for appointment as a referee—

- (a) unless he is an architect or surveyor of known ability; or
- (b) if he is a member or officer of the council concerned.

424. (1) A person shall not act as a referee in respect of a matter relating to a building of which he is the owner, architect or builder, or in which he is in any manner, whether directly or indirectly interested.

Referee not
to act when
interested.

(2) Where a person is precluded by subsection (1) of this section, or because he is or becomes a member or officer of the council concerned, or because of any other matter, from acting as a referee, in respect of a matter, the Governor, if the person was appointed by the Governor, or the council, if he was appointed by the council, as the case may be, shall appoint another eligible person to act in the matter in his stead.

425. The referees—

Duties of
referees.

- (a) in accordance with this Part and the regulations shall determine matters arising for their determination; and
- (b) for those purposes have and may exercise the powers of arbitrators under the Arbitration Act, 1895.

Gr. 59 Vict.,
13 as
amended.

426. (1) The determination of the referees is final and conclusive; but where the referees differ in opinion as to a matter, they shall refer it to the final arbitrament and decision of an umpire who being eligible for appointment as a referee, is appointed by the referees as umpire.

Determina-
tion of
referees.

(2) The umpire has and may exercise all or any of the powers of the referees or either of them and the provisions of this Division with regard to

referees, including the provisions relating to eligibility, so far as applicable and with such alterations, modifications, and substitutions, as are necessary extend and apply to the umpire.

Referee
acting
singly.

427. (1) When a matter is by or under this Part required, directed or permitted to be done by the referees, it may, with the assent of all the parties to the matter, be done by either of the referees unless express provision to the contrary is made; and if done by one of them with that assent, it is as valid and effectual as if done by both of them.

(2) Unless precluded from doing so by the regulations the referees may by writing signed by them appoint one of them to make an inquiry or a survey which appears to them either necessary or expedient in order to enable them to determine a matter.

Powers of
referees.

428. The power and authority of the referees is not revocable by a party to a matter without the consent of all of the parties to it; and although a party does not attend upon the hearing of a matter, the referees may proceed with and make their award in respect of it.

Records of
proceedings.

429. The referees shall—

- (a) keep proper minutes of their proceedings; and
- (b) lodge the minutes or true copies of them signed and certified by them as being true copies with the clerk of the council concerned.

Awards.

430. (1) The referees—

- (a) shall give their awards in writing, sign them, and deliver them to the clerk of the council concerned;

(b) may in an award make such order as to the costs, charges, and expenses, of and incidental to the reference and the award, as they think fit.

(2) An award of the referees—

(a) may by leave of the Supreme Court or a judge be enforced in the same manner as a judgment or order of the Court to the like effect; and

(b) is binding upon and conclusive against the parties to the reference and all persons whomsoever.

(3) On payment of the fee of two shillings and sixpence or such other sum as is prescribed by the regulations a person may inspect and take a copy of or make extracts from an award filed in the office of the council.

Copies of
awards.

(4) A document purporting to be a copy of an award of the referees and purporting to have been signed by the referees or sealed with the seal of the municipality is *prima facie* evidence of the matters contained in it.

431. (1) A referee is entitled to receive for his own use and benefit a fee of such sum as is prescribed by the regulations for his time and trouble in determining an appeal or reference under this Part.

Fees.

(2) The party making the appeal or reference shall in the first instance pay the fee before it is entered upon, considered, or decided.

432. Before a referee or umpire acts in pursuance of his appointment he shall make the following declaration to be administered by a justice —

Declaration
of referees.

I, A.B., solemnly and sincerely declare that I will diligently faithfully and impartially execute the duties of (referee, or umpire, as the case requires) under Division 19 of Part XV. of the Local Government Act, 1960, of Western Australia.

*Division 20.—By-laws relating to Building
and Buildings.***433.** A council may make by-laws—

- (1) for regulating the plans and levels of sites for, and the foundations and sites of, buildings;
- (2) for regulating the mode in which and the materials with which those foundations are to be made, and the sites excavated, filled up, prepared, and completed;
- (3) for regulating the thicknesses and heights and the descriptions and qualities of the substances of walls and party walls and the types of construction to be adopted and used in the construction of walls and party walls;
- (4) for regulating the thicknesses and spans and the descriptions and qualities of the substances of floors, roofs, and ceilings, and the types of construction to be adopted and used in the construction of floors, roofs, and ceilings;
- (5) for regulating the construction and erection, sizes and positions of parapets, flues, and fireplaces in buildings;
- (6) for regulating the construction, heights, and designs of, and the materials to be used in, the construction of chimney shafts;
- (7) for regulating the positions of lifts and escalators in buildings;
- (8) for regulating the heights of buildings;
- (9) for ensuring means of escape from buildings in case of fire;
- (10) for ensuring the prevention of fire in buildings;
- (11) for regulating the ventilation and lighting of buildings;
- (12) for the provision of exits from and stairways in buildings other than private dwelling-houses;

- (13) for prescribing the minimum size of rooms in a dwelling-house;
- (14) for prescribing the heights, sizes, and dimensions, and the lighting and ventilation, including mechanical means of ventilation and air conditioning, of the rooms and parts of a building;
- (15) for requiring any work or thing in connection with the construction of buildings to be executed or done with such materials, in such manner, and within such period of time, as may be directed or required, in the case of any particular building by the council or an officer or person authorised by the council to direct or require it;
- (16) for limiting the times within which buildings must be erected and completed;
- (17) for the removal of a wall, party wall, floor, roof, ceiling, parapet, flue, fireplace, lift well or escalator erected or constructed contrary to this Act or a by-law;
- (18) for requiring the deposit with and approval of the building surveyor of the plans and specifications and calculations or computations of structural elements and details of buildings, or amendments, alterations, extensions, enlargement, additions to, or the raising, uniting, or separating of, buildings or parts of buildings before the work is commenced;
- (19) for prohibiting overcrowding in public buildings, and the obstruction of gangways, aisles, and passages, in public buildings referred to in section four hundred and fourteen;
- (20) for requiring the builder or owner of a building to furnish to the council a statutory declaration verifying the purpose for which the building is to be used;

- (21) for limiting the number of occupants who may reside or be permitted to reside in a building of a specified class, whether classified according to size, design, materials used in construction, or classified otherwise;
- (22) for regulating the construction, position, and protection of staircases, lift wells and escalators;
- (23) for prescribing the methods of draining yards and buildings, and the junctions or connections of drains with other drains or sewers;
- (24) for requiring and compelling the owners of land upon which a dwelling or other habitable building is erected, to provide a sufficient supply of water for domestic purposes by—
 - (a) connecting the building to a public water main if it passes within one hundred yards of the building;
 - (b) installing tanks approved by the council for holding water of a quantity specified in the by-law but being not less than three thousand gallons drawn from a catchment approved by the council in a manner approved by the council; or
 - (c) providing a supply of water to the building in manner approved by the council from wells or other sources approved by the council;
- (25) for prescribing the minimum area and the minimum depth and the width and frontage of land upon which buildings of a specified class may be erected;
- (26) for requiring that a building of a specified class erected after the coming into operation of this Act has attached to it for the exclusive use of the occupiers of the building a prescribed area of open land and for prescribing the area;

Cf. 305
ante.

Cf. s. 376
ante.

(27) for prohibiting—

- (a) the erection of a building intended for or suitable for;
- (b) the alteration of a building intended for or suitable for; and
- (c) the use of a building for,

a specified class of purpose or for specified classes of purposes, but so that a by-law made under this power does not prevent the completion of the erection or alteration of a building which erection or alteration was lawfully commenced on or prior to the date of the commencement of the operation of the by-law, or the use of a building then already erected or partially erected if prior to that date the building was in use for the class of purpose specified in and prohibited by the by-law, or was then intended or suitable, or would, if completed, have been suitable for that purpose;

- (28) for prescribing fees to be paid by an owner or builder to the council in respect of buildings to be erected or altered, or of an order, license, matter, or thing required or permitted by this Part of this Act;
- (29) for prohibiting the erection in the district or a specified part of the district of buildings other than buildings of a specified class, whether classified according to size, design, materials used in construction, or classified otherwise; and
- (30) for regulating the construction of buildings to be used as motels;
- (31) for regulating the construction, height and position of television masts and antennae whether attached to a building or not;
- (32) for requiring the provision of passenger lifts in buildings used or intended for use for a specified class or specified classes of purpose and having more than two floors above the ground floor.

Ss. 433, 433A, 434.

- (33) generally for the carrying out of this Part of this Act.

Governor
empowered
to make
uniform
general
by-laws.

433A. (1) The Governor may—

- (a) make and publish in the *Gazette* uniform general by-laws for all or any of the purposes for which by-laws may be made by a Council under this Part;
- (b) by order declare that all or any such uniform general by-laws as are specified in the order shall apply to the whole or any portion of a district so specified;
- (c) by subsequent order declare that all or any such uniform general by-laws as are specified in the order shall cease to apply to the whole or any portion of a district so specified.

(2) Where the Governor so declares that any uniform general by-law shall apply in the whole or any portion of a district, the by-law shall until it ceases to apply have the same force and effect in the district or portion of the district as if it were made under this Part by the Council of the district in which or in portion of which it is so declared to apply.

(3) Where and to the extent that there is inconsistency between the provisions of a uniform general by-law having force and effect under this section and a by-law made by a Council under this Part, the former provisions prevail.

(4) A Council may enforce any uniform general by-law that is made and has effect pursuant to this section in its district or portion of its district in the same manner as it may enforce a by-law made by it under this Part.

Penalties.
Cf. s. 190
(7), (d)
ante.

434. (1) A by-law may be made under this Division so as to impose for a breach of the by-laws so made—

- (a) a maximum penalty of one hundred pounds; with or without provision for

- (b) a maximum daily penalty of five pounds for each day during which the offence continues.

(2) The powers conferred by this Division are in addition to and do not derogate from or otherwise affect any of the other provisions of this Act relating to by-laws.

*Cf. Part
VIII ante
and s. 445.
post.*

435. (1) For the purposes of this Part the Minister may appoint an Advisory Committee to advise him.

*Advisory
Committee.*

(2) The Advisory Committee shall consist of such number of persons having experience in building or who are conversant with the building trade not exceeding five in number, as the Minister may from time to time appoint.

(3) Any member of the Committee may be removed by the Minister.

(4) Where a vacancy occurs in the office of member the Minister may appoint a person having the necessary qualifications to fill the vacancy.

(5) The Minister may appoint one of the members of the Committee to be chairman of the Committee.

(6) The person who is holding the office of Secretary of the State department known as the Local Government Department or an officer in that department nominated in writing by that person, shall be the secretary of the Committee.

(7) The Committee shall meet whenever summoned by the Minister.

(8) The Committee shall conduct its proceedings in such manner as the Minister directs and until so directed as the Committee determines.

(9) The Committee shall as soon as practicable report to the Minister on any matter referred to it by him for its consideration and report.

(10) The members of the Committee shall receive such remuneration and allowances as the Governor determines and any costs incurred by the Committee in carrying out its functions shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

Parts XVI.
and XVII.

Ss. 436, 437, 438.

Part XVI.

PART XVI.—LIGHTING.

Council may
contract for
lighting
streets.
Cf. M.C. Act,
s. 340.

436. A council may, by contract or otherwise—

- (a) cause the streets, ways, and other public places in its district to be lighted by gas, oil, electric, or other lights;
- (b) provide such lamps, lamp posts, lampirons, poles for erecting or connecting gas pipes, electric wires, and other works and materials as are necessary for that purpose; and
- (c) manufacture or contract for the manufacture or supply of gas or electric light for the lighting of those streets, ways, and public places, and provide or contract for gasometers, electric lighting plant and any requisite apparatus and machinery.

Part XVII.

PART XVII.—WATER SUPPLIES AND
PREVENTION OF FIRES.

Reserves for
water supply
may be
declared.
Cf. M.C. Act,
s. 342.
Cf. s. 5 ante.

437. A council may declare any portion of a river or water-course within its district to be reserved for the supply of water for public use.

Drainage of
lakes, etc.,
to the public
injury
prohibited.
Cf. M.C. Act,
s. 343.
Cf. s. 5 ante.

438. (1) Where in a district the public have right of access to the water in a lake, pool, or pond, it is unlawful and an offence to draw or let off the water from the lake, pool, or pond, so as to injure immediately or prospectively the enjoyment by the public of the water.

(2) The council of the district may, without affecting liability for punishment for a contravention of subsection (1) of this section, take proceedings in a court of competent jurisdiction to restrain contravention of that subsection.

Cf. subs. (1)
of this
section.

439. A council—

(a) with the approval of the Governor, may—

- (i) contract with the owners of waterworks or other persons for the supply of water; and guarantee payment to the contracting party of an amount of gross revenue to be received by him from the sale and supply of water to consumers within its district; and

Council may contract for water supply, or may construct dams, reservoirs, and reticulate water.

Cf. M.C. Act, ss. 344, 345; and R.D. Act, s. 160 (4) to (7). Cf. ss. 5 and 277 ante.

- (ii) contract with the Crown or a department, agency or instrumentality of the Crown in right of the State or the Commonwealth for the supply of water, or purchase from the Crown, department, agency, or instrumentality, waterworks for the purpose of providing a water supply;

but shall not so contract for a supply of water for a period exceeding three years, or for the purchase of water works, without first causing notice of a proposal to do so, to be published as if it were a proposal for borrowing money, nor without the authorisation of the electors, obtained at a poll if required, the provisions of sections six hundred and ten and six hundred and eleven relating to the notice of, requisition for, and taking of, the poll, being regarded as incorporated *mutatis mutandis* in this paragraph;

Cf. ss. 610 and 611 post as to poll on proposal for loan.

- (b) may, in the district or with the prior consent of the Minister elsewhere, construct, sink, improve, and maintain tanks, wells, dams, and reservoirs, and bore or otherwise search for water for the purpose of providing a water supply;
- (c) with the consent of the Minister may render the water supply available by means of reticulation or otherwise on the respective premises of owners or occupiers of land within the district; and

- (d) for the purpose of carrying out work relating to a water supply mentioned in this section, has the powers and discretions of a water board under sections forty-six, forty-seven and fifty-one of the Water Boards Act, 1904, but if it exercises those powers or discretions, shall comply with the obligations of sections forty-eight, forty-nine and fifty of that Act.

Cf. No. 4 of 1904, as amended, ss. 46-51.

Prevention of fires.
Cf. M.C. Act, s. 346 and R.D. Act, s. 196.
Cf. No. 4 of 1904.
Cf. ss. 5 and 277 ante.

440. (1) A council, either separately or in conjunction with a Water Board constituted under the Water Boards Act, 1904, or other body or person authorised by Act to supply its district with water—

- (a) may cause such reservoirs, tanks, mains, pipes, and fire-plugs or fixed pillar hydrants to be constructed and laid down in such streets and public places as the council deems necessary for affording a supply of water for use in case of fire, but to the extent of inconsistency, if any, between the Fire Brigades Act, 1942, and those of this Act relating to fire-plugs and fixed pillar hydrants, the former prevail;
- (b) may either separately or in conjunction with a fire insurance company or other person, procure fire engines, fire escapes, ladders, and other machines and apparatus, used for extinguishing fires and saving life and property in cases of fire; and in like manner organise and establish a fire brigade and make provision for, or contribute towards the payment of, a superintendent, officer, fireman, or other person employed in the fire brigade, or grant sums of money as rewards for meritorious conduct, or compensation for personal injury to a person assisting in the extinguishment or preventing the spread of fire, or in the rescue, or attempted rescue, of a person, animal, or goods from fire within its district;
- (c) may cause fire-alarm bells to be fixed in such situations as it thinks expedient; and

Cf. No. 41 of 1951, s. 7 (3) and No. 35 of 1942 as amended.

- (d) may subsidise a fire brigade established within the district or in an adjoining district;

but before doing so a council whose district is wholly or partly within a fire district constituted by or under the Fire Brigades Act, 1942, shall serve written notice of its proposal to do so on the President of the Western Australian Fire Brigades Board appointed under that Act, and if within thirty-five days of service of that notice upon him the President serves upon the council written notice of his objection to the council carrying out the proposal the council shall not do so, but if within that period he serves notice of his consent to the council carrying out the proposal or does not serve on the council notice either of objection or consent, the council may carry out the proposal.

Cf. No. 35
of 1942,
as amended.

(2) The express mention in this section of the Fire Brigades Act, 1942, is by way of precaution only and does not affect the operation of section five.

Cf. ss. 5 and
157 (1), (b)
ante.

PART XVIII.—REST CENTRES, PUBLIC BATHS, PUBLIC
WASH-HOUSES, PUBLIC CONVENIENCES AND
PUBLIC SWIMMING POOLS.

Part XVIII.

441. (1) A council may from time to time purchase, erect, rent, or otherwise provide, either within its district or localities adjoining the district, land and buildings, for rest centres for women and children, public baths and wash-houses and lavatories, urinals and privies, and may fit them with appropriate conveniences, and from time to time enlarge, renew, and repair them, and afford the use of them under and subject to such by-laws as the council makes, and either without charge or at such reasonable charges as the council may prescribe by those by-laws.

Council may
provide
baths, etc.
Cf. M.C. Act,
s. 347 (1).

Cf. ss. 194
and 234 ante.

(2) The council shall not exercise any power conferred on it by subsection (1) of this section with respect to any area outside its district except with the prior approval of the Governor.

Council may provide swimming pools.
Cf. M.C. Act, s. 347 (2).

442. (1) From time to time a council—

- (a) may provide as swimming pools, places or premises for the purposes of swimming or bathing by the public, whether in the sea, in tidal or non-tidal waters, or in water specially provided at the place or premises;
- (b) may provide appropriate accommodation and conveniences for persons attending swimming pools for the purpose of swimming or bathing, and also for persons attending as spectators at aquatic events conducted at swimming pools;
- (c) may acquire land for the provision of swimming pools, or may provide them on land of which the Council has the control and management, for the purpose;
- (d) may enclose swimming pools with fences, walls or other structures;
- (e) may maintain and keep in repair swimming pools and the accommodation conveniences, fences and other structures and things provided in connection with swimming pools; and
- (f) may control and manage swimming pools or may let the management for such time and on such conditions as the council thinks fit,

Cf. 17 Vict., No. 4.

but in doing so may not enclose or place structures in navigable waters, without the consent of the Governor or use waters in contravention of an Act.

(2) A council is not authorised to expend money in the provision of a swimming pool, other than loan money raised for the purpose by the issue of debentures under Part XXVI, unless with the approval of the Minister.

Cf. Part XXVI, post.

Copy of by-laws to be exhibited.
Cf. M.C. Act, s. 347 (3).
Cf. ss. 194 and 245 ante.

443. Where the by-laws of a council relate to premises mentioned in this Part the council shall cause a copy of the by-laws or an abstract of the by-laws to be exhibited on the premises to which they relate but non-observance of this section does not affect the operation of the by-laws or the consequences of breaches of them.

Ss. 444, 445.

444. This Part does not affect the powers, or obligations of a council under an Act relating to public health.

Powers and obligations of councils under Acts relating to public health not affected.
Cf. M.C. Act, s. 349.

445. (1) From time to time a council—

Children's playgrounds, women's grounds, infant health centres, kindergartens.
Cf. M.C. Act, s. 351.

(a) may, unless the conditions under which, or the purposes for which, the council holds or has control of the land, preclude the council from doing so, set aside the land or portion of it for—

- (i) use as a children's playground;
- (ii) use as a women's ground;
- (iii) use as a kindergarten school;
- (iv) use as an infant health centre; or
- (v) use as any other institution mentioned in section four hundred and forty-six;

Cf. s. 446 post.

(b) may enclose and reserve a children's playground for the exclusive use of children of one or both sexes, or of children under a specified age or of varying ages, as determined by the council;

(c) may enclose and reserve a women's ground for the exclusive use of women and girls;

(d) may cancel a reservation made under paragraph (b) or (c) of this section, and throw the area so reserved open to the public for the purposes for which prior to the reservation it was available to the public; and

Cf. paragraphs (b) and (c) of this section.

(e) may provide sites for any of the institutions mentioned in section four hundred and forty-six, or the re-erection of historical buildings.

Cf. s. 446 post.

Parts XIX.
and XX.

Ss. 446, 447, 448.

Part XIX.

**PART XIX.—PLACES OF PUBLIC EDUCATION AND RE-
CREATION AND INFANT HEALTH CENTRES.**

Power to
expend
money on
libraries,
museums,
agricultural
halls,
recreation
grounds,
etc.
Cf. M.C. Act,
s. 350.

446. A council may from time to time appropriate out of its municipal fund such sum or sums as the council thinks proper for or towards—

- (a) the provision, maintenance, and improvement of museums, public halls, agricultural halls, civic centres, public libraries, reading rooms, lifesaving club rooms, youth club rooms and rooms for educational and cultural activities, children's playgrounds, women's grounds, kindergarten schools and infant health centres within its district;
- (b) the erection and maintenance of camps;
caravan parking areas; and
bungalows;
for letting or leasing within its district; and
- (c) the improvement of recreation grounds and public reserves vested in or under the care, control, or management of the council, including the provision on them of ablutionary and dressing rooms and other conveniences, and such amusements as the council thinks desirable.

Part XX.

**PART XX.—CATTLE TRESPASS, POUNDS,
POUNDKEEPERS AND RANGERS.**

Council
regarded as
owner of
streets, etc.,
and
unfenced
land
abutting.
Cf. M.C. Act,
s. 243.

447. For the purpose of this Part of this Act, a municipality is to be regarded as the owner and occupier of streets, ways, reserves, bridges, ferries, foreshores, jetties, wharves, other public places, and unenclosed land abutting them within its district.

Power to
impound
cattle
grazing on
streets
Cf. M.C. Act,
s. 244.
Cf. s. 447
ante.

448. Cattle driven along or on to a street, or way, or place mentioned in section four hundred and forty-seven, for the purpose of grazing, without the consent of the council, are to be regarded as trespassing on the street, way, or other place, and may be impounded by the council.

Ss. 449, 450, 451, 452.

449. A council may establish and maintain one or more public pounds, and may appoint fit and proper persons to be keepers of those pounds and may appoint a ranger or rangers.

Council may establish pounds, appoint pound-keepers and rangers.

Cf. Impounding Act, 1920, S.A., as amended, s. 4.

Cf. s. 328 ante as to provision of pound by two or more councils conjointly.

450. The council having the care, control, and management of a public pound shall cause public notice to be given of the establishment of the public pound, and the appointment or removal of pound-keepers and rangers, and a notice so given is *prima facie* evidence that the pound has been lawfully established, or that a poundkeeper or ranger has been lawfully appointed or removed, as the case may be.

Gazetted establishment of pounds or appointment or removal of pound-keeper to be evidence.

Cf. Impounding Act, 1920, S.A. as amended, s. 5. Cf. s. 328 ante as to care, control and management.

451. (1) The council having the care, control and management of a public pound may close the pound and dismiss the poundkeeper and rangers.

Council may close pound or dismiss pound-keeper.

Cf. Impounding Act, 1920, S.A., as amended, s. 6.

(2) The council shall cause public notice of the intended closing of a pound to be given.

452. (1) The council having the care, control, and management of a public pound shall cause it to be properly enclosed, and so adapted that provision is made for keeping cattle with contagious or infectious diseases segregated from cattle free from those diseases, while impounded.

Pound to be properly fenced, kept clean and in repair.

Cf. Impounding Act, 1920, S.A., as amended, s. 7.

(2) The keeper of a public pound commits an offence if he—

(a) does not keep the pound clean and in good repair;

(b) knowingly keeps or permits to be kept in the pound cattle infected with a contagious or infectious disease in the same enclosure with cattle not so infected;

Ss. 452, 453, 454.

- (c) does not supply the cattle for the time being impounded with a sufficiency of wholesome food at least twice a day, once before the hour of nine o'clock in the forenoon, and once after the hour of four o'clock in the afternoon; or
- (d) accepts cattle into the pound when the holding capacity of the pound is exhausted. Penalty: Ten pounds.

Provision of
shelter in
pounds.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 7A.

453. The council having the care, control, and management, of a public pound shall—

- (a) cause adequate shelter for cattle impounded in it to be provided and maintained;
- (b) cause a constant supply of wholesome water to be provided and maintained in the pound by means of troughs or by other means so as to afford cattle while impounded in it free and constant access to the water.

Water
supply to be
maintained.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 8.

Persons
using or
milking
cattle
without
consent.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 9.

454. A person commits an offence, if—

- (a) without the authority and consent of the owner of the cattle he works or uses cattle impounded in a public pound; or
- (b) not being the keeper of the public pound or the owner of the animal, or a person authorised to do so by the poundkeeper or owner, he milks a cow or goat impounded in a public pound.

and is liable to a minimum penalty of one pound, and a maximum penalty of twenty pounds for the offence and shall in addition pay to the owner of the animal such sum as a court of petty sessions, at the hearing of the complaint, decides is just and reasonable for the owner's compensation and cost, and orders him to pay to the owner.

455. (1) The council having the care, control, and management, of a public pound shall supply the keeper of it with a copy of this Act and with a pound book having pages in the form in Part 1 of the Fifteenth Schedule.

Pound book and Act to be kept by pound-keeper.
Cf. Impounding Act, 1920, S.A., as amended, s. 11.
Fifteenth Schedule, Part 1.

(2) (a) The poundkeeper shall make entries, in a legible handwriting, in the pound book, stating with respect to cattle impounded in the pound, the particulars indicated in Part 1 of the Fifteenth Schedule.

(b) A person to whom cattle impounded in the pound are delivered shall sign the pound book in the appropriate place.

(c) On the last day of each month, the poundkeeper shall transmit to the clerk of the council, a true copy of the entries made in the pound book during the month.

(3) The pound book is the property of the council.

(4) The poundkeeper shall deliver the book to the clerk of the council whenever required by the council to do so, and whether so required or not, immediately prior to ceasing to hold office as poundkeeper.

(5) (a) The poundkeeper shall keep the pound book and a copy of so much of this Act as relates to cattle trespass, pounds and poundkeepers, at or near the pound, and shall make them available for inspection at reasonable times by persons requesting him to do so.

(b) The clerk, if required, shall provide extracts from the pound book and a certificate signed by him that the extracts are from the pound book, upon payment of two shillings or such other sum as is prescribed by the regulations, for every one hundred words or part of one hundred words of the extract.

(6) A poundkeeper commits an offence if he—

(a) wilfully delays making an entry in the pound book as required by this Act;

(b) knowingly makes a false entry in the pound book; or

(c) erases or destroys an entry previously made in the pound book.

Part XX.

Ss. 456, 457, 458.

Notice of
fees to be
exhibited at
pound.

Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 12.

456. The council having the care, control, and management, of the pound shall cause to be erected and maintained in proper repair, in a conspicuous part of the pound, a board having painted on it, in legible black characters on a white ground, a table of the fees and charges authorised by this Act to be charged, and a table of the rates at which damages may be claimed under this Act for trespass of cattle, and the holding capacity of the pound.

Unclaimed
money.
Cf.
Impounding
Act 1920,
S.A., as
amended,
s. 13.

457. (1) In this section,

“unclaimed money” means money which has been received by the keeper of a public pound in respect of the sale of cattle or the carcasses of cattle and which has not been claimed by the person entitled to it.

(2) Where the keeper of a public pound has held unclaimed money for a period of thirty-five days, he shall on the last day of the month in which that period of thirty-five days expires, pay the unclaimed money, and render a true account of it, to the clerk of the council having the care, control, and management, of the pound.

(3) The council shall pay the money into an appropriate trust account.

(4) If at the expiration of two years from the day on which the council receives unclaimed money from the poundkeeper, it has not been claimed by the person entitled to it, the council may pay the money into its municipal fund, and when so paid into the municipal fund, the money becomes the property of the council.

Powers of
impounding
cattle.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 14.

458. (1) Cattle found trespassing upon land may be impounded in the nearest suitable public pound by the owner or occupier of the land or by a ranger.

(2) (a) A person who is a ranger appointed to do so by the council, or an officer of the council, or a person authorised to do so by the council, or the ranger or officer of the council, may impound cattle—

(i) found wandering, straying, or lying upon a street, way, or place mentioned in section four hundred and forty-seven; or

Ss. 458, 459.

- (ii) found wandering, straying, or lying, upon vacant Crown land.

(b) The ranger, officer, or authorised person so impounding cattle may claim ranger's fees at the rate set out in Part 2 of the Fifteenth Schedule in respect of each animal which belongs to the same owner and which is impounded by him, notwithstanding that more animals than one of the same owner are impounded at the one time, and the sum may be recovered in the same manner as the pound-keeper's fees and charges.

Fifteenth
Schedule,
Part 2.

(c) Cattle found on a street which comprises a boundary of the district or which abuts the district may be so impounded by the ranger, officer, or authorised person, notwithstanding that the place on which the cattle are so found is outside the district.

(3) The occupier of enclosed land may seize and impound in the nearest suitable pound—

- (a) cattle found wandering, straying, or lying, upon a street abutting the enclosed land of the occupier; or
- (b) cattle found feeding off the enclosed land whether through or over a fence or otherwise, notwithstanding that the cattle are upon the street.

(4) A person may seize and impound in the nearest suitable pound cattle found straying or at large or unlawfully tethered or depastured in a street, or other public place within a city, town or township.

459. Where cattle trespassing are not impounded, and it is proved to the satisfaction of a justice that it is not possible to impound the cattle except at an undue expense, and that the owner of the cattle is unknown or cannot be found, the justice may order the destruction of the cattle in such manner as he thinks fit, and may, if the animal is a horse, mare, filly, foal, gelding, colt, camel, bull, bullock, cow, heifer, steer, calf, ass, or mule, order the production and delivery to a police constable of the hide of the animal and by the order give such direction

Destruction
of
trespassing
cattle in
certain
cases.
Cf. No. 7 of
1882, as
amended,
s. 10 (1).
Cf. ss. 474,
475 and 478
post.

as to the disposal of the hide as he thinks fit, and an order so made has effect according to its tenor and is not subject to appeal.

Owner may impound on his own land cattle found trespassing thereon.
Cf. Impounding Act, 1920, S.A., as amended, s. 15.

460. (1) The owner or occupier of land on which cattle are found trespassing may impound the cattle in a convenient and suitable place upon his land if there is not a public pound situated within three miles of that land.

(2) The owner or occupier of the land shall, within twenty-four hours of that impounding—

(a) if the owner of the cattle is known to him, give to the owner of the cattle, or leave at his usual or last known place of abode in the State, notice of the impounding, specifying, with respect to the cattle, the same particulars as are, by section four hundred and sixty-six required to be specified in the notice given to the keeper by a person impounding cattle in the public pound;

Cf. s. 466 post.

(b) if the owner of the cattle is unknown to him, give to the keeper of the nearest public pound the same notice specifying the same particulars with respect to the cattle as is, by that section required to be given to the keeper by a person impounding cattle in the public pound.

Cf. s. 463 post.

(3) (a) The owner or occupier so impounding the cattle shall feed and maintain the cattle while he has them impounded, but shall not keep them impounded longer than seventy-two hours.

(b) If the owner of the cattle has not at the expiration of the period of seventy-two hours paid to the owner or occupier impounding the cattle the amount of damages which he is entitled to claim under this Act in respect of the trespass of the cattle, together with charges for the sustenance of the cattle whilst so impounded, at the same rates as are chargeable by the keeper of the nearest public pound, the owner of the land may impound them in the nearest suitable public pound.

Cf. s. 466 post as to charges, etc.

Ss. 460, 461, 462.

(4) The owner or occupier so impounding cattle may claim and recover in respect of the cattle so impounded sustenance charges in respect of the sustenance of the cattle whilst impounded by him on his land at the rates chargeable by the keeper of the nearest public pound, in addition to damages recoverable for the trespass of the cattle on his land.

(5) If any entire horse, ass, or bull above the age of one year shall be found trespassing without a keeper on any land, the owner of such land may castrate such cattle if unbranded, and if the owner thereof be unknown.

(a) In every case where any cattle shall have been castrated in accordance with the foregoing provisions, no compensation shall be given to the owner of such cattle for such castration.

(b) The above enactments shall be cumulative, and not be a bar to any claim for any compensation for damage or to any penalty which may have accrued by reason of such trespass, unless such compensation shall have been claimed before a Justice of the Peace at the time of making the complaint therefor, or assessed on the hearing of such complaint.

461. A person who impounds cattle unlawfully or in a place other than one authorised by this Act as a place in which cattle may be impounded commits an offence.

Unlawfully
impounding.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 16.

462. (1) A poundkeeper may charge, as poundage fees for cattle impounded under the provisions of this Act, the fees specified in Part 3 of the Fifteenth Schedule, and for the sustenance of the cattle while impounded, sustenance charges at the rates specified in that Part of that Schedule, according to the description in that Part of that Schedule of the cattle impounded.

Fees to be
paid to
poundkeeper.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 17.
Fifteenth
Schedule,
Part 3.
Cf. s. 464
post as to
increase.

Ss. 462, 463, 464.

(2) Those fees and charges are chargeable for each day during which the cattle remain impounded, and where they are impounded for part of a day but not for the whole of the day, the part is to be regarded as a whole day.

Rates for
damage by
trespass.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 18.
Fifteenth
Schedule,
Part 4.

463. (1) If cattle are found trespassing on land, the owner or occupier of the land may claim damages in respect of the trespass at the rates for damage by trespass specified in Part 4 of the Fifteenth Schedule, according to the description of the cattle, and the description contained in that Part of that Schedule of the land or crop on which the trespass is committed.

(2) If cattle are found trespassing upon unenclosed land—

- (a) after three days' notice in writing requiring the owner of the cattle to prevent them from continuing to trespass upon the land has been given to the owner of the cattle by the owner or occupier of the land, either by being delivered personally or by being left for him at his usual or last known place of abode in the State; or
- (b) after fourteen days' notice requiring the owner of the cattle to prevent them from continuing to trespass on the land, describing the land by the names and numbers of the locations or lots or other precise and accurate description has been published in the *Gazette*, or in a newspaper circulating in the locality;

the owner or occupier of the land may lawfully claim damages in respect of the trespass at the same rate which he could lawfully claim if the land upon which the cattle were found trespassing was enclosed.

Council may
vary fees.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 19.
Fifteenth
Schedule.

464. A council having the care, control, and management of a pound may, from time to time, with the written consent of the Minister, increase, decrease or otherwise vary the poundage fees, trespass fees, ranger's fees, and sustenance charges specified in the Fifteenth Schedule in re-

Ss. 464, 465, 466.

spect of the public pound but only on and after the day on which the council has caused notice of the increase or variation to be published in the *Gazette*.

465. (1) If cattle found trespassing upon land have been seized for the purpose of being impounded, the owner of the cattle, or a person authorised by him to do so, may pay or tender to the person having charge of the cattle before the cattle have been actually impounded sums claimed and payable under this Act in respect of the cattle, whether for damage by trespass, sustenance, or ranger's fees, or in respect of the impounding, and upon the payment or tender being made to the person having charge of the cattle he shall deliver them up to the owner or the authorised person paying or tendering the sums so claimed.

Cattle to be restored to owner on payment or tender of amount claimed.
Cf. Impounding Act, 1920, S.A., as amended, s. 21.

(2) If the person who has charge of the cattle is a person mentioned in paragraph (a) or subsection (2) of section four hundred and fifty-eight, and the sums claimed are paid to him, he shall pay the money to the keeper of the public pound in which he intended to impound the cattle when he delivered them to the person paying the sums, and shall give to the poundkeeper such information relating to the cattle and the payment as is necessary to enable the poundkeeper to record in the pound book entries relating to the cattle and the payment, and the poundkeeper shall make those entries and issue his receipt acknowledging receipt of the payment and stating the particulars in respect of which it is made.

Cf. s. 458 (2), (a) ante.

466. A person impounding cattle in a public pound shall give notice to the keeper of the pound specifying—

- (a) the number and kinds of the cattle impounded;
- (b) the name of the owner, if known, or of the supposed owner of the cattle, or stating the fact that he is unknown;

Person impounding to give notice to pound-keeper.
Cf. Impounding Act, 1920, S.A., as amended, s. 22.

- (c) the place where the cattle were found trespassing;
- (d) the sum, if any, claimed for damage by trespass of the cattle and for their sustenance, if any, while impounded on the land of the person by whom the cattle were impounded; and
- (e) the sum, if any, paid as ranger's fees in respect of the cattle.

Duty and responsibility of pound-keeper.
Cf. Impounding Act, 1920, S.A., as amended, s. 23.

467. (1) The keeper of a public pound shall receive into his custody cattle impounded in the pound and shall detain them in his custody, whether in the pound or elsewhere, until they are released, sold, or otherwise disposed of, in accordance with the provisions of this Act.

(2) The poundkeeper is responsible to the owner of cattle impounded for loss or damage sustained by the poundkeeper's wilful act or neglect, or the wilful act or neglect of any of his servants, but not otherwise, until the cattle are released, sold, or otherwise disposed of, in accordance with the provisions of this Act.

Notice of cattle impounded to be posted up.
Cf. Impounding Act, 1920, S.A., as amended, s. 24.

468. (1) The keeper of a public pound, when and as soon as cattle are impounded in the pound, shall post a written notice on a board on a conspicuous part of the pound, setting forth a description of the cattle.

(2) The poundkeeper shall keep the notice so posted until the cattle have been released, sold, or otherwise disposed of, according to the provisions of this Act.

Notice of impounding.
Cf. Impounding Act, 1920, S.A., as amended, s. 25.

469. (1) If cattle impounded in a public pound are not claimed by the owner or by a person on his behalf within twenty-four hours after they were impounded, the poundkeeper shall give notice in accordance with the requirements of this section of the impounding.

(2) If the owner of cattle so impounded is known to the poundkeeper, he shall give written notice of the impounding to the owner by causing it to be

delivered to the owner personally, or by causing it to be left for or posted to him at his usual or last known place of residence in the State.

(3) Where the poundkeeper gives the notice of impounding by causing it to be delivered to the owner personally, or by causing it to be left at the owner's usual or last known place of residence, the poundkeeper shall cause notice to be so delivered or left within forty-eight hours of the time when the cattle were impounded, and where the poundkeeper causes the notice to be given by posting it, the poundkeeper shall cause the notice to be sent not later than by the earliest post after the expiration of twenty-four hours from the time of the impounding.

(4) In the notice the poundkeeper shall state—

- (a) the same particulars as are by section four hundred and sixty-six required to be given to the poundkeeper by the person impounding cattle; Cf. s. 466 ante.
- (b) the sums claimed in respect of the cattle as trespass fees, ranger's fees, poundage fees, sustenance charges, and other expenses incurred up to the time of giving the notice; and
- (c) that if the cattle are not claimed by the person entitled to them, they will be sold or otherwise disposed of in accordance with this Act.

(5) If the owner of cattle impounded is unknown to the poundkeeper, the poundkeeper shall, as soon as possible after the expiration of twenty-four hours from the time of impounding the cattle, cause a notice of the impounding in the form in Part 5 of the Fifteenth Schedule to be published in the *Gazette* or in a newspaper circulating in the locality in which the public pound is situated.

Fifteenth
Schedule,
Part 5.

(6) If a poundkeeper knowingly and wilfully incorrectly, or in an insufficient manner, describes impounded cattle in a notice or advertisement required or permitted by this Part to be given or published, or in the notice or advertisement know-

ingly and wilfully fixes a time for the sale of cattle earlier than provided by this Act, the poundkeeper commits an offence.

Penalty: Ten pounds.

Pound-
keeper
may charge
for service
of notice.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 26.

470. (1) A poundkeeper may charge—

- (a) the sum of one shilling or such other sum as is prescribed by the regulations for delivering or sending by post the notice of impounding;
- (b) the sum of seven shillings and sixpence or such other sum as is prescribed by the regulations for publishing the notice of impounding in the *Gazette*, or the newspaper; and
- (c) expenses paid by him in respect of the publication of the notice.

(2) A poundkeeper may also charge for the delivery of the notice, by himself or by a person employed or engaged by him for that purpose, the sum of one shilling and sixpence or such other sum as is prescribed by the regulations per mile for every mile of the distance to the place at which the notice is delivered or left from the pound in which the cattle to which the notice relates are impounded, but where notice of impounding is, by section four hundred and sixty-nine, permitted to be sent by post, and is sent by post, the poundkeeper may charge for the delivery to the place of posting of the notice one shilling and sixpence or such other sum as is prescribed by the regulations per mile for every mile or part of a mile of the distance from the pound to the nearest place available for posting it.

Cf. s. 469
ante.

Cattle to be
released on
payment of
damages
and pound-
keeper's
fees and
charges.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 27.

471. The keeper of a public pound—

- (a) upon payment being made to him in respect of cattle impounded, of his lawful fees and charges, and the sums, if any, claimed for damage by trespass, or payable as ranger's fees; or
- (b) upon receipt of a statutory declaration sworn by a person entitled to claim a sum mentioned in paragraph (d) of section four

Cf. s. 466
(d) ante.

Ss. 471, 472, 473.

hundred and sixty-six that he has been paid or withdraws his claim for that sum, and on payment being made to the poundkeeper of the lawful fees and charges payable to the poundkeeper, and on payment of ranger's fees, if any, in respect of cattle impounded;

shall release the cattle from, and deliver them at, the pound to the owner of them or to a person authorised by the owner to receive them; but no poundkeeper is required so to release and deliver cattle except between the hours of sunrise and sunset, nor until payment is so made or waived.

472. (1) If the owner of cattle impounded is of opinion that the sum claimed by the person impounding them is excessive, the owner may under protest in writing pay to the poundkeeper the sum so claimed, and also the fees and charges due to the poundkeeper in respect of the cattle and immediately upon the payment being so made the poundkeeper shall release from, and deliver at the pound, the cattle to the owner or person authorised by him to receive them.

Payment under protest where amount claimed deemed excessive.

Cf. Impounding Act, 1920, S.A., as amended, s. 29.

(2) If the owner brings an action against the poundkeeper or the person impounding the cattle for the recovery of so much of the amount so paid as is claimed to be excessive, the Court before which the action is brought may, if of opinion that the action has been brought as soon after the release of the cattle as reasonably practicable, order the poundkeeper or the person impounding the cattle to return to the owner so much of money paid by him as exceeds the damages or fees and charges lawfully due in respect of the cattle, and an order so made is not subject to appeal.

473. Where the keeper of a public pound has received on account of a person ranger's fees or trespass fees, he shall on demand made by the person pay the fees to him, but to the extent only that they are lawfully chargeable.

Pound-keeper to pay, upon receipt, money due to person impounding. Cf. Impounding Act, 1920, S.A., as amended, s. 31.

Proceedings
prior to sale
of unclaimed
cattle.

Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 32.

474. (1) If impounded cattle are not released from the pound—

- (a) where notice of the impounding has been given to or left for the owner, within three days of the notice being so given or left;
- (b) where the notice has been given by post, within seven days of the time when the notice was posted; or
- (c) where the notice has been given by being published in the *Gazette* or a newspaper circulating in the locality in which the pound is situated, within seven days of the publication;

the poundkeeper may sell the cattle by public auction, but not until he has given three days' notice specifying the time and place of the sale and the cattle to be sold by posting the notice in a conspicuous place at the pound and by publishing it once in a newspaper circulating in that locality.

Cf. No. 7 of
1882, as
amended,
s. 37 (4) and
(4a).

(2) (a) Where it appears to a justice that giving notice and advertising the sale of cattle impounded under the provisions of this Act would involve greater expense than the value of the cattle impounded, or that by reason of the condition or health of the cattle, they should be sold as quickly as possible, he may make an order directing that the giving of notice, other than that required by section four hundred and sixty-eight, and that the advertising be dispensed with, and directing that the cattle be sold at such time and in such manner and under such conditions as he thinks fit.

Cf. s. 468
ante.

Cf. para-
graph (a) of
this
subsection.

(b) The provisions of paragraph (a) of this subsection do not prejudice enforcement of liability against the owner of the cattle in respect of a penalty or payment of lawful fees, charges, and damages under this Part, and they may be recovered on complaint before a court of summary jurisdiction.

Cf. s. 459
ante and
ss. 475 and
478 post.

(3) (a) Where it appears to a justice, after inspection of impounded cattle that—

- (i) if the cattle were held for the period and notice of sale advertised in manner prescribed by this Part the cattle would not be

likely to realise on sale sufficient to pay the poundage fees, expenses of sale, and other lawful charges payable under this Act in connection with the impounding of the cattle; and

- (ii) that an immediate sale under subsection (2) of this section would not be likely to realise those fees and charges,

Cf. ss. (2) of this section.

and the owner of the cattle does not appear and pay those fees and charges or give security to the satisfaction of the justice for the payment of such further fees, charges, and expenses as may be awarded in subsequent proceedings under this Act, the justice may make an order dispensing with the giving of notice, other than that required by section four hundred and sixty-eight, and authorising the immediate destruction or disposal of the cattle and the disposal of the carcasses in such manner as the justice thinks fit.

Cf. s. 468 ante.

(b) Destruction or disposal of the cattle or carcasses pursuant to an order so made does not prejudice enforcement of liability against the owner of the cattle in respect of a penalty or payment of lawful fees, charges, and damages under this Part and they may be recovered on complaint before a court of summary jurisdiction.

(4) Where a sale is authorised by or under this section, unless an order made by a justice directs otherwise—

Mode of sale of unclaimed cattle.
Cf. Impounding Act, 1920, S.A., as amended, s. 33.

- (a) only the poundkeeper or a person appointed for that purpose by the council may conduct the sale;
- (b) the poundkeeper or other person so appointed shall conduct the sale only at the public pound where the cattle are impounded or at another place nominated by the mayor or president;
- (c) the poundkeeper or other person so appointed shall sell the cattle to the highest bidder at auction unless where a reserve price is fixed, his bid is less than the reserve price; and

(d) the poundkeeper or other person so appointed shall commence the sale at the time fixed by the poundkeeper in the notice so published and posted.

(5) If the poundkeeper or person so appointed is of opinion that the cattle to be offered for sale are of a value greater in amount than that of the total of the fees, charges, costs, and expenses, chargeable under the Act in respect of the cattle, he may fix a reserve price on the cattle not exceeding that total.

(6) The person who impounded the cattle, the keeper of the pound, or a member or clerk of the council shall not either personally or by another person purchase cattle impounded in the pound.

Poundkeeper to brand with pound brand.
Cr. No. 61 of 1904, s. 41, re-numbered as s. 43 in reprint approved 21st August, 1950.

(7) The keeper of a public pound shall, on the sale of an animal which has been impounded in the pound, brand it with the brands, on the portions, and in the order, prescribed by the Brands Act, 1904, in such manner as to show that the brand is the last brand at the time imprinted on the beast.

Penalty: Fifty pounds or imprisonment for six months.

Cr. No. 29 of 1921, as amended.

(8) In selling or offering cattle or carcasses for sale under this Part a poundkeeper or person appointed by the council to sell them does not require a license under the Auctioneers Act, 1921, and the provisions of that Act do not apply to him in so selling or offering for sale.

(9) An order made under this section by a justice has effect according to its tenor, and is not subject to appeal.

Justice may order unsold cattle to be destroyed.
Cf. Impounding Act, 1920, S.A., as amended, s. 36.

475. (1) If impounded cattle offered for sale are not sold, a justice may certify that he does not consider the cattle of sufficient value to pay the cost of further maintaining them, and may order that the cattle forthwith be killed and the carcasses sold or otherwise disposed of in such manner as he thinks fit and specified in the order.

(2) The justice shall issue the order in writing, and the person obtaining the order shall deliver it to the poundkeeper of the pound in which the cattle are impounded.

Ss. 475, 476, 477, 478.

(3) An order made under this section by a justice has effect according to its tenor, and is not subject to appeal.

476. A purchaser of cattle or of a carcass sold under the provisions of this Part is not bound to prove that the sale was regular or that the provisions of this Part were complied with, and is not affected by default or irregularity in respect of the sale.

Purchaser not bound to prove regularity of sale.
Cf. Impounding Act, 1920, S.A., as amended, s. 37.

477. (1) If impounded cattle offered for sale are not sold, or if the sale of the cattle or of the carcasses of the cattle does not realise a sufficient sum to pay his lawful fees and charges, the poundkeeper may recover the fees and charges or such portion of them as remains unpaid, from the owner of the cattle by action in a court of competent jurisdiction, and if the owner cannot be found or the poundkeeper cannot recover the fees and charges or the portion remaining unpaid from the owner, he may in the same manner recover the fees and charges or the portion remaining unpaid from the council having the care, control, and management of the pound.

Poundkeeper may recover fees from owner of cattle.
If irrecoverable, fees may be collected from the council.
Cf. Impounding Act, 1920, S.A., as amended, s. 38.

(2) It is defence to an action so brought to show that a notice required by this Part to be given by the poundkeeper with respect to the cattle has not been given.

478. (1) If the mayor, president, or clerk, of the council having the care, control, and management of the pound or a justice, after inspecting cattle impounded in a pound, or found on a street, way, or place mentioned in section four hundred and forty-seven, is of opinion that the cattle are in a dying state, or are injured, diseased, or so weak as not to be likely to recover, he may order the cattle, if not claimed within twenty-four hours of the time of issuing the order, which time he shall specify in the

Authority for destruction of injured, diseased, or dying cattle impounded.
Cf. Impounding Act, 1920, S.A., as amended, s. 39.
Cf. s. 447 ante.
Cf. ss. 459, 474 and 475 ante.

order, to be killed, and the carcasses sold or otherwise disposed of in such manner as he thinks fit and specifies in the order.

(2) The person issuing the order shall issue the order in writing, and the person obtaining the order shall deliver it

- (a) if the cattle are impounded, to the pound-keeper of the pound in which the cattle are impounded; or
- (b) if the cattle are found on a street, way, or place mentioned in section four hundred and forty-seven, to the clerk of the council.

Of. s. 447
ante.

(3) An order made under this section has effect according to its tenor, and is not subject to appeal.

Application
of proceeds
arising
from sale
of cattle.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 40.

479. The price of cattle, or the carcass of cattle, sold under the provisions of this Part shall be paid by the person purchasing them to the poundkeeper and shall be applied by the poundkeeper—

firstly, in payment to the auctioneer at the sale, if he is not the poundkeeper, of a commission of five per centum or such other per centum as is prescribed by the regulations of the gross amount realised;

secondly, in payment to himself of the lawful fees and charges payable to him under this Part in respect of the cattle or carcass;

thirdly, in payment of the sum due to the ranger or other person by whom the cattle were impounded; and

fourthly, as to the balance then remaining

- (a) in payment to the owner of the cattle where he is known and demands payment of it to him; or
- (b) where the owner is not known in payment as directed by section four hundred and fifty-seven.

Cf. s. 457
ante.

Ss. 480, 481.

480. (1) The Governor may by Order declare that the provisions of this section do not apply to goats of the breed specified in the Order.

Goats, pigs, poultry may be destroyed if found on enclosed land.

(2) Where the owner or a person in charge of enclosed land—

Cf. Impounding Act, 1920, S.A., as amended, s. 41.

- (a) has given notice in writing to the owner of goats, pigs, birds, or poultry, of his intention to destroy goats, pigs, birds or poultry found trespassing on the land, he may, except where and to the extent he is precluded from doing so by an Order so made, kill by any means, except by the use of poison, goats, pigs, birds or poultry, which are the property of the owner to whom he has given the notice and which he finds trespassing on the land; or
- (b) has advertised twice in two or more newspapers published in the State and circulating in the locality his intention to destroy goats, pigs, birds or poultry found trespassing on the land, he may, except where and to the extent he is precluded from doing so by an Order so made, kill by any means except by the use of poison, goats, pigs, birds or poultry found trespassing on the land;

and, if not sooner claimed by the owner of the animal or bird, may six hours after killing it remove, bury, or destroy its carcass.

481. (1) No person shall drive cattle from the land, or out of the herds, of another person without first giving notice to him, or to his agent, overseer, or bailiff, of the time he intends to drive the cattle away.

Stray cattle not to be taken away without notice to owner of land where they are.

(2) A person—

Cf. Impounding Act, 1920, S.A., as amended, s. 42.

- (a) who has not so given notice of his intention to drive away cattle and who—
 - (i) drives cattle from the land, or out of the herds, of another person; or

Ss. 481, 482.

- (ii) enters upon the land of another person for the purpose of driving cattle from the land;

or

- (b) who having so given the notice drives from the land, or out of the herds of another person without that other person's authority, cattle other than his own,

commits an offence.

Penalty: Two hundred pounds.

Pound
rescues or
breaches.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 43.

482. (1) A person who—

- (a) unlawfully rescues or releases or attempts to rescue or release cattle lawfully impounded or seized for the purpose of being impounded;
- (b) damages a pound lawfully established, whether cattle are or are not impounded in it; or
- (c) commits pound-breach by reason of which cattle may escape from a pound;

commits an offence and is liable to a penalty not exceeding one hundred pounds, together with charges and expenses incurred in respect of the impounding.

(2) In proceedings in respect of an offence mentioned in this section, proof that cattle so rescued, released, or escaping, were within forty-eight hours of the time of the rescue, release, or escape, found in the possession or on the lands, or with a herd of a person, is *prima facie* evidence that the rescue, release, or pound-breach, was made or committed by that person.

Cf. Criminal
Code, s. 338.

(3) A person who does or threatens to do an injury, or causes or threatens to cause a detriment, to a poundkeeper or ranger with the intention of preventing him from, or hindering him in, doing an act

Ss. 482, 483, 484.

which, as such, he is lawfully entitled to do, or because he has, as such, done an act which he is lawfully entitled to do, or with the intention of compelling him to do an act which, as such, he is lawfully entitled to abstain from doing, or because, as such, he has abstained from doing an act which, as such, he is lawfully entitled to abstain from doing, commits an offence.

Penalty: One hundred pounds or six months imprisonment or both.

483. A person who unlawfully removes or takes down a fence, rail, or slip-panel, or opens a gate, for the purpose of allowing cattle to trespass upon or escape from enclosed land, commits an offence.

Penalty for removing fences, gates, etc., to allow cattle to trespass on or escape from enclosed land.
Cf.
Impounding Act, 1920, S.A., as amended, s. 44.

Penalty: One hundred pounds.

484. (1) If the owner of cattle—

- (a) permits the cattle to stray;
- (b) permits the cattle to be at large;
- (c) tethers the cattle; or
- (d) depastures the cattle;

Liability of owner of straying cattle.
Cf.
Impounding Act, 1920, S.A., as amended, s. 46.

in a street or other public place, he commits an offence.

Penalty: Fifty pounds.

(2) If cattle are found straying, or at large, or tethered, or depastured, in a street, or other public place, the owner of the cattle is to be regarded for the purposes of this section as having permitted the cattle to so stray or be at large or to have so tethered or depastured the cattle.

(3) If the owner of the cattle cannot be found, the person in charge or apparently in charge of the cattle is regarded for the purposes of this section as the owner.

Ss. 484, 485.

(4) In proceedings relating to an offence mentioned in this section, an averment in the complaint that a person is the owner, or person in charge or apparently in charge, of the cattle in respect of which the complaint is made, is regarded as proved in the absence of proof to the contrary.

(5) If,

whilst on a street, or other public place, which street or public place is in a city, town, or townsite,

cattle

in charge of a person

do not travel

at the rate of at least five miles a day in a direct line,

the cattle are,

for the purpose of this section

to be regarded as being at large, unless

the day is that on which a market is held for the sale of cattle or the preceding day, and the cattle are travelling to the market in charge of a person at a less rate,

but the provisions of this subsection do not affect the decision of the question as to whether cattle are at large in a street or other public place elsewhere than in a city, town or townsite, or in circumstances other than those mentioned in this subsection.

Actions
for full
compensa-
tion for
trespass.
Cf.
Impounding
Act, 1920,
S.A., as
amended,
s. 48.
Cf. Fifteenth
Schedule,
Part 4,

485. The provisions of this Part do not affect the right of the owner of land from suing in a court of competent jurisdiction for damages, at the rates specified in Part 4 of the Fifteenth Schedule, or at the rates in force for the time being at the public pound nearest to the land, or for any other damages, in respect of trespass by cattle on the land.

Ss. 486, 487, 488.

PART XXI.—MARKETS AND WEIGHBRIDGES.

Part XXI.

486. In this Part, unless the context requires otherwise—

Interpreta-
tion.
Cf. M.C. Act,
s. 356.

“market” means a market provided by the council, and things connected with the market and so provided;

“vehicle” means a vehicle used wholly or chiefly for the conveyance of goods.

487. A council—

Power of
council to
provide
markets.
Cf. M.C. Act,
s. 357.

(a) may provide market places, market houses and other conveniences and things for the purpose of holding markets;

(b) may make convenient approaches to the markets;

(c) with the authorisation of the ratepayers of the district of the municipality, obtained at a meeting of the ratepayers convened for the purpose of considering and if thought fit conferring the authorisation, may lease markets for any term of years;

Cf. s. 267
ante.

(d) may provide matters and things necessary for the convenient use of the markets; and

(e) may maintain and keep in repair the houses, conveniences, approaches and things so provided.

488. The council or the lessee of a market may demand, receive, and recover—

Markets,
Cf. M.C. Act,
s. 358, etc.,
tolls.

(a) from a person who, in the market, exposes or offers for sale, or sells, corn, grain, hay, straw, meat, poultry, eggs, butter, fruit, vegetables or other produce, products, or provisions, whether of the same kind as or a different kind from those things, or cattle;

(b) from a person who uses or rents a stall or standing place in the market;

Ss. 488, 489, 490, 491.

- (c) from a person who uses a building, place, or machine provided in connection with the market for the weighing of vehicles; and
- (d) from a person who at the time when the market is being conducted or at any other time uses for the sale of cattle, yards or premises which are outside a market and which are provided by the council for the purpose,

such sums of money, for stallage, rents, tolls, and dues, as do not exceed the respective amounts prescribed by by-laws made from time to time by the council.

Sales elsewhere than in markets prohibited.
Cf. M.C. Act, s. 360.

489. After a market is opened for public use, a person, who personally or by an agent or auctioneer, sells, offers, or exposes for sale, in the district of the municipality in which the market is provided except under a hawker's license, or except in his own dwelling place, shop, place of business, or private property, or except in the market, or in yards, or premises, licensed by the council under a by-law, relating to a market, articles, or cattle in respect of which tolls are authorised to be taken in the market, commits an offence.

Council may provide weights and measures.
Cf. M.C. Act, s. 361.

490. The council may provide, or cause to be provided, sufficient and proper weighing houses, or places, for weighing or measuring things sold or offered for sale by weight or measurement in a market, and proper weighing machines, weigh-bridges, weights, scales, and measures, according to the standard weights and measures, for weighing those things and for weighing vehicles.

Articles to be weighed if required by buyer.
Cf. M.C. Act, s. 362.

491. A person selling things or offering things for sale in the market by weight or measurement shall, if required so to do by the buyer, cause them

Ss. 491, 492.

to be weighed or measured, by the weights or weighing machines, and scales or by measures, provided by the council or a person authorised by the council to provide them, and a person who refuses, on demand, to cause them to be weighed or measured commits an offence.

492. (1) A person authorised under this or another Act to manage a machine for weighing vehicles and their loadings commits an offence,

Keepers of weighing machines not to commit frauds in weighing.
Cf. M.C. Act, s. 369.

- (a) if, being requested to weigh a vehicle with or without its loading, as the case may be, which is brought to the machine kept by him to be weighed, he neglects or refuses to do so;
- (b) if he does not fairly weigh the vehicle with or without loading as the case may be;
- (c) if he does not deliver to the buyer or seller of the things comprising the loading, or to a person interested in those things, a ticket or account specifying the weight of the vehicle, with or without the loading, as the case may be;
- (d) if he gives a false ticket or account of the weight of the vehicle, with or without the loading;
- (e) if he weighs a vehicle, with or without its loading, knowing that anything has been done to the vehicle or the loading to alter its weight; or
- (f) if he assists in or connives at a fraud concerning the weighing of a vehicle or its loading or makes or connives at making a false representation of the weight of the vehicle or loading.

(2) A person who is not authorised under this or another Act to manage a weighing machine for the weighing of vehicles and their loadings and who weighs a vehicle with or without its loading, and issues a ticket or account purporting to show the

Ss. 492, 493, 494, 495, 496, 497.

weight of the vehicle or loading, or issues the ticket or account without having weighed the vehicle with or without the loading commits an offence.

Penalty for assisting to commit fraud in weighing.
Cf. M.C. Act, s. 370.

493. A person who acts or assists in committing a fraud respecting the weighing or weight of—

(a) a vehicle, or its loading; or

(b) anything sold in a market,

commits an offence.

Stallages, tolls, etc. when to be paid.
Cf. M.C. Act, s. 371.

494. The persons by whom stallages, rents, tolls, or dues, are payable in respect of the market shall on demand pay them to the person authorised by the council to receive them.

Tolls, to whom paid.
Cf. M.C. Act, s. 372.

495. The persons by whom tolls are payable in respect of weighing vehicles with or without loading, shall pay them before the vehicles are weighed to the person authorised by the council to receive them.

Tolls in respect of cattle, when due.
Cf. M.C. Act, s. 373.

496. (1) The tolls in respect of cattle or articles brought to the market for sale become due as soon as the cattle or articles in respect of which they are demandable are brought into the market place, and before the cattle are put into a pen or are tied up in the market place.

(2) If the cattle or articles are not removed within forty-eight hours after the close of the market, another toll becomes due in respect of the cattle or articles.

Stallages, tolls, etc., may be varied.
Cf. M.C. Act, s. 374.

497. During the continuance of a lease of a market the council may, with the consent in writing of the lessee, change the stallages, rents, tolls, and dues authorised under this Act to be taken in respect of the market, and for weighing, and in respect of the yards or premises for the sale of cattle.

Ss. 498, 499, 500, 501.

498. No person shall demand or take a greater toll than that authorised under this Act, whether under section four hundred and ninety-seven, or otherwise.

Excessive
tolls not to
be demanded
or taken.
Cf. M.C. Act,
s. 375.
Cf. ss. 223
(2), (c); and
497 ante.

499. If a person liable to pay a stallage, rent, toll, or due, authorised under this Act to be taken does not pay it, when due, to the council, or its lessee, or a person authorised by the council or its lessee to collect it, the council or its lessee may recover it by distress of all, or any of the articles or cattle in respect of which it is due or in a court of competent jurisdiction.

Recovery of
tolls.
Cf. M.C. Act,
s. 376.

500. A dispute concerning a stallage, rent, toll, or due, may on complaint by a party to the dispute, that there is a dispute, be determined by a court of summary jurisdiction, which may make such order, and award such costs to such party as to the court seems proper, but where another court has jurisdiction to determine the dispute, the provisions of this section do not affect that jurisdiction.

Disputes,
how settled.
Cf. M.C. Act,
s. 377.

501. The council or its lessee shall cause to be painted on boards or to be printed and attached to boards, in legible characters, lists of the several stallages, rents, tolls and dues payable, and shall cause to be set up and maintained in the market and in each weighing house and weighing place a board containing a list of the stallages, rents, tolls, and dues, and no persons shall charge or receive a stallage, rent, toll or due which is not specified on the board so set up, but if a list is destroyed, injured, or obliterated, the stallages, rents, tolls or dues continue to be payable during such time as is required for the restoration of the list in the same manner as if the list had been maintained in the state required by this Act.

List of tolls,
etc., to be
set up.
Cf. M.C. Act,
s. 378.

Part XXII.,
Div. 1.

Ss. 502, 503.

Part XXII.,
Div. 1.

PART XXII.—TRADING UNDERTAKINGS.

Division 1.—Trading by Councils.

Power to
establish
trading
under-
takings.
Cf. N.S.W.
L.G. Act,
s. 417.
Cf. No. 36 of
1950.
Cf. s. 505
(2), (d)
post.

502. The council of a municipality may in accordance with the provisions of this Act, establish, acquire, and conduct trading undertakings.

Interpreta-
tion of
"trading
under-
takings."
Cf. N.S.W.
L.G. Act,
s. 418.
Cf. s. 5 ante.

503. (1) In this Act, "trading undertaking" means—

- (a) the supply of electricity and the supply and installing of electrical fittings and appliances;
- (b) the supply of gas, and the supply and installing of gas fittings and appliances;
- (c) the business of a ferry service on waters within or adjacent to a district;
- (d) the business of a motor omnibus service, tramway service, or trolley bus service, for the conveyance of passengers for hire;
- (e) the supply of stone, broken stone, clay, sand, and gravel, from the council's quarries or pits or land, and the supply of bricks from the council's brickworks;
- (f) the supply of pipes, flagstones, kerbing, cement concrete slabs, blocks, bricks, and pre-cast concrete sections and drainage structures, street seats, and the supply of bituminous concrete, and guttering;
- (g) the supply of ice and cool storage;
- (h) the carrying on of hostels for school children;
- (i) the carrying out of water boring;
- (j) the carrying on of sheep dips;

- (k) the planting of trees for afforestation, the maintenance of forests and the selling of the thinnings and timber from the forests and the carrying out of an afforestation programme;
- (l) the selling of the residual products of abattoirs; and
- (m) any other undertaking approved by the Minister.

(2) A council shall not trade in electrical or gas fittings and appliances unless the council is engaged in the supply of electricity, or gas, as the case may be.

Limitation
of supply
of certain
things.

(3) The power to trade in an article, commodity, or service, including the supply of power, includes the power to purchase, generate, manufacture, or obtain, the article, commodity, or service, for the purpose of sale or hire.

(4) The power to sell an article, commodity or service, including the supply of power, includes the right to sell for cash or upon terms of extended payment, including, where appropriate, terms of hire-purchase.

Power to
sell on
extended
terms of
payment.

(5) (a) With the consent of the Governor a council may extend any of its trading undertakings mentioned in this section into the district of another municipality, if the consent of the council of that municipality is obtained to the extension, but subject to such terms and conditions, as are agreed upon between the councils, and as are approved by the Governor.

Trading
undertak-
ings may be
extended to
other
districts
in certain
circum-
stances.
Cf. s. 277
ante.

(b) Where an agreement has been made and approved under paragraph (a) of this subsection, the parties may, from time to time, with the approval of the Governor, vary the terms and conditions of the agreement.

Cf. para-
graph (a)
of this
subsection.

Part XXII.
Div. 1.

Ss. 504, 505.

Undertaking
should aim
at cheap
service
without
loss.
Cf. N.S.W.
L.G. Act,
s. 419.

504. A council shall, while complying with the provisions of this Act, in general, and with the provisions relating to making proper provision for depreciation and obsolescence of assets, and for reserves and for the payment of principal, interest and expenses in respect of money borrowed for the purposes of the undertaking, in particular, endeavour so to conduct each trading undertaking that without loss being incurred by the council, the service, product or commodity of the undertaking is supplied to the consumer as cheaply as possible.

Separate
accounts to
be kept for
each trading
undertaking.
Cf. S.A. L.G.
Act, s. 513.
Cf. s. 522
post.

505. (1) A council shall keep the records of its accounts in respect of each trading undertaking separately from its other accounts.

Application
of revenue.

(2) A council shall apply the money received as revenue from a trading undertaking—

Working
expenses.
Cf. s. 599 (3)
post as to
interest on
overdraft.

(a) firstly, in payment of the working expenses and costs of maintenance of the undertaking, including interest on money borrowed on overdraft;

Interest on
money
borrowed.
Cf. Part
XXVI, Div. 3,
ss. 601 *et seq.*
post.

(b) secondly, in payment of the interest on debentures, if any, issued by the council under this Act in respect of money borrowed for the purposes of the undertaking;

Sinking
fund.

(c) thirdly, in providing, to the extent of not more than four per centum per annum of the amount borrowed, a sinking fund, to be invested in a manner to be approved by the Minister, and to be applied with the interest on the investment in or towards the extinction or discharge of the debt incurred for the purposes of the undertaking, unless and to the extent that the council has issued in respect of the amount borrowed debentures which provide for repayment by instalments of interest and principal, in which case the council may apply the revenue from the undertaking

towards the meeting of the periodic instalments of the principal sum for which the debentures are issued; and

- (d) fourthly, in providing a reserve fund, if the council thinks fit, by setting aside from time to time such money as it thinks reasonable, and investing it in investments in which trustees are authorised by law to invest or in a manner approved by the Minister, which reserve fund the council may from time to time apply to make good a deficiency, if any, occurring at any time in the income of the council from the undertaking, or to meet an extraordinary claim or demand at any time arising against the council in respect of the undertaking.

Reserve fund.

(3) A council shall apply the surplus remaining after compliance with subsection (2) of this section, in payment into its municipal fund of amounts paid from that fund as interest or reduction of principal, or into the sinking fund, if any, provided in respect of money borrowed for the undertaking.

Recouping municipal fund for loan commitments met.
Cf. ss. (2) of this section.

(4) The council shall apply the surplus then remaining after the council has complied with the requirements of subsections (2) and (3) of this section and after payment, if any, into the municipal fund of so much of the surplus as is authorised by section five hundred and six towards lowering the price or improving the quality of the service or commodity supplied by it.

Application of surplus towards lowering prices.
Cf. ss. (2) and (3) of this section and s. 506 post.

506. Where the Minister is satisfied that the price of the service rendered or the commodity supplied is fair and reasonable, the council may, notwithstanding the provisions of section five hundred and five, pay into its municipal fund the portion of the net surplus remaining after the payments required by subsection (3) of that section have been made.

If price reasonable, application of surplus to other purposes.
Cf. s. 505 ante.

Part XXII.,
Div. 2.

Ss. 507, 508, 509.

Reserve
fund may
be applied
otherwise
if electors
approve.
Cf. S.A. L.G.
Act, s. 515.
Cf. s. 505
ante.
Cf. No. 36
of 1950,
s. 7 (a).

507. If a council is of the opinion that the amount of the reserve fund established under section five hundred and five is at any time greater than is reasonably necessary to provide for the contingencies mentioned in that section, the council may apply the excess in accordance with the provisions of this Act.

Council to
minimise
damage
necessary
and to
compensate.
Cf. S.A. L.G.
Act, s. 516.
Cf. s. 684
post as to
arbitration.

508. A council shall do as little damage as may be in the exercise of the powers conferred by this Part, and shall make compensation agreed, or if not agreed as determined only on a reference to arbitration, for damage, if any, done in or by reason or in consequence of the exercise of the powers so conferred.

Part XXII.
Div. 2.
Cf. N.S.W.
L.G. Act,
ss. 421 and
422.

*Division 2.—Powers of Councils in Relation to Certain
Works Upon, Over and Under Streets.*

Interpreta-
tion.

509 (1) In this Division—

“notice” means a written notice served on the proprietor;

“proprietor” means the person

owning; or

entitled to the use and benefit of,

the works constructed in the street;

“street” means a street and other public place under the care, control, and management of the council;

“to construct works in a street” means to construct, lay, suspend, or otherwise place, upon, over or under a street, rails, pipes, wires, cables, tunnels, or other things, or structures, whether of the same kind as, or a different kind from, those here specified, and variants of the expression “to construct works in a street”, have correlative meanings.

(2) This Division does not apply to works constructed, whether before or after the coming into operation of this Act—

Exclusion of
application
of this
Division.
Cf. s. 5 ante.

- (a) by the Crown;
- (b) by an agency, instrumentality or department of the Crown; or
- (c) by a person under authority of an Act.

510. (1) A council may—

Council
may grant
permission.

- (a) grant permission to construct works in a street in its district;
- (b) impose conditions in respect of the permission; and
- (c) impose a charge for damage which results to the street because of the construction of the work.

(2) It is an offence to construct works in a street without first obtaining the written permission to do so from the council having the care, control, and management, of the street.

(3) Where under this Division a council grants a permission to construct works in a street, it is a condition of the permission, whether expressed in the permission or not, that the permission does not authorise permanent or unreasonable obstruction of the ordinary and reasonable use of the street for the purposes for which it is dedicated.

(4) If a person to whom a permission to construct works in a street is granted under this Division or his successor in title does not comply with the conditions of the permission, he commits an offence.

(5) There is no right of action against a council because of anything done or omitted under or pursuant to a permission granted under this Division by the council.

(6) Where works have been constructed in a street without the permission of the council having the care, control, and management of the street, the council may by notice require the proprietor to remove the works, and if the works consist of, or include a tunnel or other excavation, to fill in, and make good the street, by a time specified in the notice.

(7) Where the council is of opinion that works constructed in a street—

- (a) have damaged the street; or
- (b) require repair in the interests of the safety or convenience of the public;

the council may by notice require the proprietor—

- (i) to make good the damage to the street; or
- (ii) to effect such repairs as are specified in the notice,

by a time specified in the notice.

(8) If the proprietor does not comply with the requirements of the notice by the time specified in the notice, or if the council thinks fit to extend that time, within the extended time, the council may cause the requirement to be complied with or may cause the works or part of the works to be removed from the street and the damage, if any, resulting, to be repaired and made good, and may recover the expenses incurred in doing so from the proprietor, in a court of competent jurisdiction.

Construction
of subways,
bridges,
pipes,
conduits or
conveyors
over or
under
streets.

511. (1) A council may with the consent of the Minister authorise a person to construct and maintain all or any of the following works leading from land on one side of a street to land on the other side of the street, namely—

- (a) a subway at such depth under the street as the council approves;
- (b) a bridge for the use of pedestrians to be constructed at a height of not less than fifteen feet over the street;

- (c) a pipe, conduit or conveyor for the purpose of transporting material to be constructed at a height of not less than fifteen feet over the street.

(2) (a) The plans and specifications of any work proposed to be constructed under this section shall be submitted to and approved by the council before its construction is commenced.

(b) The person who constructs any of the works shall maintain it in good order and condition and obtain from an insurance company approved by the council a policy of insurance in the joint names of the council and himself indemnifying the council against any claim for damages which may arise in or out of the construction, maintenance or use of the work.

PART XXIII.—OTHER POWERS OF COUNCILS.

Part XXIII.

512. A council in accordance with the provisions of this Act—

- (a) may construct, or acquire by purchase or otherwise and establish, premises for the purpose of providing hostels for school children and may maintain and control the premises when so established;
- (b) may, with the approval of the Governor, provide or acquire, establish, conduct, and carry on, or subsidise, ferry or passenger transport services by land or water within its district or, with the consent of the council of another municipality, partly within the district of each municipality, and may make the prescribed passenger or transport charges in respect of a service carried on by the council, and exercise power conferred by this paragraph in conjunction with another council;
- (c) may conduct, control, and maintain abattoirs, and from time to time, construct and erect such buildings, and fences and provide

Hostels for school children may be provided.
Cf. R.D. Act, s. 160 (31).
Cf. ss. 5, 235, and 496 ante.

Passenger transport service may be provided
Cf. R.D. Act, s. 160 (21).

Cf. s. 271 ante.

Abattoirs may be conducted.
Cf. M.C. Act, s. 355.

such appliances as are necessary for the abattoirs, and may lease, purchase, or otherwise acquire, land for those purposes;

Railway
sidings
may be
permitted.
Cf. R.D. Act,
s. 160 (27).
Cf. s. 267
ante.

- (d) may, with the approval of the Minister and notwithstanding the provisions of section two hundred and sixty-seven, demise to the Western Australian Government Railways Commission for such term and subject to such conditions as the Minister thinks fit, the right to lay down and construct upon, across, or along, portion of a street or other public place under the care, control, and management of the council, such lines of rails as the Commission thinks necessary, and to run engines, trucks and rolling stock on the lines, and to use portion of the street or public place as a railway siding or part of a railway, and to exercise such accessory powers as the Commission thinks necessary, but the term may be brought to an end by the Minister at any time, and during the term the portion of the street or public place affected is regarded as being part of a railway within the meaning of the Government Railways Act, 1904, which Act as affected by the special provisions of the demise, applies to it accordingly;

Quarrying,
brickmaking.
Cf. R.D. Act,
s. 160 (28),
and M.C. Act,
s. 219.

- (e) may open, develop, acquire, and work, quarries or gravel pits or brickyards, other than brickyards situated in the metropolitan area as that area is declared by order, and may manufacture cement bricks, and employ and engage persons, and provide machinery, apparatus, and plant necessary for doing so;

Sale of
quarried
materials
and bricks.
Cf. M.C. Act,
s. 219.

- (f) may sell or otherwise dispose of stone and materials obtained from quarries belonging to it, and bricks or cement bricks made by it,
(i) to the Crown in right of the State or Commonwealth, or to a department or agency or instrumentality of the

Crown in right of the State or Commonwealth or a body authorised by Act to acquire stone, materials and bricks or cement bricks;

- (ii) to persons who require stone, materials, bricks, or cement bricks, for use in the construction, maintenance, or repair of the footpaths, streets, or ways in the district; and
 - (iii) with the approval of the Minister to other persons who require the bricks, cement bricks, stone, and materials;
- (g) may erect or acquire lighting plants and cooling chambers;
- (h) may erect, on land vested in the council or acquired for the purpose, or purchase, houses to be let to, and used as homes by, employees of the council, and may maintain and make use of and let the houses and land for those purposes as long as the council thinks fit, section two hundred and sixty-seven notwithstanding, and may sell and dispose of the houses and land when no longer required by the council for those purposes; but shall not grant the fee simple in the land to an employee, and may expend the money required for the purchase of the land or houses or the erection of the houses, or keeping them in repair if necessary, out of the municipal fund of the council or out of loan moneys raised for the purpose under Part XXVI of this Act or out of both;
- (i) may provide, conduct, control, and maintain, live-stock saleyards, and from time to time construct and erect such buildings and

Electric lighting plants and cooling chambers.
Cf. R.D. Act, s. 160 (29).
Cf. s. 5 ante.

Provision of homes for employees.
Cf. M.C. Act, s. 219A, and R.D. Act, s. 160 (23).

Cf. s. 267 ante.

Cf. Part XXVI post.
Cf. Part XXIV post gen. and s. 529 specif. as to expenditure from municipal fund.

Live-stock saleyards.

fences and provide such appliances, as are necessary for live-stock saleyards, and may lease, purchase, or otherwise acquire, land for those purposes;

Parking
areas.

- (j) may provide, establish, conduct, control and maintain on land owned by, or under the care, control and management of the council, parking areas and parking stations including termini for buses;

Acclimatisa-
tion
Districts.
Cf. No. 67 of
1956, s. 3 and
No. 68 of
1956, s. 2

- (k) may undertake the control and management of an acclimatisation district proclaimed under the provisions of Part IIIA of the Fisheries Act, 1905 in respect of which the council is registered as a trout acclimatisation society under that Act, and apply its revenue to the purposes of the control and management, and delegate its powers, authorities and functions in respect of the acclimatisation district to a committee of its members.

Parking
meters.

- (l) may purchase and instal parking meters in streets within its district, but a council shall not purchase for installation or instal in any part of its district that is within the metropolitan area as that area is defined from time to time in the regulations made under the Traffic Act, 1919 parking meters except with the prior written approval of the Minister to whom the administration of that Act is for the time being committed by the Governor; and

Historical
sites.

- (m) may provide for the purchase, restoration and preservation of sites which have historical significance or value.

513. A council in accordance with the provisions of this Act may—

Private
Bills.

- (a) promote private Bills in Parliament for the benefit of the municipality;

(b) enter into such contracts of insurance with insurers as the council considers necessary including contracts of insurance—

- (i) of the whole or part of the council's plant, buildings, or other property, against destruction or damage by fire, accident or other mishap;
- (ii) of the council's officers and employees against death, injury, or damage arising out of the exercise of their duties; and for discharging the council's obligations under the Workers' Compensation Act, 1912;
- (iii) of the fidelity of any of its officers and employees handling money or other property of the council;
- (iv) against liability to members of the public arising out of death, injury, or damage, to person or property, caused by the negligence of the council's officers or employees or caused by any other matter or thing for which the council may be held liable in damages;
- (v) of the members, without prejudice to any obligation imposed on the council by the Workers' Compensation Act, 1912, against death, injury, or damage, to person or property, arising in the course of
 - proceeding as a member to and from and attending as a member, meetings of the council or a committee of the council or as a delegate of the council, meetings of municipal conferences, or county or regional councils or committees of them; or
 - carrying out at the specific request or instruction of the council an inspection or other duty; and

-
- (vi) in respect of all or any of those risks with an insurer either by the council alone or in conjunction with other councils or through the setting up of a pool or other joint organisation to make provision for the insurances mentioned in this paragraph;
- Works. (c) carry out works for national or war purposes, for purposes connected with a visit to the State of a member of the Royal family, and for purposes connected with a local state of emergency where a state of emergency is declared by the Minister to exist;
- Nursing system, hospitals, etc. (d) subsidise a district nursing system, and a hospital, public or private, for the reception of the sick, established within or without the district of the municipality, or a qualified medical practitioner and donating such sums as the council thinks fit for purposes connected with the University of Western Australia Medical School Appeal Fund;
- Improving of school grounds. (e) contribute on a pound for pound basis towards the cost of the improvement of school grounds;
- Agricultural societies. (f) subsidise during any financial year an agricultural society, with a sum not exceeding in the aggregate three per centum of the council's general revenue for that financial year;
- Pay loss of earnings and expenses. (g) pay
- (i) loss of earnings to an amount not exceeding ten pounds for each person together with reasonable expenses necessarily incurred by not more than two delegates of the council in attending a municipal conference;

- (ii) reasonable expenses necessarily incurred by a member in carrying out a duty or performing an act under express authority of the council;
- (h) pay to a member who necessarily incurs expense or loss of earnings in or in consequence of travelling to or attending a meeting or a committee of the council, or as a delegate of the council at a meeting of or a committee of a county council or a regional council, the amount of the expenses and either the loss so incurred, or five pounds whichever is the lesser amount; Expenses of member.
- (i) subscribe to a local government association and join with other councils or with a local government association in taking proceedings in a court for the purpose of obtaining a judicial decision on a matter of law that is of general importance to local government; Test case.
- (j) take a poll or referendum of its electors to obtain a decision on a question which the council thinks fit to submit to the electors; Poll of electors.
- (k) pay fees to witnesses summoned to give evidence before the council, a revision court, an auditor, or a court of appeal or valuation court; Fees to witnesses
- (l) pay reasonable expenses incurred by the clerk or a person appointed by the council to discharge the functions of the clerk in carrying into effect the provisions of Part IV; and Expenses of Clerk.
- (m) purchase motor vehicles for resale to officers for use by them in carrying out their duties. Motor vehicles for use by officers.

514. (1) With the approval of the Governor given on the recommendation of the Minister, a council may erect on land vested in or acquired by it for the purpose, houses to be let on lease or sold under

Provision of houses for letting or sale.
Cf. M.C. Act, s. 219B.
Cf. s. 267 ante.

contract of sale to persons to whom the council may from time to time be willing to let on lease or to sell them.

(2) A council which proposes to exercise the power conferred by subsection (1) of this section shall in the first instance set out its proposal with material particulars in writing and submit them to the Minister for his consideration.

(3) After consideration of the proposal the Minister may—

- (a) decline to recommend it to the Governor for approval;
- (b) request the council to amend its proposal in such manner as the Minister indicates; or
- (c) recommend the proposal or the amended proposal, as the case may be, to the Governor for approval.

(4) If the Governor approves of the proposal, the Minister shall cause notice of the approval to be notified to the council and published in the *Gazette*.

(5) The council shall not expend money required for the erection of a house or the acquisition of land for the carrying out of a proposal approved by the Governor under this section except out of loan moneys raised for the purpose under Part XXVI of this Act.

Cf. Part
XXVI. post.

(6) The council shall use and apply the rents and profits derived by the council from the leasing of houses, and the net proceeds derived by the council from the sale of houses, under this section for payment of interest and sinking fund contributions or otherwise for the redemption of the loan from which the moneys were expended.

515. (1) Where a council is of opinion that there exists on land in its district, not being unrateable land which has not been alienated from the Crown, a sand drift that is or is likely to become injurious or detrimental to other land, whether within or outside the district, the council may, by written notice served on the owner of the land and also on the occupier, if the owner is not the occupier, require him or them within a reasonable time specified in the notice—

Council may order owner or occupier of land to prevent sand drifting on to road.
Cf. No. 51 of 1919, s. 4.

- (a) to plant the land with marram or other grass specified in the notice;
- (b) to bush the land or cover it with seaweed or any other substance specified in the notice; or
- (c) to do such other things for the abatement of the nuisance as are specified in the notice,

whichever of those requirements the council thinks fit and specifies in the notice.

(2) If the requisitions of a notice so given are not complied with to the satisfaction of the council within the time specified in the notice, the owner or occupier on whom the notice has been served commits an offence.

(3) Where a council is of opinion that if the vegetation growing on land within three chains of a street or other public place under the care, control, and management of the council were cut down or otherwise destroyed or injured, the street or public place would be obstructed or injuriously affected by wind erosion or sand-drift the council may serve upon the owner of the land, or if the owner is not the occupier, upon the occupier also, a written notice—

Cf. No. 15 of 1945.

- (a) setting out the opinion of the council; and
- (b) inviting the person upon whom the notice is served to show cause not later than a day specified in the notice, why a direction should not be made forbidding the cutting

down or other destruction or injury of vegetation on the land specified in the notice without the consent of the council.

Cf. ss. (3) of
this section.

Cf. ss. (6) of
this section.

(4) If, during the period between the service upon a person of a notice under subsection (3) of this section, and the service upon him of a direction or advice under subsection (6) of this section, he cuts down, destroys, or injures, or causes to be cut down, destroyed, or injured, vegetation on the land specified in the notice, he commits an offence.

Penalty: One hundred pounds.

Cf. ss. (3) of
this section.

(5) After service of notice mentioned in subsection (3) of this section and after hearing and considering representations, if any, made in respect of the notice the council may issue a written direction that vegetation upon the land shall not be cut down or otherwise destroyed or injured, during the period specified in the direction, except in such circumstances or with such consents, as are specified in the direction.

(6) (a) The council shall cause the direction to be served upon the owner of the land to which it relates, and, if the owner is not the occupier, upon the occupier also, and shall cause a copy of the direction to be published in the *Gazette* and a newspaper circulating in the district.

(b) If the council decides not to issue a direction it shall forthwith after making that decision serve written advice of its decision to that effect on the owner of the land to which the decision relates and if the owner is not the occupier, upon the occupier also.

(c) The clerk shall retain copies of directions so issued while they are operative at the office of the council and shall permit persons desiring to inspect them to do so at reasonable times, free of charge.

(7) If a person upon whom a direction is served under this section contravenes the direction after it is served upon him, he commits an offence.

Penalty: One hundred pounds.

(8) If a person contravenes a direction so made after the publication of it in both the *Gazette* and the newspaper, he commits an offence.

Penalty: One hundred pounds.

(9) (a) The council may give its written consent to the cutting down or other destruction of, or injury to, the vegetation upon the condition that the person to whom the consent is given plants, within the time specified by the council, other vegetation of the kind required by the council in replacement or substitution of vegetation cut, destroyed or injured with its consent.

(b) If a person to whom a consent given upon condition fails to comply with that condition he commits an offence.

Penalty: One hundred pounds.

(10) The term, "vegetation", in this section means trees, shrubs, plants and grasses growing on the land at the time of the service of a notice or service or publication of a direction under this section and in relation to trees, shrubs, plants or grasses planted in replacement or in substitution for trees, shrubs, plants and grasses, means the trees, shrubs, plants and grasses so planted but does not include a primary or a secondary noxious weed proclaimed as such for the time being under the Noxious Weeds Act, 1950.

Cf. No. 60 of
1950, as
amended.

(11) A person upon whom a direction has been served under subsection (6) of this section may appeal against the direction to the Minister for Agriculture who may by written notice to the council and the appellant, vary, amend, confirm or quash the order, and the decision of the Minister is not subject to appeal.

Cf. ss. (6) of
this section.

In default,
council may
do work and
recover cost.
Cf. No. 51 of
1919, s. 5.
Cf. s. 515 (1)
and (9)
ante.

516. (1) If a person does not comply with the requisition of a notice served upon him under subsection (1) or the requirements of a condition imposed under subsection (9) of section five hundred and fifteen, a person authorised by the council to do so may enter upon the land, with or without assistance, and may do and cause to be done the work and things which should have been done in accordance with the requisition of the notice or the requirements of the condition, as the case may be, but this section does not relieve the owner or occupier from a penalty incurred by him.

(2) (a) The council shall assess the amount of the expense incurred by the authorised person, and is authorised to pay the amount out of its municipal fund.

Cost of work
recoverable
in same
manner as
rates.
Cf. No. 51 of
1919, s. 6.

(b) A certificate of the mayor or president of the council is *prima facie* evidence of the amount, and the amount as so certified is a debt due to the council recoverable as if it were the amount of rates imposed by the council on the land for the financial year current when the expense was incurred; and the provisions of this Act dealing with the liability for and recovery of rates and to the sale or lease of land for rates, apply to and in respect of the debt, and the amount of the debt and all costs, charges, and expenses attending the recovery or attempted recovery of it are recoverable and are a charge on the land, and the burden of the amount shall be borne and apportionable as if it were the amount of those rates accordingly

Owner not
to hinder
occupier, or
vice versa.
Cf. No. 51 of
1919, s. 7.

517. (1) An owner or occupier has full power to do all that is necessary to comply with the requisitions of a notice or of a direction, or the requirements of a condition, binding on him under this Part.

(2) An occupier of land who prevents an owner from complying with a requisition of a notice or direction, or the requirements of a condition so binding on him, commits an offence and a court of summary jurisdiction may, upon complaint that the

Ss. 517, 518, 519, 520.

occupier prevents the owner from doing so, order the occupier to permit the doing of anything necessary to be done so that the requisition or requirement may be complied with and the occupier shall comply with the order, which is not subject to appeal.

(3) An owner whilst so prevented is not liable to penalties to which he might otherwise have become liable by reason of his default in complying with a requisition or requirement unless within a reasonable time he has failed to make a complaint mentioned in subsection (2) of this section.

Cf. ss. (2)
of this
section.

(4) If in the performance or attempted performance of a duty imposed on him by a notice or direction so binding upon him, or of a requirement of a condition imposed and binding upon him, the occupier of land is obstructed or hindered by the owner, or if the owner is so obstructed or hindered by the occupier, the one who obstructs or hinders the other commits an offence.

518. A trustee who as such is owner of land has the same authority to apply the funds under his control in connection with the land, in defraying charges, costs, and expenses necessarily or properly incurred by him by virtue of this Part as that owner, as he has to pay rates imposed by the council in respect of the land.

Protection
of trustee.
Cf. No. 51
of 1919, s. 8.

519. A council may let on hire its chattels, machinery, and equipment.

Power to
hire out
council
plant.
Cf. N.S.W.
L.G. Act,
s. 498.

520. (1) A council may, within or outside its district carry out work of any character for another council or for a public body or institution, at the cost of that council, body, or institution.

Private
works
authorised.
Cf. N.S.W.
L.G. Act,
s. 499.
Cf. s. 277
ante.

(2) A council may carry out work for a ratepayer of the municipality within its district at the cost of the ratepayer—

- (a) without the approval of the Minister, if the work relates to the provision of crossings, footpaths, private streets, drainage, control of soil or salt erosion, or other work which the council ordinarily carries out; or
- (b) with the approval of the Minister, if the work is other than that referred to in paragraph (a) of this subsection.

Cf. para-
graph (a)
of this
subsection.

Flood
control
powers.
Cf. s. 365
ante.

521. (1) For the purpose of reducing flooding on to a street, or reserve, or other public place, or on to private land, from a river, brook, creek, water course, or other stream, a council may, by its agents, servants, or workmen, enter upon land whether public or private and with the necessary plant and materials.

- (a) construct and maintain dams, weirs, levees, or embankments, on the land;
- (b) excavate and open drains and ditches on the land;
- (c) remove trees, snags, vegetation, or other obstruction, whether of the same kind as, or a different kind from, those here specified from the bed of the river, brook, creek, watercourse, or stream;
- (d) divert or straighten or level the bed of a river, brook, creek, or stream; and
- (e) with the written approval of the Minister for Works carry out dredging in tidal waters or reclaim areas in those waters.

Cf. ss. (1) of
this section.

(2) If by reason of action taken by a council under subsection (1) of this section a person sustains loss or suffers damage to his property the council shall make to him for the loss or damage compensation agreed between the parties, or if not so agreed, as determined only on a reference to arbitration but in

Cf. s. 684
post as to
arbitration.

determining the amount of the compensation the amount of any increase in value of the land which has resulted or is likely to result in consequence of any work done by the council under this section shall be deducted from the compensation.

(3) Where for the purpose of effectively carrying out any work authorised by this section, a council considers it necessary to carry out work in an adjoining district, the council may do so in accordance with the provisions of this Act, if it obtains the written consent to so do—

- (a) of the council of the adjoining district;
- or
- (b) of the Minister.

(4) A council may carry out any of the works authorised under this section jointly with another council or other councils, the costs thereof being paid by the councils in the proportion agreed upon by them, or a council may subsidise the council of an adjoining district which carries out any of those works.

PART XXIV.—FUNDS AND REVENUES OF MUNICIPALITIES.

Part XXIV.

522. (1) A council shall establish—

- (a) a municipal fund, into which the council shall receive and from which the council is authorised to expend the ordinary revenue of the council;
- (b) a trading fund in respect of each trading or business undertaking;
- (c) a trust fund, in respect of each trust, of which the council is trustee;
- (d) a loan capital fund in respect of each loan raised; and
- (e) a reserve fund, for each reserve of money established by the council.

Funds to be established.
Cf. N.S.W.
L.G. Act,
s. 106.
Cf. s. 523
post as to
ordinary
revenue.

Cf. s. 505
ante.

Cf. No. 36
of 1950.

(2) The council shall keep each of those funds separately and distinct from each of the others, under a designation which distinctively indicates the purposes for which the fund is kept.

(3) The council may open and operate one banking account in respect of the funds mentioned in paragraphs (a) and (b) of subsection (1) of this section, but shall open and operate a trust fund banking account in respect of the other funds mentioned in that subsection.

Cf. ss. (1),
(a) and (b)
of this
section.

Municipal
fund,
ordinary
revenue of
municipality,
composition
of.

Cf. M.C. Act,
s. 379, and
R.D. Act,
s. 216.

523. (1) The ordinary revenue of a municipality consists of money received by the council, being—

- (a) the rents, issues, profits, and dues arising from or out of the real and personal property of the municipality;
- (b) fees, profits, and rents, arising from or out of land, reserves, and commons, vested in or under the care, control, or management, of the council;
- (c) dues and fees authorised by the Governor to be exacted in respect of a building, erection, or work, placed by the Governor under the care, control, or management, of the council;
- (d) fees for licenses granted and registrations effected by or on behalf of the council, under the provisions of this Act;
- (e) fees for licenses and registrations which, whether under the provisions of another Act or otherwise, are payable to the municipality;
- (f) fines and penalties incurred and recovered by the council in respect of offences under this Act;
- (g) fines and penalties which by Act are made payable to the municipality, excepting so much as is by Act made payable to an informer;

Cf. No. 4 of
1904, s. 2.

-
- (h) fines incurred under the Bread Act, 1947, and recovered on the information of an inspector appointed by the council;
 - (i) money payable to the council of the municipality in respect of a rate imposed under the provisions of this Act; or under another Act if the proceeds are applicable to the general purposes of this or another Act administered by, or conferring a right or imposing a duty or obligation upon, the council;
 - (j) money which the council receives under or in pursuance of this or another Act, but which is not the proceeds of a loan;
 - (k) fees for licenses under the Traffic Act, 1919, or traffic fees from the Metropolitan Traffic Trust Account or The Western Australian Transport Board and moneys received out of the Central Road Trust Fund established under that Act;
 - (l) grants from the State for the construction or maintenance of streets, or as a grant in aid or otherwise for the endowment of the municipality;
 - (m) receipts under the Vermin Act, 1919, if applicable to the general purposes of this Act or the Vermin Act, 1919;
 - (n) receipts under the Health Act, 1911, if applicable to the general purposes of this Act or the Health Act, 1911;
 - (o) receipts under the Water Boards Act, 1904, if applicable to the general purposes of this Act or the Water Boards Act, 1904;
 - (p) profits of trading undertakings lawfully carried on by the council, where those profits are lawfully capable of being appropriated to the general purposes of this Act; and
 - (q) interest on authorised investments, other than investments representing a sinking fund or a reserve fund.

(2) The council shall carry ordinary revenue it receives to its municipal fund.

(3) Money received on the sale or disposal of assets of a capital nature, or the sale of plant which is to be replaced, is not ordinary revenue, and the council shall carry money so received to such of the council's other funds as the council resolves.

(4) A council shall not, in anticipation of the receipt of ordinary revenue, commit itself to expenditure from its municipal fund, in excess of an amount equal to one third of the ordinary revenue of the council for the year then last preceding.

Government
grants.
Cf. R.D. Act,
s. 217.

524. (1) The Governor may from time to time place to the credit of a municipality for the purpose of a specific object or for general purposes, a sum of money out of money appropriated by Parliament for the purposes of this Act.

(2) If granted for a specific object the sum does not form part of the ordinary revenue of the council of the municipality, and the council shall from time to time, whenever required, furnish to the Minister a separate detailed account of the expenditure of the sum.

(3) The Treasurer shall cause money granted to a council under this section to be paid to the credit of the council at such bank as the council nominates, and the council shall not, without the consent of the Minister, expend money granted for a specific object except for that specific object.

(4) A memorandum acknowledging the receipt of money so granted and placed to the credit of a council is exempt from stamp duty.

Trading
fund,
composition
of.
Cf. N.S.W.
L.G. Act,
s. 110.

525. (1) A trading fund in respect of a trading or business undertaking consists of—

(a) money received or receivable in respect of the undertaking;

Ss. 525, 526.

- (b) money transferred from the municipal fund to make good a deficiency in the income of the trading fund; and
- (c) money and other property directed or permitted by this Act to be allocated to the trading fund.

(2) A council is authorised to apply a trading fund in manner authorised by or under this or another Act for the application of the trading fund.

(3) When a council closes a trading fund it shall carry the balance, if any, remaining in the fund after the closure to its municipal fund.

526. (1) A trust fund consists of—

- (a) money granted by Parliament to the council on the condition that the council shall use it for a specific object;
- (b) money and other property held by the council as a deposit or in trust for a person; and
- (c) money and other property assigned, conveyed, transferred, given, devised, or bequeathed, to the council in trust for a charitable or public purpose.

Trust fund,
composition
of.
Cf. N.S.W.
L.G. Act,
s. 111.

(2) (a) Where money in a trust fund has been granted by the Parliament for a specific object and the accounts for expenditure in respect of the specific object have been passed by the council for payment, the council may transfer to the appropriate fund the portion of the grant required to pay the accounts.

(b) Where money or other property is held by way of deposit or in trust for a person, the council may—

- (i) pay or assure it to, or on behalf of, the person entitled to it; or

- (ii) if the money has remained in the trust fund for ten years the council may transfer it to such fund as the council thinks proper on condition that the council shall repay it from that fund to a person claiming and establishing his right to the repayment.

(c) The council shall apply money and other property held by it on trust for the purposes and according to the trusts concerning it.

Loan fund,
composition
of.
Cf. M.C. Act,
s. 472.
Cf. Q. L.G.
Act, s. 23.

527. (1) A loan fund consists of money received on loan in respect of the particular work or undertaking for which the loan was raised, and grants or subsidies received from the Treasurer of the State or Commonwealth towards the cost of the work or undertaking in respect of which the particular loan liability was incurred by the council.

(2) A council is authorised to apply a loan fund to the expenditure necessarily incurred in carrying out the work or undertaking, but if at any time it is found inadvisable, inexpedient, or unnecessary, to expend the whole or part of the money for any of the purposes for which it was borrowed, the council may by authority of a resolution passed by an absolute majority of the council, and confirmed at a meeting of ratepayers convened for that purpose, expend the whole or part on other works and undertakings.

(3) If there is a surplus remaining in a loan fund, after application of so much of it as is necessary to carry out the work or undertaking, the council may apply it in the purchase of debentures issued by the municipality to secure the loan, or in the purchase of Commonwealth bonds or inscribed stock or invest it in other investments in which trustees are authorised by law to invest, or may place it upon fixed deposit at a bank, or expend it upon works or undertakings other than those for which the loan was raised.

528. (1) In this section unless the context requires otherwise—

Interpreta-
tion.

“authorisation” means authorisation conferred pursuant to the provisions of subsection (2) of this section;

“general reserve fund” means a fund for the purposes of carrying out general undertakings as distinguished from particular undertakings;

“particular reserve fund” means a fund for the purposes of carrying out a particular undertaking;

“reserve fund” means a particular reserve fund or a general reserve fund;

“undertaking” means work, undertaking and function, which a council is authorised or required to carry out.

(2) (a) Where an authorisation is required by the provisions of this section, it may be sought and conferred pursuant to the provisions of this subsection.

Authorisa-
tion.

(b) The council shall resolve to seek the authorisation.

(c) The resolution shall specify particulars of the authorisation sought and be carried by an absolute majority of the council.

(d) The council shall submit a request for the authorisation by notice in writing specifying particulars of the request—

(i) to a meeting of its electors convened by the notice whose decision is final; or

(ii) in the event of less than twenty electors being present at a meeting so convened, to the Minister.

(e) The electors or the Minister, as the case may be, may grant or refuse the request wholly or in part or with such modifications or alterations as are determined by them or by him, as the case may be.

Establish-
ment of
Reserve
Fund.

(3) A council may, subject to the provisions of this section, establish and maintain—

(a) a particular reserve fund or several particular reserve funds, each for the purposes of a particular undertaking;

(b) a general reserve fund.

(4) (a) Where a council establishes a reserve fund it shall record the fund and all transactions affecting the fund in its accounts under a designation which distinctly indicates the purpose of the fund and shall keep the records relating to each reserve fund individually and distinct from those of other reserve funds.

(b) Where the purpose of a particular undertaking is the subject of one reserve fund it shall not be made the subject of another reserve fund.

(5) A council may—

(a) pay into a particular reserve fund or several particular reserve funds—

(i) the proceeds of the sale of capital assets;

(ii) subject to the provisions of subsection (6) of this section, contributions from its ordinary revenue;

(b) transfer a reserve fund which is established pursuant to the provisions of the Local Authorities (Reserve Funds) Act, 1942, or the Reserve Funds (Local Authorities) Act, 1950, and which represents, whether in money or investment, the proceeds of sale of capital assets, to a particular reserve fund or several particular reserve funds under this section and thereupon the provisions of this section apply and those of the Acts referred to cease to apply to that fund;

(c) pay into the general reserve fund—

subject to the provisions of subsection (6) of this section,

contributions from its ordinary revenue;

- (d) transfer a reserve fund which is established pursuant to the provisions of the Local Authorities (Reserve Funds) Act, 1942 or the Reserve Funds (Local Authorities) Act, 1950, and which represents, whether in money or investment, any money, other than the proceeds of sale of capital assets, to a general reserve fund under this section and thereupon the provisions of this section apply and those of the Acts referred to cease to apply to that fund.

(6) (a) A council may, by virtue of and without authorisation other than the provisions of this subsection appropriate in each year from its ordinary revenue for that year, a sum amounting to not more than five per centum of that revenue, and pay that sum into such of its reserve funds, in such amounts as it determines.

Contributions
from
ordinary
revenue.

(b) The provisions of this subsection are in addition to and not in derogation of those of subsection (7) of this section.

(c) A council may, but only with authorisation, appropriate from its ordinary revenue sums in excess of that mentioned in paragraph (a) of this subsection and pay those sums into such of its reserve funds, in such amounts, in such years as the authorisation specifies.

(7) A council may—

Expendi-
ture.

(a) without authorisation, apply the money in a particular reserve fund for the purposes for which it was established;

(b) with authorisation—

(i) apply the money in a general reserve fund in carrying out such undertakings as the authorisation specifies;

(ii) notwithstanding the provisions of paragraph (b) of subsection (4) of this section, apply the money in a

particular reserve fund, where no longer required for carrying out the undertaking for which it was established, in such undertakings as the authorisation specifies.

Investment.

(8) A council may during such time as it shall not require the money in a reserve fund for the purpose of carrying out the undertaking for which it was established—

- (a) invest the money in such of the modes as are authorised by any Act for the investment of trust funds by trustees or as the Minister, at the request of the council, may in his discretion approve, but so that the investment is such that it can readily be converted into money;
- (b) sell investments made pursuant to the provisions of paragraph (a) of this subsection or those held pursuant to the provisions of paragraphs (b) or (d) of subsection (5) of this section, and, for the purpose of the reserve fund concerned, either retain the proceeds of the sale including any profits in money or reinvest those proceeds in other investments referred to in the last preceding subparagraph.

(9) Investments effected pursuant to the provisions of this subsection or transferred pursuant to the provisions of paragraphs (b) or (d) of subsection (5) of this section and accruals shall be regarded as representing money in the reserve fund from which they are made or purchased or on account of which they are held, as the case may be.

(10) Accruals on investments and the proceeds including profits realised on the sale of investments shall be paid into or held on account of the reserve fund in which the investments represent money.

Ss. 528, 529.

(11) A council, while maintaining a reserve fund for the purpose of carrying out an undertaking, shall not borrow money for that purpose except to the extent that the money or investments representing money in the reserve fund are insufficient for the purpose.

Borrowing
Powers
limited.

(12) A council which is maintaining a reserve fund pursuant to the provisions of this Act, may—

Exclusion
for budget.

- (a) exclude from the annual estimates and statements required for the purpose of determining and fixing the rate of the general rate to be levied from time to time pursuant to the provisions of this Act applicable to it, the amount of the money then in or investments then representing money in the reserve fund; and
- (b) determine and fix that rate as if there were no reserve fund.

(13) The Governor may make regulations prescribing all matters and things which by this section are contemplated, required, or permitted to be prescribed, or which appear to him to be necessary or convenient to be prescribed for the purpose of effectually carrying out the provisions of this section or for better effecting the objects and purposes of this section.

529. A council is authorised to expend money out of its municipal fund—

Regulations.
Application
of municipal
fund.

- (a) in carrying out the powers and duties, and exercising the functions conferred upon it by this Act;

Cf. M.C. Act,
ss. 379, 480,
and R.D. Act,
ss. 160, 216,
335.

- (b) in carrying out the powers and duties, and exercising the functions conferred upon it by the Health Act, 1911; the Water Boards Act, 1904; the Vermin Act, 1919; the Land Drainage Act, 1925; the Noxious Weeds Act, 1950; the Traffic Act, 1919; the Bush Fires

Act, 1937; the Dog Act, 1903; the Fire Brigades Act, 1942; the Town Planning and Development Act, 1928; Metropolitan Region Town Planning Scheme Act, 1959; the Electricity Act, 1945, and by other Acts administered by or conferring a right, or imposing a duty, or obligation upon the council;

- (c) in carrying out the powers and duties, and exercising the functions conferred upon it by regulations, by-laws or other delegated legislation made under this Act or another Act;
- (d) in employing and paying the expenses of any professional or other assistance in connection with the preparation and presentation of any Bill for a private Act of Parliament if the authority of the Bill is required to enable the Council to carry out a work or undertaking;
- (e) in any other manner authorised for the time being by the Minister.

Private
Bills.
Cf. M.C. Act,
s. 221.

530. A council during a financial year—

- (a) may expend out of the ordinary revenue of the municipality a sum not exceeding three per centum of the ordinary revenue for the financial year for a purpose connected with, and for the benefit or credit of, the municipality, although the purpose is not within the scope of this Act, and may include in its payments under this paragraph, or make in place of them, the payment of an entertainment allowance to the mayor or president;
- (b) during the continuance, and for the period of six months after the termination, of a war in which the Crown is engaged, whether at or after the coming into operation of this Act, may out of a sum mentioned in

Other
powers of
expenditure
of municipal
fund.
Cf. M.C. Act,
s. 480, and
R.D. Act,
s. 335.

paragraph (a) of this section, contribute money to a fund established for a patriotic purpose connected with the war, whether the fund is so established within the State or in a place beyond the State and whether by a Government, society, association, corporation, or other body of persons, or by a person, acting in an official capacity; and

Cf. paragraph (a) of this section.

(c) may expend out of the ordinary revenue of the municipality for the year sums for—

(i) providing, constructing, maintaining, and improving, streets, pleasure resorts, places of recreation, and other similar works, outside the district, on the banks or foreshores of, or across, an estuary, river, lake, or water course, or on the seashore, or on other land, but only if the estuary, river, lake, or water course, or its banks or foreshores, or the seashore, or the land, abuts, or is adjacent to, the district and is not within another district, and only if the estuary, river, lake, or water course, is not within an irrigation district constituted under the Rights in Water and Irrigation Act, 1914, and only if the council is of opinion that the expenditure is for the benefit of the inhabitants of the district;

(ii) subsidising the council of another municipality whose district adjoins that of the municipality, in respect of the expense to be incurred by the council of that other municipality in providing or constructing, maintaining, and improving within the district of that other municipality, streets, pleasure resorts, places of recreation, and other similar works, which in the opinion of the council

so subsidising that other council are necessary for and will benefit persons residing within the district of the municipality whose council grants the subsidy;

- (iii) providing all forms of tourist propaganda both within the district of the municipality and elsewhere in connection with or in relation to tourist resorts within the district; and
- (iv) establishing and maintaining or subsidising, either alone or in conjunction with another council, kindergartens, community centres, maternal health centres, infant health centres, creches, day nurseries, dental clinics, ambulance services, swimming pools, life saving clubs, youth centres, women's rest and refreshment rooms, air navigation landing grounds and aerodromes, whether within the district or elsewhere, when in the opinion of the council the expenditure will directly or indirectly benefit inhabitants of its district.

Ward accounts not to be kept, except for specific works and services.
Cf. N.S.W. L.G. Act, s. 107.

531. In applying its ordinary revenue, a council shall have regard to the needs of the inhabitants of the district as a whole, and shall not keep ward accounts, but this section does not preclude the council of a shire from keeping a separate account of the expenditure of a sum raised by differential rating for specific works for the benefit of a ward or other specified portion of the district of the shire, or for loan charges in respect of a loan raised for the benefit of a ward or other specified portion of the district of the shire.

PART XXV.—RATES.

Division 1.—Rateable Property.

532. (1) Except where this section provides otherwise land is rateable property under this Act.

Land is
rateable
property.
Cf. M.C. Act,
s. 380, and
R.D. Act,
s. 218.

(2) Land is not rateable property if it is the property of the Crown,

(a) and is being used for a public purpose; or

(b) is unoccupied, except where and to the extent and manner in which a person mentioned in paragraph (e), (f), or (g), of the interpretation, "owner" in section six occupies, or makes use of the land.

Cf. s. 6 ante.

(3) Land is not rateable property—

Cf. M.C. Act,
s. 380 (2),
and R.D.
Act, s. 218
(2).

(a) if it is land belonging to a religious body, and is used or held exclusively as a place of public worship, a Sunday school, a place of residence of a minister of religion, a convent, nunnery or monastery, or is occupied exclusively by a religious brotherhood or sisterhood;

(b) if it is land used exclusively as a public hospital, benevolent asylum, orphanage, public school, private school being the property of a religious body, public library, public museum, public art gallery, or mechanics' institute; or

Cf. M.C. Act,
s. 380 (3)
and R.D.
Act, s. 218
(3).

(c) if it is land used and occupied exclusively for charitable purposes.

Cf. M.C. Act,
s. 380 (4) and
R.D. Act,
s. 218 (4).

(4) Land does not cease to be used exclusively for a purpose mentioned in subsection (3) of this section merely because it is used for the purposes of a bazaar, or as a place of meeting for a religious, charitable, temperance, or benevolent, object, or as a polling place for a parliamentary or other election or the taking of a poll.

Cf. M.C. Act,
s. 380, and
R.D. Act,
s. 218.
Cf. ss. (3) of
this section.

(5) Land is not rateable property while it is vested in—

- (a) a board under the Parks and Reserves Act, 1895;
- (b) trustees for—
 - (i) agricultural, or horticultural show purposes; or
 - (ii) zoological or acclimatisation gardens or purposes; or
 - (iii) the purposes of public resort and recreation.

(6) Land is not rateable property while used as a cemetery.

(7) Land in a district of a municipality is not rateable property while it is owned by the municipality and is used for the purposes of that municipality other than for purposes of a trading concern.

(8) Land, or a portion of a parcel of land, is not rateable property if the land or portion is declared by the Governor under this Act or the Municipal Corporations Act, 1906 or the Road Districts Act, 1919, to be exempt from municipal rates or is declared by any Act other than the two last mentioned Acts, passed before or after the coming into operation of this Act, to be so exempt.

(9) If on the coming into operation of this Act, land, which but for this subsection would immediately become rateable, is held under a lease, the term of which is unexpired, and which was entered into when the land was not rateable property under the provisions of a repealed Act, the land does not become rateable property until—

- (a) the expiration of the term of the lease;
- (b) the lessor or lessee has a right to determine the lease; or
- (c) the expiration of two years from the coming into operation of this Act;

whichever happens first.

(10) The Governor may from time to time—

- (a) by subsequent declaration cancel or vary any declaration made by the Governor under subsection (8) of this section or under any repealed Act which declaration exempts land from municipal rates;
- (b) declare that any land or portion of a parcel of land is exempt from municipal rates and by subsequent declaration cancel or vary the declaration.

Division 2.—Valuations.

Part XXV.,
Div. 2.

533. (1) For the purpose of making up the rate book under Division 3 of this Part each council shall adopt valuations of the rateable property in its district.

Councils
must adopt
valuations.

(2) Subject to the provisions of subsection (8) of this section the council

- (a) may request the Commissioner of Taxation appointed under the Land Tax Assessment Act, 1907, to supply to the council the unimproved value, as last assessed under that Act, of any rateable property in the district; the Commissioner shall comply with the request, and the council may adopt the valuation so supplied as the unimproved value of the property;
- (b) may request the Commissioner to make in respect of any rateable property in the district an assessment of the unimproved value according to the meaning given to that expression by subsection (3) of this section; the Commissioner shall comply with the request, and the council may adopt the assessment so supplied as the unimproved value of the property;
- (c) may cause the unimproved value of any rateable property in the district to be assessed according to the meaning so given

to that expression, by a valuer or by valuers engaged by the council, and may adopt the assessment of the valuer or valuers as the unimproved value of the property; or

- (d) may, subject to subsection (6) of this section, cause the annual value of any rateable property in the district to be assessed in accordance with the rules prescribed by subsection (4) of this section by a valuer or valuers engaged by the council, and may adopt the assessment of the valuer or valuers as the annual value of the property.

(3) For the purpose of assessment of unimproved value under paragraph (b) or (c) of subsection (2) of this section "unimproved value" means in relation to—

- (a) land granted in fee simple—the capital sum for which the fee simple in the land would sell under such reasonable conditions of sale as a bona fide seller would require, assuming the actual improvements (if any) had not been made;
- (b) land held under contract for conditional purchase under the Land Act, 1933, or any Act enacted in amendment of, or substitution for, that Act, or any Act thereby repealed—

the capital sum for which the fee simple of the land would sell on the assumption that the ratepayer is the owner in fee simple thereof, under such reasonable conditions of sale as a bona fide seller would require, assuming the actual improvements (if any) had not been made;

- (c) land held under a pastoral lease under any of the Acts mentioned in paragraph (b) of this subsection—a sum equal to twenty times the amount of the annual rent reserved by the lease;

- (d) land temporarily used for private purposes but held by the Crown for a "public work" (other than for a site for a town) within the meaning of that expression as defined in section two of the Public Works Act, 1902, or held by the Crown or any agency or instrumentality of the Crown pursuant to authority conferred by any other Act—a sum equal to twenty times the rental charged for the land, as distinct from the improvements thereon, or the unimproved value of the land in fee simple, whichever is the lesser sum;
- (e) other land held under a Crown lease not being a conditional purchase or pastoral lease under any of the Acts mentioned in paragraph (b) of this subsection—a sum equal to twenty times the annual rent but if the land is within a city, town, or town-site, means the unimproved value of the land in fee simple; or
- (f) other land of the Crown which is temporarily occupied without title or authority for private purposes—a sum equal to twenty times the rent which might reasonably be demanded for the land, or the value of the land in fee simple, whichever is the lesser sum.

(4) In assessing annual value under paragraph (d) of subsection (2) of this section, the following rules shall be observed—

- (a) "land" for the purposes of the valuation, includes all reclaimed or unreclaimed land, and all buildings and other structures or property erected thereon or thereunder, but does not include any machinery, whether affixed to the soil or not;
- (b) the annual value of rateable land which is improved or occupied shall be deemed to be a sum equal to the estimated full, fair

average amount of rent at which the land may reasonably be expected to be let from year to year, on the assumption (if it is necessary to make it) that the letting is allowed by law, less forty pounds per centum to cover rates, repairs, insurance and other out-goings.

- (c) the annual value of rateable land which is improved or occupied shall in no case be deemed to be less than four pounds per centum upon the capital value of the land in fee simple;
- (d) when more persons than one are in separate occupation of a building erected on any portion of rateable land, each of them shall be deemed to be in occupation of a part of the land, and the annual value of the part shall be taken to bear the same proportion to the annual value of the whole of the land as the annual rental value of the part of the building occupied by him bears to the annual value of the whole of the building;
- (e) the annual value of rateable land held under any tenure peculiar to an area constituted a goldfield or mineral field under sections ten and twelve of the Mining Act, 1904, shall be the fair average annual value of the land of the same quality held in fee simple in the same neighbourhood, with the buildings erected thereon, but without regard to the value of any other improvements made or work done upon the land, and without regard to any metals, or minerals contained or likely to be contained in the land;
- (f) the annual value of rateable land which is unimproved, and whether occupied or unoccupied, shall in any case be deemed to be not less than ten pounds per centum on the capital value; except that

(i) no land shall be regarded as unoccupied if it is a portion of the land contained in the original grant from the Crown, and is let or occupied with any other part if the portion of the land contained in the grant belongs to the same owner as the other part in the grant and that other part is occupied and rated; and

(ii) land shall be regarded as unimproved unless improvements have been effected on the land to a value, assessed at the time of valuation irrespective of their cost, of at least

(I) one-third of the value of the land without improvements;
or

(II) fifty pounds for each lineal foot of the frontage of the land;

whichever is the lesser amount;

(g) no lot or separate portion of rateable land shall be valued at an annual value of less than three pounds; but where the same person is the owner of two or more lots or parcels of unoccupied land adjoining one another, the lots or parcels shall be valued as one.

(5) A council may appoint such number of persons to be valuers as are in its opinion necessary to assess valuations under paragraph (c) or paragraph (d) of subsection (2) of this section; a person so appointed is in this section called a "valuer", but a council shall not appoint a person as valuer

(a) if the person is a member of the council; or

(b) unless the person is a member of the body known as the Commonwealth Institute of Valuers, or is a sworn valuator appointed under the Transfer of Land Act, 1893.

(6) Instead of so appointing a valuer to make a valuation a council may, by resolution adopt the valuations made for or on behalf of the Commissioner of Taxation under the Land Tax Assessment Act, 1907 or of the water supply authority for the district in which the land to be valued is situate if the valuations are made in accordance with subsection (4) of this section.

(7) (a) The members of a council and its officers and any valuer may for the purpose of making valuations under this Act enter into and upon rateable land within the district without being liable to legal proceedings for or on account of the entry, and may search in the Office of Titles, Registry of Deeds, any office of the Department of Lands and Surveys, and of the Department of Mines, and inspect plans, grants, transfers, certificates of title, memorials and any other document relevant to the valuation of land, free of charge.

(b) A valuer may put to the owner, or agent of the owner, or a person in occupation or in charge of rateable land which the valuer is authorised to value, such questions as are necessary to enable the valuer to state correctly the several particulars required to be stated in his valuation of the land.

(c) A person who, after being informed by the valuer of the purpose in putting the questions, and of his authority to put them refuses or omits to answer them to the best of his knowledge and belief, or knowingly makes a false answer or statement in reply to a question so put, commits an offence.

(d) A valuer who wilfully makes an incorrect valuation commits an offence.

(8) Notwithstanding any of the provisions of the preceding subsections of this section, but subject to subsection (10) of this section—

(a) a council of a municipality that is a city or a town shall for all rateable land in its district adopt valuations assessed under paragraph (d) of subsection (2) of this section on annual value, unless at the

request of the council the Governor, as he is hereby authorised to do from time to time, makes an order authorising the council to adopt valuations assessed under paragraph (a) or (b) or (c) of that subsection on unimproved capital value of any rateable property in the district of the municipality; and

- (b) a council of a municipality that is a shire shall for all rateable land within its district adopt valuations assessed under paragraph (a) or (b) or (c) of subsection (2) of this section on unimproved capital value, unless at the request of the council the Governor, as he is hereby authorised to do from time to time, makes an order authorising the council to adopt valuations assessed under paragraph (d) of that subsection on annual value of any rateable property in its district.

(9) Not later than the thirty-first day of July in each year the council shall adopt and record in the rate book the valuations required by this Act and for that purpose may adopt new valuations of any rateable property in the district or again adopt valuations recorded in the last preceding rate book.

(10) The Governor may make an order authorising a council to change a system of valuation if the Minister certifies that either

- (a) the council has resolved by an absolute majority to make the request, and that the ratepayers of the district of the municipality have not vetoed the making of the request; or
- (b) that he is satisfied that it is desirable that the change should be made.

(11) Before a council requests the Governor to make the order it shall

- (a) pass by an absolute majority a resolution that the Governor be requested to make the order;

- (b) publish a notice once in the *Gazette* and in a newspaper circulating in the district of its intention to make the request after the expiration of thirty-five days from the publication of the later of the two notices;
- (c) if a demand for the holding of a poll is made in accordance with the provisions of subsection (12) of this section, take a poll of the ratepayers on the question whether the request should or should not be made; and
- (d) inform the Minister—
 - (i) that the poll was so demanded;
 - (ii) that a poll was taken; and
 - (iii) the result of the poll.

(12) (a) Within thirty-five days after the publication of the later of the two notices mentioned in paragraph (b) of subsection (11) of this section, fifty ratepayers of the municipality, or one-fifth of the ratepayers, whichever is the lesser in number, may in writing signed by them or by petition bearing their signatures verified by a statutory declaration of the person presenting it, delivered to the Clerk, demand that the question of whether or not the council shall make to the Governor a request for the making of the order be submitted to a poll of the ratepayers of the district.

- (b) If a poll is so demanded
 - (i) the returning officer shall cause sufficient voting papers in or substantially in the form in the Twenty-sixth Schedule to be provided for the taking of the poll;
 - (ii) the returning officer shall, for the purpose of taking the poll, prepare a roll in accordance with the regulations;
 - (iii) such of the provisions of this Act relating to the taking of the poll at the election of members of a council, including persons voting in absence,

as are appropriate, apply *mutatis mutandis* to the taking of the poll on the question;

- (iv) if at the poll the number of valid votes cast in favour of the council requesting the Governor to make an order is not more than one-half of the valid votes cast, the council's decision to request the Governor to make an order is vetoed, and the council shall not make the request.

(13) If a poll on the question is held, the council shall not pass a resolution on the same question until after the expiration of five years from the holding of the poll.

534. (1) Where during a financial year the assessment of the unimproved value of rateable property in a district as supplied under paragraph (a) of subsection (2) of section five hundred and thirty-three is increased or decreased under the Land Tax Assessment Act, 1907, the Commissioner of Taxation shall cause the reassessed value to be supplied immediately to the council of the municipality and the council shall immediately on receiving it adopt and record in the rate book the increased or decreased value.

Council bound to increase or reduce values in accordance with taxation values. Cf. R.D. Act, s. 232.

(2) Where during the year in which land has been assessed on the annual value, it appears to the council that,

by reason of improvements having been made to or erected upon the land during the year,

the amount of the annual value has become greater than the amount of the annual value then assessed; or that,

by reason of the destruction, damage or demolition of improvements previously made and standing upon the land,

the amount of the annual value has become less than the amount of the annual value then assessed, the council

may cause the annual value to be re-assessed for and in respect of the then unexpired portion of the year; and

may amend and adjust, either by increase or reduction, as the case requires, the amount of the rates payable upon the land, to the extent by which the re-assessment of the annual value justifies the making of the amendment or adjustment.

Valuation
to be
signed.

535. When the council adopts a valuation, the mayor or president, and the clerk shall sign the adoption and the valuation which then becomes and remains the valuation of the council until the next valuation is so adopted.

Minimum
value.
Cf. M.C. Act,
s. 383 (g).

536. The minimum unimproved value under this Act of a lot or other separate parcel of land, is ten pounds, notwithstanding that the unimproved value as assessed under the Land Tax Assessment Act, 1907, is less.

Valuation of
tramways or
railways
generally.
Cf. R.D. Act,
s. 226.

537. (1) Tramways and railways, including buildings, plant, and fixtures, used solely for the purposes of the tramways and railways, whether constructed on unalienated Crown land or private land or on land held under or the subject of a lease, license, or concession, whether from the Crown or otherwise, unless belonging to the Crown or exempted from rates by an Act, are rateable under this Act on a valuation of the capital cost represented by the cost of construction and material less depreciation.

(2) The Commissioner of Taxation shall determine the capital cost and depreciation mentioned in subsection (1) of this section, but in doing so shall disregard machinery and rollingstock.

(3) If there is a dispute as to that capital cost or percentage for depreciation the council shall refer it to the Minister for determination, and his decision is not subject to appeal.

(4) If the whole of the tramway or railway is not within the district of one municipality—

(a) the valuation of each portion of the tramway or railway shall be carried out at the one time by the Commissioner of Taxation, and the Minister may apportion the cost of the valuation between the municipalities concerned in such proportions as the Minister thinks fit and the Commissioner of Taxation may recover so much of that cost as is so apportioned to, but not paid by, a municipality, from that municipality in a court of competent jurisdiction;

(b) the Commissioner of Taxation shall assess the value of that part which is in a district at an amount, which bears to the value of the whole, the ratio which the mileage of the tramway or railway within the district bears to the total mileage of the tramway or railway.

(5) In full satisfaction and discharge of rates due by, or which might but for this section be imposed, in respect of tramways and railways mentioned in this section, the owner of the tramway or railway shall pay a sum equal to one-half of one per centum of the amount determined under this section by the Commissioner of Taxation, or the Minister, as the case may be.

538. (1) In this section—

“electric line” means a wire, conductor, or other means used for the purpose of conveying, transmitting, transforming, or distributing, electricity, and includes such casings, coatings, coverings, tubes, pipes, pillars, poles, posts, frames, brackets, and

Valuation of
gas mains
and electric
lines.

Cf. M.C. Act,
s. 386; and
R.D. Act,
s. 228.
Interpreta-
tion.

insulators, as enclose, surround, or support it or part of it, and includes such apparatus as is connected with it, for the purpose of conveying, transmitting, transforming, or distributing, electricity, but does not include a tramway line, telegraph line, or telephone line;

“supply authority” means a person who, and a company or other body corporate which, undertakes the supply of gas or electricity or both within the district of a municipality and for that purpose has laid down or constructed pipes or electric lines in, under or over, a street in the district.

(2) (a) On or before the fourteenth day of July in every year the supply authority shall deliver to the council a return verified by statutory declaration showing the amount actually received by the supply authority from the sale of gas or electricity, as the case requires, within the district during the year ending on the thirtieth day of June next preceding.

(b) A supply authority making default in the delivery of the annual return commits an offence and is liable to a penalty not exceeding five pounds for every day during which the default continues.

(3) The supply authority shall keep and record in proper books of account those receipts, and shall keep the books open to inspection by officers appointed by the Minister or council concerned.

(4) (a) Instead of paying rates, which but for this subsection, would be assessed and payable in respect of pipes, electric lines, lands, buildings, and works, used by the supply authority exclusively in connection with the manufacture and supply of gas or electricity, the supply authority shall make payments to the council in accordance with the provisions of this subsection.

(b) On receipt of the return mentioned in paragraph (a) of subsection (3) of this section, the council,

where the amount shown in the return is shown as having been received from the sale of gas or electricity supplied for power purposes at a charge lower than that made for gas or electricity supplied for lighting purposes,

*Cf. subs. (3)
(a) of this s.*

shall assess a sum not exceeding one-quarter of one per centum of the amount shown, or

where the amount shown in the return is shown as having been received from the sale of gas or electricity supplied for lighting purposes,

shall assess a sum not exceeding one and one-quarter per centum of the amount shown.

(c) The supply authority shall pay to the council one-half of the sums so assessed in respect of the return for the year, by the first day of September in the next following year, and the remaining half by the first day of March next following that day.

(d) Payment so made is in full satisfaction of rates which but for this subsection would be assessed in respect of those pipes, electric lines, lands, buildings, and works.

539. Money payable under section five hundred and thirty-seven or five hundred and thirty-eight is recoverable as rates are recoverable under this Act; but the provisions of those sections apply only in respect of property mentioned in them and do not exempt from rating other rateable property owned or occupied by the company or authority.

Money payable under ss. 537 and 538, recoverable as rates.

Division 3.—The Rate Book.

**Part XXV.,
Div. 2.**

540. (1) Each council shall cause to be recorded particulars relating to the rateable property in its district in accordance with the form in the Sixteenth Schedule including—

Rate book. Sixteenth Schedule. Cf. M.C. Act, s. 391; and R.D. Act, ss. 233 and 235.

(a) the unimproved value of the land as supplied from time to time by the Commissioner of Taxation, the unimproved value

Cf. ss. 533 and 534 ante as to values supplied by the Commissioner of Taxation.

or annual value as assessed from time to time by any valuer appointed by the council or the annual value supplied by the Commissioner of Taxation or the appropriate Water Supply authority and adopted by the council, as the case may be; and

(b) the name of the owner of the land, either in a bound book or in such other manner of recording as is approved by the Minister.

(2) The record so kept is the rate book of the municipality.

(3) The council shall cause the rate book to be made up and completed not later than sixty-two days after the expiration of each financial year.

(4) When the making up of the rate book is complete the clerk of the council shall certify in writing signed by him after the last entry in the rate book that it is made up and is complete for the year and a rate book bearing the certificate is regarded as having been made up as required by this Act.

(5) The council shall keep the rate book at the office of the council and shall permit ratepayers of the municipality to inspect the rate book at reasonable times free of charge.

Where name
of owner
not known,
may be rated
as "the
owner".
Cf. M.C. Act,
s. 392.

541. Where the name of an owner of property liable to be rated or charged with payment of a rate is not known to the council, the council may rate the property, and in respect of the rate, serve notice and make demand upon, and proceed against the owner, by the designation of "the owner" without stating his name.

Notice of
valuation
and rate.
Seventeenth
Schedule.
Cf. M.C. Act,
s. 393; and
S.A. L.G.
Act, s. 257.

542. (1) The council shall, as soon as practicable after the rate book has been made up, cause to be served upon every person whose name is in the book as an owner, or on his attorney or agent, a notice of valuation and rate in, or substantially in, the form in the Seventeenth Schedule.

(2) The council may include more than one property of the same owner in one notice.

(3) The council shall state in the notice—

- (a) particulars of every rate to be collected in respect of the rateable property;
- (b) the number and description of the property in the rate book;
- (c) the place appointed for the receipt of rates, and the hours within which payment may be made;
- (d) the time allowed for the payment of the rate before it becomes in arrear; Cf. s. 550 (1) post.
- (e) the discount, if any, allowed if the rate is paid within a specified period after the day on which it became due and payable and that period; and Cf. s. 550 (2) post.
- (f) a short statement of the consequences of default in payment.

543. (1) The council may from time to time, alter or amend a rate book made up by—

- (a) recording in it the names of persons whose names have been omitted and who claim and are entitled to have their names included;
- (b) recording in it the names of persons whose names have been omitted but ought to have been included;
- (c) striking out the names of persons whose names ought not to have been included;
- (d) raising or reducing the sum at which a person's property has been rated, or valued, if it appears to the council that owing to an error in entering the rate or valuation in the rate book the property has been underrated or overrated or undervalued or overvalued as the case may be;

Alteration or amendment of rate book. Cf. M.C. Act, s. 395; and R.D. Act, s. 237.

- (e) recording in it rateable property that has been omitted from it; or that since the valuation was adopted has become rateable, and striking out property which since the valuation was adopted has ceased to be rateable;
- (f) making alterations and additions which, in the opinion of the council are necessary for the purpose of giving effect to sections five hundred and thirty-four, five hundred and forty-five, and five hundred and forty-nine;
- (g) making such other additions, alterations or amendments as are necessary in order that the rate book conforms with the provisions of Acts for the purposes of which it is required to be used; or
- (h) correcting or supplying accidental errors or omissions.

Cf. ss. 534,
545 ante, and
549 post.

Cf. s. 556 (5)
post.

(2) The council shall amend the rate book in order to give effect to decisions of valuation courts including where applicable decisions of the City of Perth Rating Appeal Board.

Cf. No. 49 of
1940; and
s. 5 ante.

(3) An alteration, addition, or amendment, so made is not effective unless the clerk marks it with his initials and the date on which it is made.

(4) An alteration, addition, or amendment, so made does not avoid the rate.

(5) The power to so alter or to so amend a rate book extends only to the rate books for the current year and to the rate books for the last preceding five years.

(6) Where a person who, by an alteration, addition, or amendment, so made becomes liable to pay rates in respect of rateable property or is otherwise affected, the council shall cause notice of the alteration, addition, or amendment, to be served upon him but may not take proceedings for the

recovery of those rates from him until the expiration of thirty-five days from the service upon him of the notice.

(7) A person may appeal under Division 5 of this Part against an entry in the rate book as so altered or amended, or against an entry so added to the rate book, and for the purposes of appeal the notice served under subsection (6) of this section is regarded as a notice of assessment.

Cf. Div. 5 of
this Part.

Cf. subs. (6)
of this s.

544. (1) A council is not required to keep a separate rate book or serve separate notices of assessment for each rate which the council imposes, whether under the authority of this or another Act; but the council may from time to time in its discretion utilise one rate book and one notice of assessment for all or any of those rates.

One rate
book and
notice of
assessment
may be used
for several
rates.
Cf. R.D. Act,
ss. 236 and
236A.

(2) Where a council under this Act is also a council or local governing body under another Act by or under which it is required or empowered to impose rates on land which is also rateable property under this Act, and the council uses one rate book for the several rates which it imposes under this Act and for another Act or other Acts, the council may aggregate the several amounts of the several rates into one sum as if it were one rate, and enter it in one column only of the rate book and issue one notice of assessment for those several rates accordingly, but so that particulars of the amount of each of the rates included in one notice of assessment are shown separately in it.

545. Where under section five hundred and thirty-four the council, during a rating period, reduces the value of rateable property, which value, but for the reduction, would have continued in force for the period,

On reduction
in value
under s. 534
council to
adjust rate.
Cf. R.D. Act,
s. 238.
Cf. s. 543 (1)
(f) ante.

- (a) the council shall assess the rate for the balance of the period remaining unexpired at the time of the reduction on the reduced value;

- (b) if notice of the former value and rate imposed on that value have already been served on the ratepayer, the council shall cause to be served upon him an amended notice of the reduced value and reduced amount of rate; or
- (c) if the ratepayer has already paid the amount of the rate imposed on the former value the difference between that amount and the amount of the rate shown in the amended notice shall at the election of the ratepayer be appropriated by the council in satisfaction or part satisfaction of any amount payable for rates in the future by the ratepayer to the council or refunded to him, but if the ratepayer does not so elect, the council shall pay the amount of the difference into its appropriate trust account and unless it is claimed by the person entitled to it within twelve months after being so paid in it shall be appropriated by the council as part of its ordinary revenue.

Minister may extend time for making valuation, framing budget, making rate, or making up rate book. Cf. R.D. Act, s. 239. Cf. Div. 2 of this Part as to valuation; this Div. as to making up rate book; Div. 4 of this Part as to budget; and s. 543 post as to rate.

546. (1) If the valuation has not been made, or the rate book has not been made up, or the budget has not been prepared, or the rate has not been imposed, within the time limited by this Act, for the purpose, the Minister, if reasons satisfactory to the Minister are advanced for the delay, may, by a direction in writing, extend the time, and a direction so issued has effect according to its tenor.

(2) Rate books made up, and rates imposed, under a repealed Act, before the coming into operation of this Act, are valid, notwithstanding that the rate book has not been made up within the time appointed by the repealed Act; and notwithstanding that the council has not complied with other provisions of the repealed Act.

Division 4.—General Rates.

547. (1) Not later than the thirty-first day of August in each year, each council shall prepare its budgets for the financial year ending on the next following thirtieth day of June in the form and manner prescribed by this Act and the regulations.

Council to prepare annual budget.
Cf. M.C. Act, s. 396;
R.D. Act, s. 240; and
Q. L.G. Act, s. 25.

(2) The council shall prepare a separate budget for each fund established and kept by the council.

(3) The council shall adopt each budget on or before the thirty-first day of August in the year for which it is prepared and shall impose rates or charges or both on the basis of the budget.

(4) In preparing the budgets for the municipal fund the council shall estimate for the current year—

- (a) the amounts required for disbursement upon the several works, matters and things to which the council is authorised to apply its municipal fund;
- (b) how far the several sources of ordinary revenue, independently of rates, will be sufficient for that purpose; and
- (c) what sum will be required to make up the deficiency, if any, shown by comparing the sum required, with the estimated revenue of the municipality, independently of rates.

Cf. s. 614 (1) post.

(5) The council shall cause the estimates of receipts and disbursements to be set out, as nearly as is practicable, separately in accordance with the several sources of receipts and disbursements.

(6) Where specific works, services, or undertakings, are proposed for the special benefit of certain portions or wards of a shire, the council shall cause the specific works, services, and undertakings, and the amount required to provide each to be set forth separately in the budget.

Cf. s. 548 (4) (c) post.

Cf. s. 5 ante.

(7) Where a council is authorised or required by another Act to expend money in carrying that Act into effect, it may, notwithstanding provisions of the other Act to the contrary, include the expenditure of that money in its municipal fund budget, and may include the rate necessary to be imposed in order to meet that expenditure as part of its general rate imposed under this Act.

Cf. s. 548
post as to
general rate.

(8) In the budget the council shall cause to be shown—

- (a) particulars of each item;
- (b) actual receipts and disbursements for the previous financial year; and
- (c) estimates of receipts and disbursements for the current financial year.

(9) The council shall observe each of the respective budgets and as nearly as possible balance the budget, and if at the end of the year there is a surplus or deficit, the council shall carry the surplus or deficit forward and take it into account in preparing the budget and in imposing the rates and charges for the next ensuing year.

(10) (a) At the close of each financial year authorisations of expenditure, and votes of money, for expenditure by the council lapse.

(b) An authorisation or vote so lapsing may be reauthorised or revoked by the council.

(11) Ordinary payments by the council in the months of July and August in each financial year are authorised and the council shall include them in the budget for that year.

(12) If the council makes payment in a financial year from a fund which payment has not been provided for in the budget relating to that fund for that year, the payment, unless authorised by an absolute majority of the council, is unauthorised expenditure.

(13) The mayor or president and clerk shall sign the respective budgets and the details of the rates imposed in respect of them, and after they have been so signed, the clerk shall cause them to be kept open throughout the currency of the financial year concerned for inspection free of charge by ratepayers and creditors of the municipality at the office of the council during office hours.

548. (1) The council, after so preparing the respective budgets and after ascertaining the deficiency disclosed by them, shall, not later than the thirty-first day of August in each year, impose on rateable property in the district of the municipality a general rate of an amount sufficient to yield the amount of the deficiency so disclosed.

Council
to impose
general
rate.
Cf. M.C. Act,
s. 397; and
R.D. Act,
s. 241.

(2) The maximum general rate which a council may impose under this Act—

(a) is two shillings for each pound of the unimproved value or seven shillings for each pound of the annual value, as the case may be, of the rateable property where the council provides in the district a reticulated water supply which is available for service to the property; or

(b) is one shilling for each pound of the unimproved value or five shillings for each pound of the annual value of the property, as the case may be, where a reticulated water supply service is not so provided or is not so available.

(3) Unless authorised to impose differentiating rates under subsection (4) of this section, a council shall impose the general rate at a uniform rate for each pound of the unimproved value or the annual value, as the case may be, of the property.

(4) (a) In this subsection—

“specified area” means—

(i) a ward of a shire;

- (ii) a portion of the district of a shire, declared by Order made under paragraph (b) of this subsection to be an area to which this subsection applies.

(b) The Governor may at the request of the council of a shire by Order declare portion of the district of the shire the boundaries of which portion are not coterminous with the boundaries of a ward or two or more wards of the shire to be an area to which this subsection applies.

(c) Where—

- (i) the council of a shire proposes that expenditure, including loan interest and repayments, be incurred in providing specific works, undertakings, or services, for the benefit of the inhabitants of a specified area;
- (ii) the proposal is set out in the budget with sufficient clarity to indicate that the expenditure is to be so incurred; and
- (iii) a resolution of the council imposing the differential rate is passed by an absolute majority of the council;

the council of the shire may, in order to meet that expenditure, impose in respect of the rateable property in the specified area a greater rate than that which it imposes elsewhere in the district but not exceeding the maximum prescribed by subsection (2) of this section.

Cf. subs. (2)
of this s.

Rates to be
made for the
financial
year.

Cf. M.C. Act,
s. 398; and
R.D. Act,
s. 245.

Supple-
mental rates
authorised in
certain
cases.

Cf. R.D. Act,
s. 245.

Cf. s. 529 (f)
ante.

549. (1) The council shall impose the general rate for the current financial year, and may at any time but then only in order to meet extraordinary circumstances which are declared by an absolute majority of the council to constitute an emergency, impose supplemental rates for the unexpired portion of the current financial year, and may for the purposes of imposing the supplemental rates or other rates under this or another Act, after the general rates for the year, make such alterations in, and additions to, the rate book, but without obliterating

existing entries, as are necessary to complete the rate book for the supplemental or other rates, and to show such matters and fact as would appear in the rate book if it were being then made up.

(2) Before imposing a supplemental rate the council shall prepare estimates and a budget in form similar to that mentioned in section five hundred and forty-seven with such modifications as are necessary to meet the case.

Cf. s. 547
ante.

(3) This section does not authorise a council to impose under this or another Act rates beyond the limits respectively enacted by this or that other Act.

550. (1) When a rate has been imposed by the council, the mayor or president shall, on a vacant page or pages of the rate book, to be left blank for the purpose, enter and sign a memorandum to that effect, and cause a copy of the memorandum to be published in the *Gazette*, and subject to the by-laws as to the time and mode of payment, the rate becomes due and payable on the day on which the copy of the memorandum is so published, but the council shall not take proceedings to recover or enforce payment of the rate until after the expiration of thirty-five days from the publication, at the expiration of which period payment of the rate is in arrear.

Manner of
making
rate.
Cf. M.C. Act,
s. 399; and
R.D. Act,
s. 246.

Arrears of
rates.

(2) The council may allow to persons liable to pay the rate, a discount not exceeding five per centum of the amount of the rate imposed, if they pay it within such time after the day on which it becomes due and payable as the council determines and specifies in the notice of valuation and rate.

Discount
allowable.
Cf. s. 542
ante, as to
notice of
valuation
and rate.

551. (1) The council of a newly-constituted municipality may, with the consent of the Minister, and subject to such exceptions and conditions, if any, as the Minister imposes, and is by this section authorised to impose, exercise the powers and carry

Provisions
in case of
newly
constituted
municipal-
ity.
Cf. M.C. Act,
s. 400; and
R.D. Act,
ss. 248 and
249.

out the duties and obligations granted to and imposed upon a council by this Part as soon after its election as is practicable, having regard to the respective intervals of time prescribed by this Act for the doing of the respective things required to be done under this Act.

(2) For the purposes of this section the council of a newly-constituted municipality may prepare a statement and estimate in respect of so much of the then current financial year as from the date of the constitution of the municipality remains unexpired, and may impose rates the maximum of which bears to the maximum of the rates which the council could impose under section five hundred and forty-eight, had it been in office for the necessary period, the ratio which the portion of the current financial year unexpired at the date of the constitution of the municipality bears to a full year.

Cf. s. 548 (2)
ante.

Minimum
rate may be
charged.
Cf. R.D. Act,
s. 244.

552. Notwithstanding that if imposed under other provisions of this Part, the rate on rateable land would be less, a council may impose a minimum rate of such sum being five pounds or less than five pounds as the council thinks fit, on the rateable land, or if the council thinks fit on each of the several lots if any, into which the land has been subdivided for sale, leasing, or partition.

Governor
may exempt
district
from this
Division.
Cf. R.D. Act,
s. 250.

553. (1) By Order the Governor may exempt a district or portion of a district from the operation of this Division for such time as the Governor thinks fit.

Cf. No. 30 of
1918, s. 4, as
to "sitting
days."

(2) The Minister shall cause particulars in writing of exemptions so granted and the grounds on which they are granted to be laid before each House of Parliament within six sitting days of the House next following the publication of the Order in the *Gazette*.

*Division 5.—Appeals.***Part XXV.,
Div. 5.****Interpreta-
tion.**Cf. s. 542
ante.

Application.

554. (1) In this Division—

“assessment notice” means the notice of valuation and rate mentioned in section five hundred and forty-two.

(2) The provisions of this Division do not apply to the City of Perth while the City of Perth (Rating Appeals) Act, 1940 continues in operation.

555. A person may in accordance with the provisions of this Division and the regulations appeal to the appropriate Valuation Appeal Court constituted under this Division for rectification of the rate book made up and completed by the council of a municipality on the ground—

Grounds of
appeal.
Cf. M.C. Act,
s. 401; R.D.
Act, s. 251;
and S.A. L.G.
Act, s. 203.

Cf. s. 5 ante.

(a) that he himself, or the principal for whom he is attorney or agent, having been recorded in the rate book as the owner of rateable property,

(i) is not the owner of the property; or

(ii) the property or part of the property is not rateable property; or

(b) whether he has or has not been recorded in the rate book as the owner of rateable property,

(i) that rateable property which, or the owner of rateable property who, should have been recorded in the rate book has not been so recorded; or

(ii) that the value recorded in the rate book as that of rateable property, whether owned or not owned by him, is not the proper value which should have been so recorded.

556. (1) The Governor from time to time by Order may—

(a) constitute such Valuation Appeal Courts as he thinks necessary for the hearing of appeals under this Division and specify the

Constitution
and juris-
diction of
Appeal
Courts.
Cf. M.C. Act,
ss. 403, 404
and 410; and
R.D. Act, ss.
252, 254 and
255.

portion or portions of the State in which a Valuation Appeal Court so constituted has jurisdiction;

- (b) appoint such person or persons to constitute a Valuation Appeal Court at such remuneration and travelling and other allowances as he thinks fit;

Chairman.

- (c) where more persons than one are so appointed, fix the quorum necessary for exercising the jurisdiction of the Valuation Appeal Court, and appoint one of them as Chairman of the Court;

Registrar.

- (d) appoint registrars of Valuation Appeal Courts; and

- (e) appoint the places for sittings of Valuation Appeal Courts which shall so far as it is practicable, be held in the usual meeting place of the council concerned in the appeal.

Area of jurisdiction.

(2) A Valuation Appeal Court has jurisdiction to hear and determine appeals in respect of rateable property in the portion or portions of the State specified in the Order by which the Court is constituted, and may make such order as to the costs of and incidental to an appeal as it considers just; and an order so made by which a party to an appeal is ordered to pay costs may be registered in a Local Court established under the Local Courts Act, 1904, by the party in whose favour the order is made and enforced as a judgment of that Local Court.

Decision to be delivered by Chairman.

(3) The Chairman of a Valuation Appeal Court shall deliver the decision of the Court.

Decision final.
Power to state case for Supreme Court.

(4) (a) The decision of an appeal by a Valuation Appeal Court is not subject to appeal, but the Valuation Appeal Court, if required by a party to the appeal to do so, shall state a case for determination by the Supreme Court.

(b) The Supreme Court has jurisdiction to determine cases so stated and make such order as to payment of costs of and incidental to the proceedings in the Supreme Court and in the Valuation Appeal Court as the Supreme Court considers just.

Determination by Supreme Court if case stated.

(5) A Valuation Appeal Court may direct a council to cause to be made such corrections in the rate book and direct to be done such things necessary for giving effect to the correction and give such direction as to the application of the deposit mentioned in section five hundred and fifty-nine, as the Valuation Appeal Court considers just and a direction so given shall be given effect according to its tenor by the council or person to whom it is directed.

Directions by Valuation Appeal Courts.

Cf. s. 559 (2) post.

(6) The expense of and incidental to the constitution and functions of Valuation Appeal Courts is payable from the public moneys of the State.

557. In order that persons may ascertain to which Valuation Appeal Court appeals may be brought each council shall cause to be kept open during office hours at its office for inspection free of charge, a register showing the rateable property in its district which is within the jurisdiction of the Valuation Appeal Court or if more than one, the respective Valuation Appeal Courts having jurisdiction in the district.

Persons intending to appeal may ascertain to which Valuation Appeal Court appeal may be brought.

558. (1) To the extent to which the provisions of the Local Courts Act, 1904, and the Rules of Court made under that Act are capable of being applied with or without adaptation in respect of proceedings of and incidental to appeals and the hearing of appeals under this Division, those provisions with or without adaptation apply in respect of those proceedings.

Provision of procedural matters relating to appeals and cases stated by adaptations, regulations and rules of Court.

(2) To the extent to which the provisions of the Supreme Court Act, 1935, and the Rules of Court made under that Act are capable of being applied with or without adaptation to proceedings of and incidental to the determination by the Supreme Court of a case stated under this Division by a Valuation Appeal Court, those provisions with or without adaptation apply in respect of those proceedings.

Cf. subs. (1)
and (2) of
this s.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the Governor may make such regulations and rules of court as he thinks necessary or convenient for giving effect to the provisions of this Division.

Cf. subs. (1)
(2) and (3)
of this s.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section or the provisions of regulations or rules of court made under subsection (3) of this section the provisions of section five hundred and fifty-nine apply in respect of appeals under this Division.

Cf. s. 559
post.

Provision of
procedural
matters by
enactment.

559. (1) A person who desires to appeal under the provisions of this Division shall commence his appeal—

(a) if he is an owner or an attorney or agent on whom an assessment notice is served under section five hundred and forty-two, or on whom notice of an alteration or an addition is served under subsection (6) of section five hundred and forty-three, within thirty days of service of notice on him; or

Cf. ss. 542
(1) and 543
(6) and (7)
ante as to
service of
assessment
notice.

Cf. s. 555 (b)
ante.

(b) if he is not a person on whom notice is so served, within sixty days of the publication in the *Gazette* of the memorandum mentioned in section five hundred and fifty;

Cf. s. 550
ante.

by serving a written notice of appeal signed by him and stating the grounds of appeal in or substantially in the form of the Eighteenth Schedule, firstly on

Eighteenth
Schedule.

the clerk of the council and then on the registrar of the valuation Appeal Court having jurisdiction in the portion of the State where the land in respect of which the appeal is brought is situated.

(2) (a) If the appellant's ground of appeal is that the value recorded in the rate book as that of rateable property owned by him or by a person for whom he is agent or attorney, is not the proper value which should have been so entered he shall at the time of serving the notice of appeal on the clerk of the council deposit with the clerk a sum equal to one-fourth part of the rates recorded in the rate book as having been imposed in respect of the property, but if the owner is a person who is exempted from payment of rates under the provisions of section five hundred and sixty-one, he is not required to pay the deposit.

Deposit on
lodging
appeal.

(b) The clerk of the council shall pay the deposit into the appropriate fund of the council and apply it in accordance with the direction of the Valuation Appeal Court, but if the appellant abandons his appeal, the clerk shall apply it in part payment of those rates.

(c) The clerk of the council shall, if requested to do so by the appellant, endorse an acknowledgment of the service and, if a deposit is payable, of receipt of the deposit, on the copy of the notice intended to be served on the registrar.

(3) So far as is practicable Valuation Appeal Courts shall determine appeals not later than the first day of December in each year.

(4) The Valuation Appeal Court shall appoint a day for the hearing of the appeal being such a day as is not less than ten days after the service on the registrar of the notice of the appeal and as permits of the notice of the hearing being given as required by subsection (5) of this section.

Cf. subs. (5)
of this s.

(5) The registrar of the Valuation Appeal Court shall cause notice of the day appointed for the hearing of the appeal to be served on the appellant and the clerk of the council at least ten days before that appointed for the hearing of the appeal.

(6) On receipt of the notice of the day appointed for the hearing of the appeal the clerk of the council shall cause a copy of the notice—

- (a) to be published in a newspaper circulating in the district; and
- (b) to be posted, and until the appeal is determined, kept posted on the official notice board of the council.

(7) Where rateable property extends continuously beyond the district of a municipality into the district of another municipality or into the districts of other municipalities and a person desires to appeal under this Division in respect of the whole of the property or in respect of a part or parts of it which is or are in two or more districts—

Cf. subs. (1)
of this s.

- (a) the time limited by subsection (1) of this section for commencing the appeal commences on the day following that on which
the last notice; or
the last memorandum;
mentioned in that subsection, as the case requires, is served or published by the respective councils of the municipalities in whose districts the whole or the part or parts of the property, in respect of which the appeal is brought, is situated; and
- (b) the appellant shall commence the appeal in a Valuation Appeal Court having jurisdiction to hear at one time appeals in the several districts in which the property in respect of which the appeal is brought is situated.

Division 6.—Liability for and Recovery of Rates.

Subdivision A.—General.

560. (1) Subject to the provisions of section five hundred and sixty-one rates imposed under this Act and recorded in a rate book, together with the costs of proceedings, if any, for the recovery of the rates, are a first charge on the land rated,

Who is
liable for
rates.
Cf. M.C. Act,
s. 412; and
R.D. Act,
s. 258.

after rates and taxes, if any, due to the Crown or to a department or agency of the Crown in right of the State; and

after mortgages, if any, to The Commissioners of the Rural and Industries Bank of Western Australia;

and are recoverable by the council from—

- (a) the owner at the time of the completion of the rate book;
- (b) a person who whilst the rates are unpaid becomes
 - (i) the owner of the whole of the land rated; or
 - (ii) the owner of part of the land rated but as to the rates on that part only;

but a person who, by virtue of an Act relating to bankruptcy or insolvency or to the winding up of companies, has become the owner of rateable land in the capacity of a trustee or liquidator, is not on that account personally liable to pay out of his own moneys or otherwise than out of the estate in his hands rates which are already due on the land when he becomes owner in that capacity or rates which become due on the land while he is owner in that capacity.

(2) If a person, without the permission of the council knowingly and wilfully removes from, or demolishes, or destroys, a building or structure on land which is subject to a charge under this section, he commits an offence.

Exemption
from rates.

561. (1) (a) A person who—

- (i) is in receipt of an age pension, an invalid pension or a widow's pension under the provisions of the Social Services Act 1947-1958 of the Parliament of the Commonwealth;
- (ii) is or was a member of the forces within the meaning of Part III of the Repatriation Act 1920-1959 of the Parliament of the Commonwealth and who is a service pensioner within the meaning of Division 5 of Part III of that Act; or
- (iii) is the wife or widow of such member of the forces if she is a service pensioner as so defined,

may claim to be exempt from liability for the payment of rates or charges under this Act in respect of land of which he is in occupation as owner.

(b) Any reference in this section to an Act of the Parliament of the Commonwealth includes any Act amending the Act or enacted in substitution for it.

(2) On receipt of the claim the municipality to which the rates and charges are payable shall postpone the payment of them until the sale of the property by the person or his death.

(3) While the rates and charges remain unpaid they are by force of this section a charge on the land ranking equally with any other charge on the land created by any other Act and before any other charge on the land.

(4) If the land in respect of which exemption from rates is claimed under this section is subject to the provisions of the War Service Homes Act 1918-1956 of the Parliament of the Commonwealth, the consent of the Director of War Service Homes to the charge referred to in subsection (3) of this section shall be first obtained before the exemption from rates becomes effective.

Ss. 562, 563, 564.

Part XXV.,
Div. 6,
Subdiv. A.Payment of
rates by
mortgagee.
Cr. M.C. Act,
s. 413.

562. If a mortgagee of rateable land pays rates imposed under this Act in respect of the land, the amount so paid by the mortgagee becomes part of, and is added to, the principal sum due to him under the mortgage, and is recoverable as such with interest accordingly.

563. (1) Rates recoverable under this Act

Rates
apportion-
able as
between
successive
owners.
Cr. M.C. Act,
s. 414; and
R.D. Act,
s. 261.

(a) are apportionable between successive owners in respect of time as if they accrued due from day to day during the period for which they were imposed; and

(b) are apportionable between owners of several portions of the land rated according to the respective values of the portions.

(2) A person who is or has been an owner of rated land

and whose rates have, or whose apportioned part of the rates in respect of the land has directly or indirectly, been wholly or partly paid by another person in accordance with this Act, whether during or after the period for which the rates were imposed,

is liable,

if there is no agreement between them to the contrary,

to reimburse that other person the amount so paid.

(3) This section does not effect the liability of a person to the council.

564. An unsatisfied judgment or order of a court for the recovery of rates from a person is not a bar to the recovery of them from another person liable under the provisions of this Act to pay them.

Persons
liable to be
resorted to
in succession.
Cr. M.C. Act,
s. 415.

Part XXV.,
Div. 6,
Subdiv. A.

Ss. 565, 566, 567.

Rates
recoverable
by complaint
or action.
Cf. M.C. Act,
s. 417; and
R.D. Act,
s. 262.
Cf. s. 550
ante, as to
arrears.

565. (1) (a) A council may recover rates which have been imposed under this Act, or another Act and are payable to the council, and payment of which is in arrear, as well as the costs of proceedings, if any, for the recovery of them, from a person liable to pay them, either by complaint of the clerk in a court of summary jurisdiction or by action at the suit of the council in a court of competent jurisdiction.

(b) A person against whom an order has been made by a court of summary jurisdiction on a complaint made under this subsection is not liable to be imprisoned for non-payment in contravention of the order except under the provisions of the Debtors Act, 1871, and proceedings under that Act may be taken in respect of the order as if it were a judgment within the meaning of that Act, and as if it were expressly mentioned in subsection (6) of section one hundred and fifty-five of the Justices Act, 1902.

Cf. No. 11 of
1902 as am.
s. 155 (6).

(2) For the purposes of the complaint or action, rates are to be regarded as being payable at the office of the council.

All rates
may be
included in
one
summons.

(3) Rates due by the same person to the council, whether under this Act or another Act, may be included in one writ, summons, complaint, or other process; but this subsection does not affect the rights of the parties in proceedings for the recovery of rates under another Act.

Non-
compliance
with
procedure
prescribed
in Act not
to prevent
recovery of
rate.
Cf. R.D. Act,
s. 264.

566. In proceedings by or on behalf of a council for the recovery of an amount due in respect of a rate, failure by the council to comply in respect of the rate with the provisions of this Act, is not a defence, if it appears that the council had the power to impose, and did in fact assent to the imposition of, the rate.

Defence
in special
cases.
Cf. R.D. Act,
s. 265.

567. If a person sued or proceeded against proves that a notice required to be given under Division 3 of this Part has not been given, the claim of the

Ss. 567, 568, 569.

Part XXV.,
Div. 6,
Subdiv. A.

council does not on that account fail, but he may raise as a defence to the whole or part of the claim, such objections as would have been competent on an appeal under Division 5 of this Part unless he has already unsuccessfully raised the objection on appeal under the latter Division.

Cf. Div. 5 of
this Part.

568. A jurisdiction otherwise competent to entertain proceedings to recover rates, or consequent on the recovery of a rate, or to hear an appeal is not affected on the ground that a question of title to land is raised in the proceedings, but an order or judgment in the proceedings or appeal is not evidence of title.

Question of
title to land
not to affect
jurisdiction.
Cf. R.D. Act,
s. 266.

569. (1) In this section—

Attornment
of lessees.
Cf. S.A. L.G.
Act, s. 264.

“lease” includes an agreement whether made orally, or in writing, or by deed, or however made or subsisting, for the leasing or sub-leasing of premises and includes a license or arrangement for the use of premises;

“lessor” and “lessee” mean the respective parties to a lease and their respective successors in title;

“premises” means premises other than those of which the lessor or lessee is

- (a) the Crown in right of the Commonwealth or of the State;
- (b) a department, agency, or instrumentality of the Crown in right of the Commonwealth or of the State;
- (c) the State Housing Commission constituted pursuant to the State Housing Act, 1946;
- (d) the Commissioners of the Rural and Industries Bank of Western Australia appointed pursuant to the Rural and Industries Bank Act, 1944; or
- (e) the McNess Housing Trust constituted pursuant to the McNess Housing Trust Act, 1930;

“rent” means the actual consideration in money or money’s worth derived under the lease and passing to the lessor from the lessee.

Cf. s. 550
ante, as to
payment in
arrear.

(2) If payment of rates imposed by a council in respect of premises is in arrear, the council may give notice to the lessee of the premises requiring the lessee to pay to the council the rent, if any, accrued due, and the rent as it accrues due under the lease of the premises, until the amount of the rates payment of which is in arrear has been paid, and the council may if it thinks fit serve on the lessor a copy of the notice with an intimation that the original of it has been served on the lessee.

(3) On receipt of the notice, the lessee shall pay to the council, the rent, if any, then accrued due, and shall continue to pay to the council rent as it accrues due under the lease, to such extent as is necessary to satisfy the amount of the rates payment of which is in arrear.

(4) If after receiving the notice, the lessee pays the rent otherwise than to the council while payment of the rates is in arrear, he commits an offence.

(5) If after receiving a copy of the notice, where a copy of the notice has been served on the lessor, the lessor receives the rent from or paid on behalf of the lessee, while payment of the rates is in arrear, and does not within twenty-four hours of the receipt of it pay to the council the amount of rates payment of which is in arrear, he commits an offence.

(6) The prosecution of an offence under this section does not affect the council’s power to recover the rates.

Authority
for lessee
to set off
rates paid
as against
rent, etc.
Cf. s. 569
ante.

570. (1) Where a lessee, required to pay rent to the council under section five hundred and sixty-nine, pays the rent to the council accordingly, and as between himself and his lessor, the lessor is bound

Ss. 570, 571, 572, 573.

Part XXV.,
Div. 6,
Subdiv. A.

to pay the rates, the lessee may set off the amount so paid to the council against the rent payable by him to his lessor.

(2) If the amount so paid to the council exceeds the rent due, or if there is no rent due, the lessee may set off the amount so paid against accruing rent, or recover the balance from his lessor in a court of competent jurisdiction.

(3) The receipt of the clerk is a discharge of rent to the amount shown in the receipt and is evidence of payment of that amount to the council.

571. To the extent that an agreement purports to preclude a lessee from so setting off or recovering payments or the balance of payments made to a council under section five hundred and seventy, the agreement is of no effect.

Contracting
out pro-
hibited.

Cf. s. 570
ante.

572. Where money is paid to a council in respect of rates imposed on rateable property, the council shall apply the money for or towards the rates due on the rateable property in the order in which they become due.

Rates
longest out-
standing
to be first
paid.
Cf. S.A. L.G.
Act, s. 260
(2).

573. If, on the request of a council or a servant or agent of the council authorised by the council to make the request—

Refusal to
give name
of person
liable.
Cf. M.C. Act,
s. 422.

(a) the occupier of property, or an agent of the owner, refuses or wilfully omits to disclose, or wilfully mis-states, to the council, its servant or agent making the request, the name of the owner, or of the persons receiving or authorised to receive the rents, of the property; or

(b) the person receiving or authorised to receive the rents of the property so refuses or wilfully omits to disclose, or wilfully mis-states, the name of the owner of the property,

he commits an offence.

Part XXV.,
Div. 6,
Subdiv. A.

Application
of this Part
to annexed
areas.
Cf. M.C. Act,
s. 424.

Ss. 574, 575.

574. On an annexation to, or an extension of, a district by the inclusion from outlying land of land which when so included becomes rateable property,

- (a) the provisions of this Part which relate to the imposition of a rate and which have been complied with by the council of the municipality in respect of rateable property in the district at the time of the annexation or extension are to be regarded as having been complied with for the financial year then current in respect of the rateable land so included; and
- (b) the Commissioner of Taxation or other valuer at the request of the council shall make a valuation of that land for the purpose of imposing the rate in respect of it; but
- (c) the council shall assess as the amount of rate chargeable for the current financial year in respect of the land so included such amount as bears to that which would have been payable for the whole financial year had the land been so included for the whole of the year, the ratio which the portion of the year commencing when the land was so included bears to the whole of the year.

Power to
write off
rates.
Cf. M.C. Act,
s. 425; and
R.D. Act,
s. 269.
Cf. s. 550
ante, as to
arrears.

575. A council may, with the approval of the Minister—

- (a) write off rates which have been imposed in respect of rateable property and payment of which is in arrear;
- (b) refund rates which have been paid by a ratepayer in respect of farming or grazing land in respect of a year or years during which the ratepayer has been absent on what in the opinion of the Minister was war service from the land but in respect only of so much of the land as has been unoccupied or out of production by reason of that absence.

Ss. 576, 577, 578.

Part XXV.,
Div. 6,
Subdiv. B.

576. Where payment of rates imposed in respect of land in a district is in arrear the council of the municipality has an interest in the land in respect of which the council may, in accordance with the provisions of Acts which authorise the lodging of caveats, lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it, but this express inclusion of this right does not prejudice or otherwise affect a right of a council under any Act to lodge and withdraw a caveat in respect of any other charge upon or interest in land or other property.

Council may lodge caveats in respect of arrears of rates.
Cf. 56 Vict. No. 14, s. 137; No. 15 of 1904, s. 284; and No. 37 of 1933, s. 152.
Cf. s. 693, as to charges generally.

Subdivision B.—Power to Lease.

Part XXV.
Div. 6,
Subdiv. B.

577. (1) Where payment of rates imposed in respect of rateable land in a district other than land of or belonging to the Crown has been in arrear for three years or longer, the council of the municipality, notwithstanding anything to the contrary contained in the Transfer of Land Act, 1893, and notwithstanding changes, if any, which have taken place in the meantime in the ownership of the land, since payment became due, may in accordance with the appropriate provisions of this Subdivision—

Power to lease land on which arrears of rates are due.
Cf. M.C. Act, s. 426; and R.D. Act, s. 270.
Cf. s. 550 ante, as to arrears.

- (a) take possession of the land;
- (b) hold the land as against a person having an estate or interest in the land; and
- (c) from time to time let the land on lease in accordance with the provisions of this Act.

(2) Land, possession of which is so taken, or which is so held, or is so let, by the council, does not cease to be rateable property because of the taking possession, holding, or letting of the land.

578. (1) The council shall not take possession of the land until the expiration of one hundred and five days from that on which the council—

Procedure.
Cf. M.C. Act, s. 427.

- (a) has caused notice in the form or substantially in the form in the Nineteenth Schedule, to be served on each person who

Nineteenth
Schedule.

appears, by the records which relate to estates and interests in land and which are kept at the Land Titles Office, the Office of the Registrar of Deeds, the Department of Lands and Surveys and the Department of Mines to have an estate or interest in the land; and

Twentieth
Schedule.

- (b) has caused a notice in the form or substantially in the form in the Twentieth Schedule to be affixed to a conspicuous part of the land.

Twenty-first
Schedule.

(2) On taking possession of the land, the council shall cause to be affixed upon a conspicuous part of the land a notice, in the form or substantially in the form in the Twenty-first Schedule.

(3) The council—

Terms of
lease.
Cf. s. 267
ante.

- (a) may, notwithstanding section two hundred and sixty-seven, let the land on lease for such term, not exceeding seven years at one time, as the council thinks fit;
- (b) shall reserve in the lease the best rent which can be reasonably obtained for the property; and
- (c) may make such other reservations and such exceptions, covenants, and conditions, in the lease, except a covenant for renewal of the term of the lease if the renewal would extend the term beyond seven years, as the council thinks fit.

(4) A lease which purports to be granted by the council under this Subdivision is valid, notwithstanding non-compliance with any of the provisions of this section.

(5) The lessee is entitled, during the term of the lease, to possession of the land as against persons who have an estate or interest in the land, but this subsection does not affect—

- (a) the rights of the council under the lease;

- (b) rights of public enjoyment of a public right of way or other public easement, which, whether acquired by enjoyment or use or otherwise, subsists in, on, over, across, above, or beneath, or otherwise affects the land;
- (c) the rights of the Crown in right of the State or Commonwealth, or a department, agency, or instrumentality, of the Crown in right of the State or Commonwealth; or
- (d) the rights of The Commissioners of the Rural and Industries Bank of Western Australia under a mortgage of the land.

(6) Where the lease is of land which is subject to the provisions of the Transfer of Land Act, 1893, the Registrar of Titles, upon the production to him of the lease shall register it, and may if he thinks it necessary to do so, make such orders and publish such advertisements as are provided for by that Act in the case of dealing with land the certificate of title of which is lost or not produced.

(7) The exercise by a council of a power conferred by this Division, including the taking of possession of land, or the leasing of land under this Subdivision, does not prejudice or affect the rights of The Commissioners of the Rural and Industries Bank of Western Australia under a mortgage of the land, or the recovery of rates or taxes if any, due to the Crown in right of the State or Commonwealth, or a department or agency of the Crown in right of the State or Commonwealth.

579. (1) Where a person who,
if the council had not taken possession of the
land,
would be entitled to possession of the land and the
land has not, under the provisions of this Part

- (a) been sold by the council;
- (b) been transferred to the council; or

(c) been vested in the Crown,
makes,

within fifteen years of the taking of possession of
it by the council,

a demand upon the council to execute a release

sealed with the council's seal, releasing the land
from payment of rates payable in respect of the
land to the time of the demand, and the rates
payable in respect of the land to the time of the
demand have been paid in full,

the council shall execute the release.

(2) If the council does not execute the release, the
Supreme Court may, at the suit of the person order
the council to execute it.

(3) On the execution of the release the person is
entitled to possession of the land, but where a lease
of the land has been granted by the council and the
term of the lease has not expired, the lease subsists
for the balance of the term which has not expired
and the lessee on being served by the person with
written notice of the release becomes the lessee of
the person for the unexpired portion of the term,
as if the lease had been made between them.

Appropriation of rents,
received.
Cf. M.O. Act,
s. 429; and
R.D. Act,
s. 273.
Cf. s. 579
ante.

580. Where the council has let the land on lease
the council shall, until

the execution of a release mentioned in section
five hundred and seventy-nine;

the expiration of fifteen years from the taking
possession of the land by the council;

the sale under this Division of the land by the
council;

the transfer under this Division of the land to
the council; or

the vesting under this Division of the land in
the Crown;

whichever first happens, apply the rent and other money paid to the council under the lease,

firstly—in defraying the expenses of and incidental to the giving of the notices required by this Subdivision to be given by the council, and the execution of the lease, and the collection of the rents;

Expenses.

secondly—in payment to the council of unpaid rates, or other charges, for the time being due to or imposed by the council in respect of the land;

Rates.

thirdly—in payment of unpaid rates and taxes for the time being due to or imposed in favour of the Crown in right of the State or a department or agency of the Crown in right of the State; and

Crown charges.

fourthly—in payment of the residue to such person as would, when the rents and other money were received respectively, have been entitled to receive the rents and profits of the land if the council had not taken possession of the land, or in case of doubt, in payment of the residue into the Supreme Court under section forty-six of the Trustees Act, 1900.

Residue.

Cf. 64 Vic.
No. 17, s. 46.

581. Unless within fifteen years after possession of the land has been taken under the provisions of this Subdivision,

Land, when vested in the Council.
Cf. M.C. Act, s. 430; and R.D. Act, s. 274.
Cf. s. 579 ante.

the council has executed in respect of the land a release mentioned in section five hundred and seventy-nine; or

the land has under this Division been sold, transferred to the council, or revested in the Crown;

by operation of this section there vests in the municipality the fee simple in the land subject to

rights of public enjoyment of a public right of way or other public easement, which, whether acquired by enjoyment or use or otherwise, subsists in, on, over, across, above, or beneath, or otherwise affects the land;

Part XXV.,
Div. 6,
Subdiv. C.

S. 581, 582.

the rights of the Crown in right of the State or Commonwealth, or a department, agency, or instrumentality, of the Crown in right of the State or Commonwealth;

rates and taxes due on the land; and

Cf. s. 578 (7)
ante.

mortgages, if any, on the land in favour of The Commissioners of the Rural and Industries Bank of Western Australia;

but freed from other encumbrances.

Part XXV.
Div. 6.
Subdiv. C.
Power of
council to
sell land
on which
rates are
three years
in arrears.
Cf. R.D. Act,
s. 275.
Cf. Subdiv.
B of this
Div.

Subdivision C.—Power of Sale.

582. (1) Where rates payable to a council under this or another Act, in respect of land being rateable property, other than land of or belonging to the Crown, have been unpaid for not less than three years, and the council has not granted a lease of the land under Subdivision B of this Division, or having granted a lease under that Subdivision the term of the lease has expired or been otherwise determined, the council by virtue of this Act, has—

- (a) power to sell the land; and
- (b) power to transfer or convey the land sold.

(2) The power of sale includes—

- (a) power to sell the whole or part of the land either together or in lots—

- (i) by public auction; or

- (ii) by private contract, if having been offered for sale by public auction, it has not been sold by public auction;

subject to such terms and conditions with respect to the payment of the purchase money or any other matter, including power to fix a reserve, as the council thinks fit;

- (b) power to vary a contract of sale by agreement with the other party or parties to the contract, and to buy in at auction;

- (c) power to rescind a contract for sale on default by the other party or parties to the contract, and to resell without being answerable for loss occasioned by the rescission and resale; and
- (d) power to make such roads and to grant such easements of right-of-way or drainage over the land as the circumstances of the case require and the council thinks fit.

583. (1) A council shall not exercise the power of sale conferred by this Subdivision unless and until it has caused notice requiring payment of the rates owing in respect of the land—

Conditions
for exercise
of power of
sale.
Cf. R.D. Act,
s. 276.

- (a) to be served if the land is subject to the provisions of the Transfer of Land Act, 1893, on the person registered as the proprietor in fee simple of the land, by being delivered to him or by being sent in a registered letter posted to him at his address, if any, appearing in the register book, or by being advertised under subsection (3) of this section;
- (b) to be served if the land is not subject to the provisions of that Act, on the owner in fee simple in the land or on the person appearing by the last memorial relating to the Land in the Office of the Registrar of Deeds to be seised of the fee simple in the land, by being delivered to him or by being sent in a registered letter posted to him at his address, if any, appearing in the memorial, or by being so advertised.
- (c) to be served on such other persons as appear by the records which relate to estates and interests in land and which are kept at the Land Titles Office, the Office of the Registrar of Deeds, the Department of Lands and Surveys, or the Department of Mines, to have an estate or interest in the land, by being delivered to, or by being sent in a

registered letter posted to each of them at his address, if any, appearing in the record, or by being so advertised; and

- (d) to be posted on the official notice board of the council for not less than thirty-five days.

Contents of
notice.
Cf. R.D. Act,
s. 277.

(2) The council shall cause the notice requiring payment—

- (a) to be in writing and be dated and signed by the clerk;
- (b) to specify the total amounts owing in respect of rates of which payment is required;
- (c) to specify the land in respect of which the rates are owing by a sufficient description of the land and the name of the registered proprietor in fee simple, or the person seised of the fee simple, in the land;
- (d) to include a statement that in default of payment of the amounts specified in the notice, the land will be offered for sale by public auction after the expiration of one hundred and five days from the date of notice at a time appointed by the council; and
- (e) to be in, or substantially in, form No. 1 in the Twenty-second Schedule, unless the address of the person required to be served does not appear in the register book, memorial, or record, as sufficient for the purpose of service by delivery or post, in which case subsection (3) of this section applies.

Twenty-
second
Schedule,
form No. 1,

Cf. subs. (3)
of this s.

(3) If in the case of a person required by this section to be served, no sufficient address appears in the register book, or memorial, or record, the council shall cause the notice requiring payment in, or substantially in, form No. 2 in the Twenty-second Schedule to be served on that person by causing it

Twenty-
second
Schedule
form No. 2.

to be advertised once in a newspaper circulating in the neighbourhood of the land, and once in the *Gazette* and may include in a notice advertised under this subsection, land belonging to more than one owner.

(4) The council shall appoint a time not less than one hundred and five days and not more than twelve months from the service of the notices required by this section as that at which the land may be offered for sale by public auction.

Fixing of
time for sale
by auction.
Cf. R.D. Act,
s. 278.

584. (1) The council shall advertise the sale—

Advertise-
ment for
sale.
Cf. R.D. Act,
s. 279.

(a) in, or substantially in the form prescribed by the regulations

- (i) once at least in a newspaper circulating in the neighbourhood of the land;
- (ii) once at least in the *Gazette*; and
- (iii) by posting a copy of the advertisement on the official notice board of the council and keeping it so posted for not less than twenty-one days, and

(b) by such further and other means, if any, as, in the opinion of the council, are necessary or desirable.

(2) In the advertisement the council—

- (a) may include land belonging to more than one owner; and
- (b) shall so describe the land, and improvements, if any, upon the land, as to identify the land, and to convey to persons likely to be interested in the sale the condition of the land and improvements.

(3) (a) The council shall deliver a memorial of the advertisement to the Registrar of Titles, or to the Registrar of Deeds, as the case requires, who, without payment of a fee, shall register the memorial

Part XXV.,
Div. 6,
Subdiv. C.

Ss. 584, 585, 586.

and endorse or note the title and land register or record, in respect of each piece of land comprised in the memorial.

(b) When the memorial is registered the Registrar of Titles, or the Registrar of Deeds, as the case requires, is prohibited from registering and from accepting for registration an instrument affecting the land without the consent of the council, until the land ceases under section five hundred and eighty-five or section five hundred and ninety-two to be bound by this subsection but the prohibition imposed by this paragraph does not extend beyond twelve months from the day on which the memorial is so delivered.

Cf. ss. 585
and 592 post.

Right to
pay rates
and costs,
and stay
proceedings.
Cf. R.D. Act,
s. 280.
Cf. s. 550
ante, ss to
arrears.

585. Up to the time of the actual sale of the land for non-payment of rates, a person having an estate or interest in the land may pay the rates payment of which is then in arrear, and the costs and expenses then incurred in proceedings relating to the proposed sale, and on payment being made the proceedings are stayed, and the council shall deliver to the Registrar of Titles, or to the Registrar of Deeds, as the case requires, a certificate, signed and dated by the clerk, certifying that those rates and costs and expenses have been paid and the Registrar of Titles, or the Registrar of Deeds, as the case requires, shall endorse the title and land register or record to that effect and when the certificate is so noted, the land ceases to be bound by subsection (3) of section five hundred and eighty-four.

Cf. s. 584 (3)
ante.

Power of
council to
transfer or
convey land.
Cf. R.D. Act,
s. 281.

586. A council exercising the power of sale conferred by this Subdivision has power—

- (a) by proper transfer, where the land is under the Transfer of Land Act, 1893, and subject to registration under that Act; and
- (b) by proper deed or transfer, where the land is not under the Transfer of Land Act, 1893,

to transfer or convey an indefeasible estate in fee simple in the land to the purchaser, but the estate of the purchaser is subject to

rights of public enjoyment of a public right of way or other public easement, which, whether acquired by enjoyment or use or otherwise, subsist in, on, over, across, above, or beneath, or otherwise affects the land;

the rights of the Crown in right of the State or Commonwealth, or a department, agency, or instrumentality, of the Crown in right of the State or Commonwealth;

a charge, if any, imposed by a law of the Commonwealth;

rates and taxes imposed or to be imposed on or in respect of the land after the date of the sale; and

a mortgage, if any, in favour of The Commissioners of the Rural and Industries Bank of Western Australia;

but freed from other encumbrances and charges.

587. (1) Where a council has exercised the power of sale conferred by this Subdivision, the Registrar of Titles, or the Registrar of Deeds, as the case may be, shall accept as sufficient evidence that the power of sale has been properly exercised, a transfer or conveyance which is in the proper form prescribed by the Act or law governing the registration of transfers or conveyances of the land, and which is executed under the common seal of the council, and which is expressed to be in exercise of the power of sale conferred by this Subdivision, if it is accompanied by a statutory declaration by the clerk of the council that the provisions of this subdivision have been complied with.

Statutory
declaration
and transfer.
Cf. R.D. Act,
s 282.

(2) The purchaser is responsible for the preparation of the transfer or conveyance and the declaration, the submission of the transfer or conveyance

to the council to be executed, and the declaration to the clerk for signature and attestation, the payment of the stamp duty and registration fees payable in respect of them and the production of them to the Registrar of Titles, or to the Registrar of Deeds, as the case requires, for registration.

(3) Where the land sold is subject to the provisions of the Transfer of Land Act, 1893, the Registrar of Titles, upon production to him of the transfer and declaration, shall register the transfer and notwithstanding the provisions of that Act to the contrary, shall not require production of the certificate of title, but, for the purposes of the registration, the Registrar may, if he thinks fit, make such orders and publish such advertisements as are provided for by that Act in the case of dealings with land when the certificate of title is lost or not produced.

(4) Where a transfer or conveyance of an estate in fee simple in land is made in professed exercise of the power of sale conferred by this Subdivision, the title transferred or conveyed is not impeachable on the ground that no case had arisen to authorise the sale or that proper notice was not given as required or that the power was otherwise improperly or irregularly exercised; but a person damnified by an unauthorised or improper or irregular exercise of the power has his remedy in damages against the council by which the power was exercised, but not against the Crown or the assurance fund established under the Transfer of Land Act, 1893.

Combination
of all lands
of same
owner.
Cf. s. 582
ante.
Cf. R.D. Act,
s. 284.

588. Where rates are so owing for not less than the period of three years in respect of more than one piece of land in the name of the same owner, the council may include in one notice requiring payment and in one advertisement of sale, the amounts of all the rates, and each piece of land in respect of which they are so owing.

589. Notwithstanding the disability of a person or a statute of limitations, the council shall apply the money it receives from the sale—

Application
of purchase
money.
Cf. R.D. Act,
s. 285.

firstly—in payment of the costs, charges and expenses properly incurred by the council in or incidental to the sale or attempted sale or the exercise of any other power conferred upon the council by this Subdivision;

Expenses.

secondly—in payment of—

Rates and
taxes and
Crown
charges.

- (a) unpaid rates due to or imposed by the council under this or another Act or as the local authority under the Health Act, 1911;
- (b) costs and other moneys, if any, due to or imposed in favour of the Crown in right of the State or a department, agency, or instrumentality of the Crown in right of the State other than the Rural and Industries Bank of Western Australia; and
- (c) other amounts due to the council under this or another Act;

in respect of the land at the time of the sale,

whether pursuant to this Act or another Act, and whether a charge upon the land or not;

but

where the payments firstly required by this section to be made have been made, and the balance of the money then remaining is not sufficient for the payment in full of the items secondly required by this section to be made, the council shall distribute the balance of the money so remaining, between the Crown, the department, the agency, the instrumentality, and the council, *pro rata* with the amounts of their claims, respectively, unless the Governor, or

the Minister controlling the department, agency, instrumentality as the case requires, consents to rank after the council or local authority, or both;

Rural and
Industries
Bank.

thirdly—in payment of money due under mortgage of the land to The Commissioners of the Rural and Industries Bank of Western Australia, but without affecting the validity or operation of section eighty-nine of the Rural and Industries Bank Act, 1944;

Cf. No. 51 of
1944, s. 89.
Cf. s. 6,
"owner,"
par. (h)
ante.
Vendor's
costs.

fourthly—in payment of the vendor's costs and expenses of and incidental to conferring upon the purchaser a title to the land;

Sewerage
installation
charges.

fifthly—in or towards the discharge of a charge, if any, on the land subsisting under an Act relating to the construction of drains and fittings from and in connection with the land to connect with a sewer;

Other
charges.

sixthly—in or towards the discharge of other mortgages and encumbrances on the land, both registered and unregistered, according to their respective priorities, at law, so far as they can be ascertained by the council; and

Residue.

seventhly—in payment of the residue of the money within twelve months after the council has received it to—

- (a) the person who would, but for the proceedings for sale, be entitled to the land; or
- (b) if there are several persons who would be so entitled, then to those persons in the proportions in which they would be respectively so entitled;

but

- (i) if a person is entitled to an estate in reversion or remainder in the land, the council may pay that residue into the Supreme Court under section forty-six of the Trustees Act, 1900;

- (ii) if within that period of twelve months the council has not paid that residue to the person entitled to it, the council shall on the expiration of that period of twelve months pay that residue into the Supreme Court under that section of that Act; and
- (iii) if at the expiration of six years after the money is so paid into the Supreme Court,

proceedings whether by petition, suit, claim or action have not been commenced; or are not pending; and the Court has not made an order to the contrary;

the money becomes part of the public moneys mentioned in the Audit Act, 1904, and the proper officer shall after the expiration of that period of six years pay the money into the State Public Account mentioned in that Act.

Cf. No. 12 of 1904, s. 4 as to "public moneys"; and s. 22 as to "State Public Account".

590. A receipt in writing issued by the council is a sufficient discharge for money paid to the council on the exercise by it of the power of sale conferred by this Subdivision, and a person paying it is not bound to inquire whether money remains due to the council for rates or otherwise in respect of the land sold.

Receipt of the council a discharge. Cf. R.D. Act, s. 286.

591. Where since payment of a rate imposed, whether under this or another Act, in respect of land, became due, there has been an alteration in the boundaries of the district of the municipality in whose district the land was then situated, or in the constitution of the municipality or its council, or in its name or status, the alteration does not preclude the council for the time being of the municipality in whose district the land is situate from exercising in respect of the land the powers conferred by this Subdivision and that council may exercise those powers.

Changes in boundaries of municipal area. Cf. R.D. Act, s. 286A.

Part XXV.,
Div. 6,
Subdiv. C.

Ss. 592, 593.

If sale not
completed
within one
year after
advertise-
ment,
proceedings
lapse.

Cf. R.D. Act,

s. 286B.

Cf. s. 584 (3)

(b) ante.

592. If at the expiration of twelve months from the date of the delivery to the Registrar of Titles a memorial of the advertisement mentioned in section five hundred and eighty-four the land is not sold, or having been sold the purchaser has not caused to be registered by the Registrar of Titles, a transfer, or by the Registrar of Deeds, a conveyance evidencing his ownership of the fee simple in the land, the advertisement and subsequent proceedings under this Subdivision cease to have effect and the land ceases to be bound by the noting of the memorial under that section.

Power
to transfer
land to
Crown.

Cf. R.D. Act,
s. 286C.

593. (1) (a) If under this Subdivision land is offered for sale by auction, but no bid of an amount, which in the opinion of the council is sufficient, has been made for the land at the auction, and at the expiration of that period of twelve months the land is not sold, or the land having been sold the purchaser has not caused to be registered by the appropriate registration authority, a transfer or conveyance, evidencing his ownership of the fee simple in the land, the council with the consent of the Minister, may by transfer, where the land is subject to the provisions of the Transfer of Land Act, 1893, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to the Crown in right of the State.

(b) The Minister shall not give his consent unless he is satisfied that there is no reasonable prospect of selling the land under this Subdivision within a reasonable time, nor unless the Minister is satisfied that the rights of The Commissioners of the Rural and Industries Bank of Western Australia under mortgage, if any, of the land, will not be prejudicially affected if he does so.

(c) If and as often as the Minister refuses his consent the council may again commence proceedings for sale by advertising the sale under section five hundred and eighty-four and if the council

Cf. s. 584
ante.

does so the provisions of this Subdivision relating to the advertising of the sale and subsequent proceedings again apply.

(2) Where the Minister gives his consent and the land is subject to the provisions of the Transfer of Land Act, 1893, the council shall cause the transfer to be prepared in proper form and sealed with the common seal of the council and where the land is not subject to the provisions of that Act, the council shall cause the conveyance to be prepared and sealed with the common seal of the council, and produced to the Registrar of Titles or the Registrar of Deeds as the case requires for registration.

(3) (a) The Registrar of Titles, or Registrar of Deeds, as the case may be, shall, on receipt of the transfer or conveyance, make such entries in the register book or other book of the Office of Titles or the Office of the Registrar of Deeds as are necessary or proper to evidence that the land is revested in the Crown in right of the State.

(b) Notwithstanding the provisions of the Transfer of Land Act, 1893, upon the making of such entry, the land becomes, and may be dealt with as, Crown lands free from mortgages, including mortgages to The Commissioners of the Rural and Industries Bank of Western Australia, and leases, tenancies, encumbrances, charges and reservations of every kind.

(c) If the land is under the Transfer of Land Act, 1893, the Registrar of Titles shall cancel the certificate of title, relating to the land by indorsing upon it the words, "Cancelled, the within land having been acquired by the Crown and removed from the operation of the Transfer of Land Act, 1893," and the land is, for the purposes of the Transfer of Land Act, 1893, and until again alienated from the Crown regarded and may be dealt with as if it had never been alienated from the Crown.

(d) If the land is not under the Transfer of Land Act, 1893, the Registrar of Deeds may, for the purpose of identification of the land, require the council to deposit with him a plan or map of the land as if an application were being made to bring the land under the Transfer of Land Act, 1893.

(4) Stamp duty is not payable upon the transfer or conveyance, or upon the statutory declaration mentioned in subsection (5) of this section, and no fee is payable upon lodging or registering the transfer or conveyance or statutory declaration in the Office of Titles or the Office of the Registrar of Deeds.

(5) The Registrar of Titles or the Registrar of Deeds, as the case may be, shall accept as sufficient evidence that the power has been properly exercised, a transfer or conveyance expressed to be in exercise of the power conferred by this section, if it is accompanied by a statutory declaration of the clerk that the provisions of this Subdivision have been complied with.

(6) Where a transfer or conveyance of an estate in fee simple is effected in professed exercise of the power conferred by this section, the title transferred or conveyed is indefeasible and is not impeachable on the ground that no case had arisen to authorise the exercise of the power, or that proper notice was not given, as required, or that the power was otherwise improperly or irregularly exercised, but a person damnified by an unauthorised or irregular exercise of the power has his remedy in damages against the council by which the power was exercised, but not against the Crown or the assurance fund established under the Transfer of Land Act, 1893.

594. (1) (a) If under this Subdivision land is offered for sale by auction, but no bid of an amount which in the opinion of the council is sufficient has been made for the land at the auction, and at the expiration of the period of twelve months from the

date of the delivery to the Registrar of Titles of the memorial of the advertisement mentioned in section five hundred and eighty-four the land is not sold, or the land having been sold the purchaser has not caused to be registered by the appropriate registration authority, a transfer or conveyance, the council, with the consent of the Minister, may by transfer, where the land is subject to the provisions of the Transfer of Land Act, 1893, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to the council.

Cf. ss. 584,
592, and 593
ante.

(b) The Minister shall not give his consent unless he is satisfied that there is no reasonable prospect of selling the land pursuant to this Subdivision within a reasonable time.

(c) If and as often as the Minister refuses his consent the council may again commence proceedings for sale by advertising the sale under section five hundred and eighty-four and if the council does so the provisions of this Subdivision relating to advertising the sale and subsequent proceedings again apply.

Cf. s. 584
ante.

(d) The Minister may give his consent on the condition that the council will pay the whole or part of the sum secured by or payable under a mortgage, lease, tenancy, encumbrance, or charge, in favour of the Crown in right of the State, or a department, agency, or instrumentality, of the Crown in right of the State.

(2) Where the Minister gives his consent and the land is subject to the provisions of the Transfer of Land Act, 1893, the council shall cause the transfer to be prepared in proper form and sealed with the common seal of the council and where the land is not subject to the provisions of that Act, the council shall cause the conveyance to be prepared and sealed with the common seal of the council, and produced to the Registrar of Titles or the Registrar of Deeds as the case requires for registration.

(3) (a) The Registrar of Titles or Registrar of Deeds, as the case may be, shall, on receipt of the transfer or conveyance and upon payment of the prescribed fee, make such entries in the register book or other book at the Office of Titles, or the Office of the Registrar of Deeds as are necessary or proper to evidence that the land is transferred or conveyed to the council.

(b) If the land is subject to the provisions of the Transfer of Land Act, 1893, the Registrar of Titles may issue to the council a Certificate of Title.

(c) If the land is not subject to the provisions of that Act, the Registrar of Deeds may for the purpose of identification of the land require the council to deposit with him a plan or map of the land as if an application were being made to bring the land under the Transfer of Land Act, 1893.

(4) The Registrar of Titles or the Registrar of Deeds, as the case may be, shall accept as sufficient evidence that the power has been properly exercised, a transfer or conveyance expressed to be in exercise of the power conferred by this section if it is accompanied by a statutory declaration of the clerk that the provisions of this Subdivision have been complied with.

(5) Stamp duty and registration fees are not payable upon the transfer, conveyance, or statutory declaration.

(6) Notwithstanding the provisions of the Transfer of Land Act, 1893, or other law, the registration of the transfer or conveyance as the case may be vests in the council an indefeasible estate in fee simple in the land subject to—

- (a) rights of public enjoyment of a public right of way or other public easement, which, whether acquired by enjoyment or use or otherwise, subsists in, on, over, across, above, or beneath, or otherwise affects the land;

- (b) the rights of the Crown in right of the State or Commonwealth, or a department, agency, or instrumentality, of the Crown in right of the State or Commonwealth; or
- (c) the rights of The Commissioners of the Rural and Industries Bank of Western Australia under a mortgage of the land.

(7) Where a transfer or conveyance of an estate in fee simple is made in professed exercise of the power conferred by this section the title transferred or conveyed is indefeasible and is not impeachable on the ground that no case had arisen to authorise the exercise of the power, or that proper notice was not given as required, or that the power was otherwise improperly or irregularly exercised, but a person damnified by an unauthorised or irregular exercise of the power has his remedy in damages against the council by which the power was exercised, but not against the Crown or the assurance fund established under the Transfer of Land Act, 1893.

595. A sale of land by the council, or a transfer or conveyance of land to the Crown or the council, under this Subdivision discharges the land and the owners and occupiers of it, including the previous owners and occupiers of the land, from their respective liabilities to the council for rates and other money, if any, due to the council for a purpose which, at the time of the sale or the transfer or the conveyance, were a charge upon the land, or which were otherwise recoverable, whether under this or another Act, by the council in respect of the land.

Discharge
of liability
on sale of
land.
Cf. R.D. Act,
s. 286E.

596. (1) If land—

- (a) has been alienated from the Crown in fee simple; or
- (b) is land in respect of which only the payment of the fee mentioned in section one hundred and forty-two of the Land Act,

Power to
have land
revested in
the Crown if
rates in
arrears three
years.
Cf. R.D. Act,
s. 286EA.
Cf. No. 37 of
1933 as am.
s. 142, as to
Crown grant
fee.

1933, for preparing and recording the Crown grant is required to be made before the land is alienated from the Crown in fee simple;

and in either case is

- (i) rateable property;
- (ii) vacant, whether enclosed with a fence or not enclosed; and
- (iii) land in respect of which no rates have been paid for a period of at least three years,

the council of the municipality in whose district the land is situated may apply in form and manner prescribed by the regulations to the Minister for a certificate that the land is revested in the Crown in right of the State.

(2) The Minister shall consider the application and the circumstances surrounding the application and may grant or refuse the application, but shall not grant the application if, in his opinion, to do so would prejudicially affect the rights of The Commissioners of the Rural and Industries Bank of Western Australia under a mortgage of the land.

(3) If the application is granted the Minister shall issue a certificate in form and manner prescribed by the regulations that the land is revested in the Crown and shall cause a copy of the certificate to be delivered to the Registrar of Titles, the Registrar of Deeds, the Under Secretary for Lands, or other person having custody or control of any register or public record kept for the purpose of recording the ownership of and transactions relating to the land.

Cf. subs. (3)
of this s.
Cf. s. 593 (3)-
(6) ante.

(4) Upon the delivery of the copy of the certificate the provisions of subsections (3) to (6) both inclusive of section five hundred and ninety-three of this Act apply, *mutatis mutandis*, as if the copy of the certificate were a transfer or conveyance as the case may be, expressed to be in exercise of the power conferred by that section and although not required

Ss. 596, 597, 598.

Part
XXVI.,
Div. 1.

by this subsection to be accompanied by a declaration mentioned in subsection (5) of that section, as if it were so accompanied.

Cf. s. 593 (5).

597. The powers conferred by this Subdivision do not affect other powers conferred by this Act on a council for the recovery of rates.

Saving
provisions.
Cf. R.D. Act,
s. 286F.

PART XXVI.—BORROWING POWERS.

Part XXVI.
Div. 1.*Division 1.—General.*

598. In this Part, unless the context requires otherwise—

Interpreta-
tion.

“debenture” means a debenture issued under the provisions of this Part by a municipality to secure repayment of money borrowed by the municipality;

“works and undertakings” means—

Works and
undertak-
ings.
Cf. M.C. Act,
s. 442; and
R.D. Act,
s. 291.

- (1) the opening, making, paving, partial paving, diverting, altering, increasing the width of, and the kerbing of, and the provision of seats on, roads and footpaths;
- (2) the raising, lowering, or altering of the ground or soil of roads;
- (3) the construction, purchase, and establishment of bridges, culverts, ferries, wharves, and jetties;
- (4) the construction, enlargement, and alteration of sewers and drains and works connected with sewerage and drainage under the powers conferred on the council by this or another Act relating to public health, and the purchase or erection of machinery for the treatment of refuse;
- (5) the construction and purchase with the consent of the Governor of water-works and the procuring of a water supply;

- (6) the construction and purchase with the consent of the Governor of gas-works and electric light plant, or other works for lighting a district, or for the supply of gas or electric light or power for consumption or use by a person, company, or public or local authority;
- (7) the construction and purchase of any other trading undertaking authorised under this Act;
- (8) the construction and purchase with the consent of the Governor of tramways, and tramcars;
- (9) the construction and providing of a town hall, agricultural hall, civic centre, kindergartens, child welfare clinics, ambulance services, municipal offices, pounds, abattoirs, market places, market houses, fountains, urinals, places for weighing vehicles and their loadings, and the making of convenient approaches to markets and the furnishing and equipping of them;
- (10) the planting of forests, and the carrying out of an afforestation programme;
- (11) the construction or acquisition by purchase or otherwise and establishment by a municipality of hostels for school children;
- (12) the providing of baths, wash-houses and swimming pools;
- (13) the improvement of endowment lands;
- (14) the providing of public libraries and public museums, and the providing, laying out and improvement of pleasure grounds, and places of public resort and recreation; and the furnishing and equipping of them;

- (15) the purchase of organs and other musical instruments, and cinematograph and other projection apparatus;
- (16) the erection of lamp-posts, lamps, and necessary connections for lighting a district by gas light, electric light, or other light;
- (17) the construction, purchase and erection of plant, pans, and appliances, for the removal and treatment of nightsoil and refuse, or the application of the treated matter to land for the purpose of manuring the land;
- (18) the purchase of stone quarries and the construction or erection of machinery and plant in connection with them;
- (19) the purchase of steamrollers, and apparatus and appliances for watering streets and other public places, and fire-engines and other appliances for preventing, controlling and extinguishing fires;
- (20) the construction of theatres and grandstands;
- (21) the purchase or acquisition of land and of materials for the provision of anything mentioned in this section, and the making of compensation to the owner of the land or of the materials so purchased or acquired;
- (22) the construction and purchase of concrete mixers, tar-sprayers, grit spreading machines, gully flushers, street sweepers, scarifiers, tar mixers, bituminous road plant, and other plant and appliances required for constructing, repairing, cleaning, or flushing, streets, footpaths, and other public places;

- (23) the construction and purchase of aircraft, and motor vehicles including omnibuses and school buses, and of municipal depots, stables, aero and motor garages and workshops; and plant for use in extermination or control of vermin, extinguishment or control of bush fires, or for use in carrying out the provisions of other Acts which confer a right or impose a duty or obligation upon the council;
- (24) other plant, machinery, things, and permanent works, and undertakings, which a council is authorised or required by this or another Act, to provide, carry out, or undertake;
- (25) work to be provided, carried out or undertaken by a council jointly with one or more other councils under the authority of this or another Act; and
- (26) other plant, machinery, things, works, and undertakings, approved in writing by the Governor.

Part XXVI.,
Div. 2.

Overdraft,
Cf. M.C. Act,
s. 437.

Cf. subs. (3)
of this s.
as to over-
drafts on
trading
undertak-
ings.

Division 2.—Power to Borrow Money on Overdraft.

599. (1) Pending the collection of rates, or the receipt of money, if any, granted by Parliament to a municipality, the council thereof may, for the purpose of commencing, carrying on, or completing works, or carrying on other activities of the council other than trading undertakings, obtain from a bank on overdraft of its current account advances not exceeding at one time an amount which equals the balance of one-third of the ordinary revenue of the municipality for the year then last preceding, remaining after deducting grants, if any, from Parliament and profits, if any, made during that year out of trading undertakings conducted by the council.

(2) Where the council is that of a newly-constituted municipality it may, for the purposes of commencing, carrying on, or completing works,

Ss. 599, 600.

or carrying out other activities of the council, other than trading undertakings, obtain from a bank on overdraft of its current account for the current financial year, advances not exceeding at one time an amount which equals the estimated balance, as estimated by the council, of one-third of its ordinary revenue for that year exclusive of those grants and profits.

(3) A council which is conducting a trading undertaking under this Act may obtain from a bank on overdraft of its current account relating to the trading undertaking, advances not exceeding at one time one-fifth of the gross receipts from the undertaking in the preceding financial year, and during the first financial year of conducting a trading undertaking may obtain the overdraft on the council's estimate of one-fifth of gross receipts from the undertaking for that year, and payment of interest on money so borrowed and repayment of the money are included in the working expenses of the undertaking.

Cf. s. 505 (2)
(d) ante as
to working
expenses.

(4) A bank so making advances on overdraft is not bound to inquire whether the advances are being obtained, or are being or have been applied, for the purposes mentioned in this section.

600. (1) A council may, with the written consent of the Minister, obtain advances from a bank on overdraft for carrying out any one or more of the following works or undertakings:—

Power to
borrow for
certain
works.

- (a) the installation of sewerage connections for owners of premises under section eighty-two A of the Health Act, 1911;
- (b) the installation of apparatus for the bacteriolytic treatment of sewage under section one hundred of that Act; and
- (c) any other work or undertaking whether of the same kind as, or a different kind from, those here specified which is approved by the Governor.

(2) The council shall expend the money so advanced in carrying out or causing to be carried out the works for which it is advanced, and not otherwise.

(3) The council shall pay the receipts arising out of the works into the overdraft account.

(4) The amounts estimated to be received by the council and to be so paid into that account shall both be shown in the budget of the municipal fund.

*Division 3.—Power to Borrow Money Otherwise
than on Overdraft.*

601. (1) A council may in accordance with the provisions of this Division borrow money on the credit of the municipality for works and undertakings, and to liquidate the principal money owing by the municipality on account of previous loans.

(2) On or before the thirty-first day of March in each year after the coming into operation of this Act each council

(a) shall prepare estimates of the total amount it proposes to borrow under this Division on the security of debentures during the financial year commencing on the first day of July next succeeding that thirty-first day of March, and

(b) shall deliver a copy of the estimates to the Treasurer of the State.

(3) After the thirty-first day of March next succeeding the coming into operation of this Act a council shall not borrow money under this Division on the security of debentures unless the council has first

(a) complied with the requirements of subsection (2) of this section;

(b) delivered to the Treasurer of the State particulars of

- (i) the amount of money the council proposes to borrow;
- (ii) the interest to be charged on that amount;
- (iii) the period proposed for repayment of that amount;
- (iv) the purpose for which it is proposed to borrow that amount; and
- (v) the name of the proposed lender; and
- (c) obtained the written approval of the Treasurer of the State to do so.

602. Where by this Division restrictions or conditions are imposed upon the exercise of the power to borrow, the restrictions or conditions do not apply to borrowing on overdraft under Division 2 of this Part and do not require amounts borrowed under that Division to be taken into account.

Overdrafts
excluded
from this
Division.

Cf. Div. 2 of
this Part.

603. (1) Unless a council is authorised under this section to borrow to a greater extent, the amount of money which a council is authorised to borrow for works and undertakings is

Limit of
amount to
be borrowed.
Cf. M.O. Act,
s. 440.

- (a) ten times the balance of the ordinary revenue of the municipality remaining after deducting from it such sums as are required for meeting payments of interest and principal money owing by the municipality on account of previous loans, which balance is averaged over the two years terminating with the yearly balancing of accounts next preceding the publication under section six hundred and ten in the *Gazette* of the proposal to borrow money; or

Cf. s. 610
post.

- (b) where a municipality is already indebted under a previous loan, the difference obtained by subtracting from ten times the average mentioned in paragraph (a) of this subsection, the balance remaining unpaid

Cf. para. (a)
of this subs.

of previous loans, sums standing to the credit of a sinking fund for the repayment of a previous loan being regarded for the purposes of this paragraph as a repayment to the extent of the credit of the loan; or

- (c) where the council is that of a newly-constituted municipality, such amount as the council estimates as its net revenue to the thirtieth day of June in the next financial year after that of the constitution of the municipality.

(2) With the approval in writing of the Governor the council may in accordance with the provisions of this Division, borrow money to an extent greater than that mentioned in paragraph (a), (b) or (c) of subsection (1) of this section, for permanent works and undertakings specified in the approval.

(3) The amount of money which the council of a municipality is authorised to borrow to liquidate a loan is restricted to the balance of principal money owing on account of the loan.

(4) Where two or more municipalities are jointly liable in respect of a loan, but as between themselves each is liable in respect of a portion only of the loan, in order to determine how much each municipality is authorised to borrow, it is required to deduct from ten times the average mentioned in subsection (1) of this section, only such proportion of the balance of the loan remaining unpaid, as bears to that balance the ratio which its liability as between themselves in respect of the whole of the loan, bears to the joint liability of all of them in respect of the whole of the loan.

Amount which may be borrowed by a municipality jointly liable in respect of a loan.
Cf. M.C. Act, s. 441.

Borrowing by sale of debentures.
Cf. M.C. Act, s. 443.

604. (1) Where a council is authorised to borrow money under this Division it may do so by the issue and sale of debentures—

- (a) in or substantially in the form in the Twenty-third Schedule, for the redemption of which form of debentures, the municipality is not required to establish and

Twenty-third Schedule.
Cf. Gazette 18th May, 1934, p. 713.
Form No. 31.

maintain a sinking fund, but by which the municipality is bound to repay the principal sum and to pay interest, by specified instalments; or

- (b) in or substantially in the form in the Twenty-fourth Schedule, for the redemption of which form of debentures, the municipality is bound to establish and maintain a sinking fund, and by which the municipality is bound to repay the principal sum by a stipulated day and is bound in the meantime to pay instalments of interest on the surrender of coupons which are issued in, or substantially in, the form in the Twenty-fifth Schedule with the debenture.

Twenty-fourth
Schedule.
Cf. *Gazette*
13th April,
1934, p. 508,
Form No. 29,
Cf. s. 615
post.

Twenty-fifth
Schedule.
Cf. *Gazette*
13th April,
1934, p. 509,
Form
No. 29a.

(2) Before issuing debentures of a series a council shall cause each debenture of the series to be numbered consecutively in numerical sequence commencing with the numeral, one, on the first of the series issued.

605. A debenture so issued entitles the bearer of it to receive payment of the principal sum and interest, in accordance with the provisions of the debenture, on presenting the debenture or coupon, as the case requires, on or after the day on which it is expressed to be payable, at the place at which it is expressed to be payable.

Debentures
to be payable
to bearer.
Cf. M.C. Act,
s. 445.

606. A debenture or a coupon so issued is transferable simply by delivery, without the necessity of an assignment or indorsement, whether the coupon has or has not been detached from the debenture with which it was issued.

Debentures
to pass by
delivery.
Cf. M.C. Act,
s. 446.

607. Where the council so issues debentures, it shall cause a register of the debentures issued to be kept at the office of the council and to be open for inspection by ratepayers of the municipality at

Register
of debentures
to be kept open
for
inspection.
Cf. S.A. L.G.
Act, s. 436.

Part
XXVI.,
Div. 3.

Ss. 607, 608, 609.

reasonable hours and shall cause to be shown in the register the number of each loan and the number of each debenture issued for each loan, together with the name of the person to whom it was issued; the date of issue and of repayments; and the particulars indicated by the headings to the respective columns of the schedule of debentures in the Twenty-third Schedule.

Cf. Twenty-
third
Schedule.

Limitation
of period of
loans.
Cf. M.C. Act,
s. 447.

608. (1) A council shall not issue debentures unless upon condition expressed in the debenture that the municipality shall repay the principal sum mentioned in it on a day mentioned in it and being within a period of thirty-six years from the day of the issue of the series of which it is one, or such lesser period mentioned in it as is limited by Order made under subsection (2) of this section.

Cf. subs. (2)
of this s.

(2) The Governor, by Order, may limit the maximum term of a loan for a particular class, or for particular classes, of works or undertakings, to a period of less than thirty-six years.

Plans,
specifica-
tions and
estimates to
be prepared
before
borrowing.
Cf. M.C. Act,
s. 448; and
R.D. Act,
s. 297.

609. Before proceeding to borrow money for the construction of works and undertakings a council shall cause to be prepared—

- (a) plans and specifications and estimates of the cost of the works and undertakings; and
- (b) statements showing the proposed expenditure of the money to be borrowed, including the cost of supervision and initial expenditure in connection with the raising of the loan;

and shall cause the plans, specifications, estimates, and statements, to be open at reasonable hours for inspection by the ratepayers of the municipality for thirty-five days after the publication of the notice mentioned in section six hundred and ten.

Cf. s. 610
post.

610. A council shall not adopt a proposition for borrowing money by the issue of debentures,

(a) unless it has caused a notice of the proposition to be published firstly in a newspaper circulating in the district of the municipality, and then in the *Gazette*, not less than thirty-five days nor more than one hundred and fifteen days before the proposition is adopted—

(i) stating the amount proposed to be raised and the maximum rate of interest proposed to be paid on the debentures, the times and places at which money due on the debentures is to be payable, and the purposes for which the loan is to be applied;

(ii) where the loan is to be expended in the purchase of works or undertakings, specifying the works or undertakings;

(iii) where the loan is to be expended in the construction of works or undertakings stating that the plans, specifications, estimates, and statements, mentioned in section six hundred and nine, are open for inspection by ratepayers of the municipality at the office of the council; and

Cf. s. 609
ante.

(iv) where the loan is proposed to be raised for works or undertakings and the council is of opinion that the works or undertakings will be of special benefit to a portion only of the district, or that the benefit will be of varying degrees in different parts of the district or of that portion, stating that opinion; nor

Cf. s. 614
post.

(b) unless where a poll of ratepayers is demanded by the requisite number of ratepayers under section six hundred and

Cf. s. 611
post.

eleven the council has caused the poll to be held, and the majority of valid votes cast are in favour of raising the loan.

Power
to demand
poll.
Cf. M.C. Act,
s. 450; and
R.D. Act,
s. 299.

611. (1) Where within thirty-five days after the publication in the *Gazette* of the notice of the proposition to borrow money, not being a proposition to borrow money to liquidate a loan lawfully incurred under this Act, at least fifty persons or one-tenth of the total number of persons, whichever is the lesser in number, who are ratepayers—

- (a) within the district; or
- (b) within the portion, if any of the district referred to in the notice as that which in the opinion of the council will benefit specially from works or undertakings for which the loan is proposed,

as the case may be, may, in writing signed by them, or petition bearing their signatures verified by statutory declaration by the person presenting it delivered to the clerk, demand that the question, whether or not the proposed loan be incurred, be submitted to the vote of the ratepayers of the district or the portion of the district as the case may be, the council shall unless the demand is withdrawn cause the question to be submitted to a poll of the ratepayers of the district or portion of the district as the case may be, to be held on a day appointed by the mayor or president, being not less than forty-two nor more than seventy days after that on which the demand is delivered to the clerk.

(2) Within fourteen days after the demand has been delivered to the clerk, ratepayers of the district or the portion of the district, may by written notice signed by them and delivered or posted to the clerk, withdraw from the demand, or if not parties to the demand join in the demand, but if at the expiration of that period of fourteen days, less than the requisite number of ratepayers are parties to the demand, it is regarded as withdrawn.

(3) The returning officer shall cause sufficient voting papers in or substantially in the form in the Twenty-sixth Schedule to be provided for the taking of the poll.

Voting
papers.Twenty-
sixth
Schedule

(4) The returning officer shall, for the purpose of taking the poll, use the roll of the district as last settled prior to the taking of the poll.

Roll.

(5) Where the notice states that in the opinion of the council a portion or portions of the district will benefit specially from the works or undertakings for which the loan is proposed, only the persons who are registered as ratepayers on the roll and who pay rates in respect of land in that portion or those portions are entitled to vote at the poll, but otherwise all persons who are so registered are entitled to vote at the poll.

Right to
vote.

(6) Such of the provisions of this Act relating to the taking of the poll at the election of members of a council, including voting in absence, as are appropriate, apply *mutatis mutandis* to the taking of the poll on the question.

Provisions
relating to
elections
apply to
poll.

(7) If at the poll a majority of the valid votes cast are in favour of the loan, the raising of the loan is approved, but if a majority of the valid votes cast are against the loan or the valid votes cast against the loan are equal in number to those in favour of the loan, the raising of the loan is forbidden.

612. If the raising of the loan is not forbidden, the council may adopt the proposal and proceed to borrow the money for the purposes mentioned in the notice.

Power
to council
under
certain cir-
cumstances
to proceed
to raise
money.
Cf. M.C. Act,
s. 452.

613. If the raising of the loan is not forbidden, the council may raise the loan by the issue and sale of debentures, which when so issued and sold are good and valid security against the municipality, notwithstanding that the council has not complied with the provisions of this Act, with which it should have complied.

All debentures valid
under
certain cir-
cumstances.
Cf. M.C. Act,
s. 453; and
R.D. Act,
s. 302.

Part
XXVI.,
Div. 3.

S. 614.

Loan com-
mitments
to be
included in
budget and
amount
required
raised by
general rate.
Cf. M.C. Act,
s. 454.
Cf. s. 547 (4)
(a) ante.

614. (1) A council shall, from time to time,
while money borrowed by the municipality
remains unpaid,

include in the estimates of expenditure,
mentioned in paragraph (a) of subsection (4)
of section five hundred and forty-seven,

a sum sufficient to meet

the interest and repayments or sinking fund
instalments on the loan,

and shall include in the general rate,

Cf. s. 548
ante.

imposed under section five hundred and forty-
eight,

a sum sufficient to meet

that interest and those repayments,

Special
benefits.
Cf. M.C. Act,
s. 454; and
R.D. Act,
s. 242.

but where the council has borrowed the money for
the purpose of providing works and undertakings
for the special benefit of portions of the district,
and has

Cf. s. 610 (a)
(iv), ante.

included in the notice of the proposal to borrow
a statement of the council's opinion that the
works or undertakings will be of special benefit
to a portion only of the district, or will be of
special benefit in varying degrees to parts of the
district or of that portion,

the council shall include in the estimates,

Cf. s. 547 (4)
(a) ante.

mentioned in paragraph (a) of subsection (4)
of section five hundred and forty-seven

a separate statement

of the amounts of interest and repayment of
sinking fund instalments in respect of the loan,

and shall include in the general rate

Cf. s. 548
ante.

to be imposed under section five hundred and
forty-eight.

a different amount

determined by the council in respect of the loan
in accordance with its opinion of those varying
degree of benefit.

(2) Where a council has used the proceeds of a loan in a reproductive undertaking,

Self
supporting
loans.
Cf. M.C. Act,
s. 454; and
R.D. Act,
s. 242.

(a) the council may use and apply the surplus of receipts over payments for any year in respect of the undertaking in or towards meeting its commitments in that year in respect of interest, repayment instalments, or sinking fund instalments, in relation to the loan;

(b) where the council estimates that the surplus of receipts over payments will be sufficient to meet in full the amount of the council's commitments for the year in respect of the undertaking, it is not necessary for the council to include in its estimates or to include in its general rate any sum in connection with the loan; but

(c) where the council estimates that the surplus of receipts over payments is sufficient to meet only in part the commitments of the council for the year in respect of the undertaking, or is insufficient to meet any part of the council's commitments for the year in respect of the undertaking, the council may—

(i) include in its estimates of expenditure an amount estimated to cover the deficiency;

(ii) include in its general rate a sum sufficient to cover this deficiency; and

(iii) when the deficiency has been met from the proceeds of the general rates in a year, repay the amount of the deficiency so met to the municipal fund in a subsequent year from the fund of the undertaking concerned.

615. (1) Where a council intends to borrow money by the issue and sale of debentures in or substantially in the form of the Twenty-fourth

Sinking
fund.
Cf. M.C. Act,
ss. 457, 458
and 460; and
R.D. Act,
s. 303.

Schedule, for the redemption of which form of debentures the municipality is bound to establish and maintain a sinking fund, the council shall—

- (a) cause to be specified in each debenture the amount which it binds itself to apply under the provisions of this Act in establishing and maintaining the sinking fund, being an amount per centum per annum of the principal sum for which the debentures are issued, but being not less than two pounds per centum per annum of that principal sum; and
- (b) cause the amount so specified to be paid each year to the Treasurer of the State for investment in the joint names of the Treasurer and the municipality—
 - (i) in inscribed stock or other securities issued by the State or Commonwealth; or
 - (ii) until investment in those securities is available, on fixed deposit at a bank carrying on business in the State; or
- (c) apply the amount so specified in the repurchase of the debentures by the issue and sale of which the council borrowed that principal sum but only at a purchase price which does not exceed so much of the principal sum as then remains to be repaid by the council.

*Of, subs. (1)
(c) of this s.*

(2) Where under paragraph (c) of subsection (1) of this section a council repurchases debentures the mayor or president and the clerk—

- (a) shall cancel the debentures repurchased and the coupons issued with them;
- (b) send to the Treasurer a memorandum of the money expended in the purchase, and the cancelled debentures and coupons; and

- (c) cause an amount equal to the interest and sinking fund contributions which would have been payable annually by the municipality in respect of the debentures had they not been so repurchased and cancelled, to be paid each year to the Treasurer for investment under paragraph (b) of subsection (1) of this section and placed to the credit of the sinking fund.

Cf. subs. (1)
(b) of this s.

(3) If, after obtaining an actuarial report, it appears to the Treasurer that the contributions that have been made to the sinking fund for the redemption of a loan will, at compound interest, be sufficient to redeem the loan at maturity, the Treasurer may authorise a reduction in the percentage of the contribution, or the cessation of further contributions to the fund, and the council may reduce or cease to make the contributions accordingly.

(4) Where the specified amount mentioned in paragraph (a) of subsection (1) of this section is invested in accordance with the provisions of paragraph (b) of that subsection and interest accrues on the investment, the Treasurer and council of the municipality in whose joint names the amount is invested shall cause the interest to be invested in accordance with paragraph (b) of that subsection.

Investment
of interest
on sinking
fund.
Cf. M.C. Act,
s. 461.
Cf. subs. (1)
(a) and (b)
of this s.

616. (1) A council may expend the ordinary revenue of the municipality in the purchase of debentures issued by the council but only at a purchase price which does not exceed so much of the principal sum as then remains to be paid by the council under the debentures.

Power
to purchase
debentures.
Cf. M.C. Act,
s. 459.

(2) Where, under paragraph (c) of subsection (1) of section six hundred and fifteen or under subsection (1) of this section,

Cf. s. 615 (1)
(c) ante and
subs. (1) of
this s.

- (a) a council purchases debentures in, or substantially in, the form in the Twenty-third Schedule, for the redemption of which form

Twenty-
third
Schedule.

of debentures the municipality is not required to establish and maintain a sinking fund, but by which the municipality is bound to repay the principal sum and to pay interest, by specified instalments,

the mayor or president and the clerk on receiving the debentures so purchased by the council shall cancel the debentures; or

Twenty-fourth
Schedule.

- (b) a council purchases debentures in or substantially in the form in the Twenty-fourth Schedule, for the redemption of which form of debentures the municipality is bound to establish and maintain a sinking fund, and by which the council is bound to repay the principal sum by a stipulated day and is bound in the meantime to pay instalments of interest on the surrender of coupons which are issued in, or substantially in, the form in the Twenty-fifth Schedule, with the debentures,

Twenty-fifth
Schedule.

the mayor or president and the clerk on receiving the debentures and coupons issued with them shall cancel the debentures and coupons and shall send particulars of them to the Treasurer.

Application
of sinking
fund
to meet
debentures.
Cf. M.C. Act,
s. 462.

617. (1) When debentures are about to fall due, the Treasurer and council jointly holding inscribed stock or other securities comprised in a sinking fund established to redeem them may cause those securities to be sold out, and the proceeds paid into such bank to the account of such person or persons as the Treasurer and the council determine, and may cause the money so paid into the bank to be paid out to the holders of the debentures and coupons issued with them and then unpaid on presentation and delivery up of them.

Power
to Treasurer
to transfer
sinking fund
after re-
purchase of
debentures.
Cf. M.C. Act,
s. 463.

(2) On the presentation on behalf of the municipality of debentures, and coupons issued with them but not then payable, together with a certificate signed by the Auditor General, stating what amount

of inscribed stock or other securities and deposits credited to that account will be sufficient to secure the holders of debentures secured upon inscribed stock, or other securities or deposits other than the debentures and coupons so presented and upon the cancellation of the debentures and coupons, the Treasurer may join in transferring to the municipality the balance, if any, of inscribed stock or other securities or deposits credited to that account, being the balance over and above the amount mentioned in the certificate.

(3) Except for the purposes and unless on the conditions mentioned in this section, or unless ordered to do so by the Supreme Court or a Judge, the Treasurer shall not join in transferring inscribed stock or other securities, or deposits forming part of a sinking fund established to redeem debentures issued and sold under this Division.

When
Treasurer
may
transfer.
Cf. M.C. Act,
s. 464.

618. (1) If a municipality makes default in payment of principal money or interest secured by a debenture or coupon, or in establishing and maintaining a sinking fund to redeem debentures in accordance with the provisions of this Division, the Supreme Court or a Judge may, on the petition of, or on originating summons issued by, the holder of the debenture or coupon, appoint a person or persons, not exceeding three, to be a receiver or receivers of the whole annual ordinary revenue of the municipality.

Power to
appoint
receiver.
Cf. M.C. Act,
s. 464.

(2) A person so appointed a receiver is an officer of and shall act under the direction of the Supreme Court or a Judge, who may from time to time issue such directions relating to the receivership as the Court or Judge thinks fit.

619. The Supreme Court, or a Judge, may from time to time remove a receiver so appointed, and on the death or removal of a receiver, may appoint another person in his place.

Power
to remove
receiver.
Cf. M.C. Act,
s. 467.

Part
XXVI.,
Div. 3.

Ss. 620, 621, 622, 623, 624.

Powers of
receiver.
Cf. M.C. Act,
s. 468.

620. Receivers so appointed are entitled—

- (a) to receive and recover so much of the revenue of the municipality as is outstanding at the time of his or their appointment;
- (b) to receive and recover so much of that revenue as becomes due and payable as fully and effectually as the council could have done; and may exercise the powers of the council of imposing rates,

and for those purposes are regarded as being the council of the municipality with power to exercise the powers of the council.

Commission
to receiver.
Cf. M.C. Act,
s. 469.

621. Receivers so appointed are entitled to commission as remuneration for their service and such allowances for travelling and other expenses as the Supreme Court or a Judge directs.

Transfer
of sinking
fund to
receiver.
Cf. M.C. Act,
s. 470.

622. The Supreme Court or a Judge may order the Treasurer and the council to transfer inscribed stock and other securities and fixed deposits standing in their names and forming a sinking fund for the redemption of debentures into the name or names of the receiver or receivers.

Purposes
for which
receiver
is to hold
money.
Cf. M.C. Act,
s. 471.

623. The receiver or receivers shall hold money received and recovered, and the proceeds of inscribed stock and other securities and fixed deposits forming sinking funds received by him or them, after payment of costs and expenses, firstly for the benefit of the holders of debentures of the municipality, according to their respective priorities and then for the municipality.

Priorities
of debenture
holders.
Cf. M.C. Act,
s. 465.
Cf. Twenty-
fourth
Schedule.

624. Where a municipality has by more than one loan, borrowed money by the issue and sale of debentures in or substantially in the form in the

Twenty-fourth Schedule for the redemption of which the municipality is bound to establish and maintain a sinking fund—

- (a) the council or where a receiver is or receivers are appointed the latter shall apply each sinking fund

firstly, in repayment of the principal sum mentioned in the debentures for the redemption of which that sinking fund was established;

secondly, in payment of interest unpaid on that principal sum; and

thirdly, in payment of the balance, if any, then remaining into the municipal fund;

Cf. M.C. Act,
s. 473.

- (b) the holders of debentures issued and sold for a loan stand as among themselves on an equal footing, but in priority to the holders of debentures issued and sold in respect of a subsequent loan; and
- (c) for the purpose of ascertaining that priority, each debenture issued and sold for a particular loan is regarded as having been sold on the day shown in the register mentioned in section six hundred and seven as that on which the first of those debentures was issued for that loan.

Cf. s. 607
ante.

PART XXVII.—ACCOUNTS AND AUDIT.

Part XXVII.
Div. 1.

Division 1.—Keeping and Audit of Accounts.

625. In this Part unless the context requires otherwise—

Interpreta-
tion.
Cf. Div. 2 of
this Part
and s. 633
post.

“auditor” means in relation to a shire a Government Inspector of Municipalities or a person appointed under section six hundred and thirty-eight to be the auditor thereof instead of a Government Inspector of Municipalities as the case may be and in

relation to a city or town a person appointed under that section by a council to be the auditor of the municipality or the Government Inspector of Municipalities where the municipality requests under that section that he be the auditor of the municipality;

“books” means records kept in such manner and form as the Minister directs and includes such other accounts, papers and records as a council considers necessary for the effective carrying out of its functions under this Act.

Books of
account and
inspection
by persons
interested.
Cf. M.C. Act,
s. 474; and
R.D. Act,
ss. 320, 321.

626. (1) The financial year of councils ends on the thirtieth day of June in every year.

(2) A council—

(a) shall cause to be provided and kept books in which are entered true and regular accounts of—

(i) the sums of money received and paid on account of and for the municipality, and of the several purposes for which the sums of money have been received and paid;

(ii) particulars of land which is subject to the encumbrance of a charge under this Act in respect of work carried out by the council and particulars of the charge; and

(iii) particulars of contracts entered into by the council, and deeds, and other documents executed by the council; and

(b) shall permit members of the council, rate-payers and creditors of the municipality, and persons nominated by the Minister, to inspect and take copies or extracts from the books at the office of the council at reasonable times free of charge.

(3) The Minister may, from time to time, direct the manner and form in which councils shall keep the books, accounts, and records, and councils shall cause them to be kept in the manner and form directed by the Minister but in addition the council may keep such other documents, papers and records as it considers necessary for the effective carrying out of its functions under this Act.

(4) If a person who has the custody of the books does not on a reasonable demand made by a person mentioned in paragraph (b) of subsection (2) of this section permit him to inspect the books, or to take copies or extracts from them he commits an offence.

*Cf. subs. (2)
(b) of this s.*

(5) (a) Unless under paragraph (c) or (d) of this subsection he is permitted to do otherwise,

*Cf. pars. (c)
and (d) of
this subs.*

- (i) a person who receives money on behalf of a municipality shall pay the money into such bank, and in such manner, as the council of the municipality, from time to time, appoints and directs for that purpose; and
- (ii) a person who receives on behalf of the municipality a sum or sums exceeding five pounds shall not personally keep possession of it for more than a period of seven days, but before the expiration of that period shall pay it into that bank in that manner or hand it over to such person in such manner as the council's directions require.

(b) Unless under paragraph (c) or (d) of this subsection he is permitted to do otherwise,

- (i) where money is received on behalf of a municipality and is paid into a bank by or on behalf of the council, no person shall withdraw the money or part of it except by cheque which has been issued by authority of resolution of the council recorded in the minute book of the council, and which cheque has been signed by the mayor or

deputy mayor or by the president or deputy-president and counter-signed by the treasurer of the council, or where there is no treasurer by another member of the council and also by the clerk; and

- (ii) where the money is paid into the bank in such manner as to indicate that it is so paid in by or on behalf of the council no person shall pay out the money unless on a cheque so signed, but the person paying out is not bound to inquire as to whether the resolution has been so passed or so recorded.

(c) This subsection does not preclude a council from entrusting to its clerk or treasurer a sum of money to be used as a petty cash or other advance account, nor to prevent a sum being placed to the credit of a banking account operable upon the signature of the clerk or treasurer alone.

(d) Where, in the opinion of the Minister, absence of banking facilities in a district renders a strict compliance with the provisions of paragraphs (a) and (b) of this subsection impracticable, the Minister may permit such modification of those provisions as he thinks fit.

Cf. paras. (a)
and (b) of
this subs.

(6) The council may remove or summarily dismiss the clerk or other officer or servant of the council if he does not comply with the requirements of this section or where those requirements have been modified under paragraph (c) or paragraph (d) of subsection (5) of this section if he does not comply with those requirements as so modified.

Cf. subs. (5)
(c) and (d)
of this s.

Books to be
entered up
regularly.
Cf. M.C. Act,
s. 475.

627. (1) It is the duty of a council to keep the books, accounts and records of the municipality constantly entered up and ready for inspection at any time by the auditor.

(2) If upon examination by the auditor it is found that the books, accounts, or records, are incomplete, and that the officer whose duty it is to enter up the

books, accounts and records has not carried out that duty for a longer period than twenty-eight days, the auditor shall report the finding to the mayor or president and the council.

(3) An officer whose duty is to enter up the books, accounts and records, and who, without reasonable excuse, has not carried out that duty for a longer period than twenty-eight days commits an offence.

628. The clerk shall, once in every month, prepare and place before the council a true statement in the prescribed form of the financial position of the municipality, including ordinary revenue and grants, and the council shall cause the statement to be entered in the minutes.

Monthly
financial
statement.
Cf. R.D. Act,
s. 322.

629. (1) A council shall, within seventy days after the end of each financial year, or such extended time as the Minister allows, cause the accounts of the council to be balanced up to the last day of the financial year; and as soon as he is able to do so after the accounts have been balanced, the auditor shall audit the accounts.

Annual
balancing
of accounts.
Cf. M.C. Act,
s. 476; and
R.D. Act,
s. 328.

(2) A council, by its clerk or other proper officer, shall produce and lay before the auditor the accounts so balanced with vouchers in support of them, and the records which relate to them and which are in the custody or control of the council.

(3) If the accounts are found correct, the auditor shall sign them in token of his allowance of them, but if he thinks there is just cause to disapprove part of the accounts, he may disallow that part and shall, in relation to the disallowance, take such steps as are provided in this Division.

Cf. ss. 631
and 632 post.

Part
XXVII.,
Div. 1.

Annual
financial
statement,
Cr. M.C. Act,
s. 478; and
R.D. Act,
s. 329.

S. 630.

630. (1) Each council shall prepare an annual statement or summary, in the form directed by the Minister,

- (a) showing the financial position of the municipality at the end of every financial year, setting out on the one side, the amount received from every source of income, and, on the other, the various matters and things on which it has been expended; and
- (b) showing the assets and liabilities of the council, setting out current assets and fixed assets, and both current and fixed or deferred liabilities.

(2) Where the council has borrowed money during the year, or has brought forward borrowed money from the preceding year, the council shall prepare—

- (a) a statement setting out, on the one side, money so received or brought forward, and, on the other, the application of such money as has been expended, and the amount remaining unexpended and to be carried forward; and
- (b) a statement showing the amount repaid in respect of each loan, and the amount still unpaid at the close of the year, and, in respect of a loan for the redemption of which a sinking fund has been established, particulars of the sinking fund at the close of the year.

(3) The auditor shall audit the statement so prepared, and if he finds it correct shall sign a certificate to that effect upon it.

(4) Where a statement is so certified as correct the council shall cause copies of it to be printed or copied and available at least seven days before the annual meeting of ratepayers, to such ratepayers and creditors of the municipality as apply to the council for a copy of it whether before, at, or within a reasonable time after, that meeting.

(5) Nothing in this section precludes a council from preparing such additional statements of account or summaries as it considers in the circumstances to be necessary or desirable, whether or not they are in the form directed by the Minister.

631. If the auditor finds an account or statement submitted to him for audit to be erroneous or deficient in any particular, he—

Auditor
to report
errors and
deficiencies.
Cf. M.C. Act,
s. 492; and
R.D. Act,
s. 330.

- (a) shall report thereon to, and forward a copy of his report and findings to the Minister; and
- (b) shall forward by registered post addressed to the mayor or president, as the case may be, a copy of his report.

632. (1) It is the duty of the auditor—

Duties of
auditors
as to
unauthorised
expenditure.
Cf. M.C. Act,
s. 493;
R.D. Act,
s. 331; and
23 and 24
Geo. 5, c. 51,
s. 228, U.K.

- (a) to disallow items of account which are contrary to law;
- (b) to surcharge the amount of expenditure so disallowed upon the person responsible for incurring or authorising the expenditure;
- (c) to surcharge a sum which has not been duly brought into account upon the person by whom that sum ought to have been brought into account;
- (d) to surcharge the amount of a loss or deficiency upon a person by whose negligence or misconduct the loss or deficiency has been incurred;
- (e) to certify the amount due from a person upon whom he has made a surcharge; and
- (f) to certify at the conclusion of the audit his allowance of the accounts, subject to a disallowance or surcharge which he makes.

(2) The auditor shall serve on the council and on the Minister a copy of the certificate.

(3) The Minister shall direct the auditor as to whether the auditor shall or shall not proceed against the person liable to make good to the municipality the amount of expenditure so disallowed.

(4) Persons who, as individual members of the council have incurred or authorised the expenditure so disallowed, are personally liable, jointly and severally, to make good to the municipality the amount of the expenditure, whether they have continued or ceased to be members of the council.

(5) If the Minister directs him to do so the auditor shall, in the name and on behalf of the municipality, sue for the amount of the expenditure so disallowed in a court of competent jurisdiction and, if it appears to the court that the expenditure was contrary to law, the municipality is entitled to judgment for the amount against the person or persons sued who appear to have incurred or authorised the expenditure.

(6) The Minister shall direct the council to recover the amount of a loss or deficiency, other than expenditure so disallowed, from the person responsible for the loss or deficiency, and the council shall give effect to the direction, but if the council does not give effect to the direction the Minister shall direct the auditor to do so, in which case the provisions of subsection (5) of this section apply as if repeated *mutatis mutandis* in this subsection.

Of. subs. (5)
of this s.

(7) In proceedings, brought under this section,

- (a) the minutes of the proceedings kept by the council are *prima facie* evidence of the facts stated in them; and
- (b) a document purporting to be a direction given by the Minister to an auditor, is *prima facie* evidence of the direction having been given, and of the signature of the Minister, and of authorisation for giving effect to the direction.

(8) If it does not appear from the minutes what particular members of the council incurred or authorised a particular expenditure, every member is regarded as having incurred or authorised it until he proves the contrary.

(9) Where in proceedings under this section the auditor recovers money, he shall pay it to the council.

633. The auditor may, at the expense of the council obtain and act upon legal opinion on a question arising in the course of an audit.

Auditor may obtain and act upon legal opinion.
Cf. R.D. Act, s. 332.

634. The council may, with the approval of the auditor, destroy disused receipt books, bank pass books or statements, cheque books, ledgers, cash books, and documents relating to the accounts of the municipality, if they have not been in use for upwards of six years.

Power to destroy old books.
Cf. R.D. Act, s. 360.

Division 2.—Appointment of Government Inspectors of Municipalities as Auditors.

Part XXVII,
Div. 2.

635. (1) On the coming into operation of this Act persons occupying the office of auditor of a municipality which was a "former municipal district" or a "former road district" according to the interpretation given to those expressions by paragraph (a) of subsection (6) of section nine, shall continue to hold office—

Offices of auditors to continue on the coming into operation of this Act.
Cf. s. 9 (6) (a) ante.

- (a) in the former case until the expiration of the period for which they were elected as auditor unless they vacate the office prior to the expiration of that period on account of resignation, death or incapacity; and
- (b) in the latter case if the auditor is a Government Inspector of Road Boards until his appointment is terminated by the Minister, or if the auditor is not such an Inspector for the unexpired portion of the term for which he was appointed unless he vacates

the office prior to the expiration of that period on account of resignation, death or incapacity or the council terminates his appointment.

No right to
compensa-
tion.

(2) A person who ceases to hold office as auditor because of the operation of subsection (1) of this section is not entitled to compensation and the council shall not make payment of compensation to him because he so ceases to hold the office.

Office of
Government
Inspector of
Municipali-
ties.
Cf. R.D. Act,
s. 326.

636. (1) The Minister may from time to time appoint such persons as he thinks fit to the office of Government Inspector of Municipalities, and may from time to time assign the municipalities for which a person so appointed shall carry out the functions of auditor other than a municipality in respect of which there is in office an auditor appointed by the council under section six hundred and thirty-eight.

Cf. s. 638
post.

(2) The duties of that office are—

- (a) to carry out the functions of auditor for such municipalities as the Minister from time to time assigns to it;
- (b) to inquire into and report to the Minister upon—
 - (i) the valuations made under this Act of rateable property in the districts of those municipalities;
 - (ii) the conduct of polls and elections held under this Act in those districts; and
 - (iii) the administration of local government under this and other Acts by the councils of those municipalities; and
- (c) to inquire into and report to the Minister upon the accounts, valuations, elections, polls and general administration of such other municipalities as the Minister directs.

Ss. 637, 638.

637. (1) The Minister shall from time to time assess the amount payable by each municipality for the carrying out of the audit of its accounts.

(2) Where more than one municipality is concerned in the same audit, the Minister shall assess the proportionate amount payable by each of the municipalities concerned for the carrying out of the audit.

(3) The council of a city or a town shall on demand pay to the Minister the amount so assessed.

(4) The council of a shire shall on demand pay to the Minister one-half of the sum so assessed and the Minister shall pay the remaining half from the public moneys of the State, which public moneys are hereby permanently appropriated for the purpose.

Cr. No. 12 of
1904, s. 4,
as to
"Public
moneys".

(5) This section applies only to those municipalities in which the audit is carried out by a Government Inspector of Municipalities.

638. (1) A council of a municipality that is a city or town may appoint a person to be the auditor of the municipality, who shall at the time of the appointment be a member in good standing of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants and registered as an auditor under the Companies Act, 1943.

Auditors
other than
Government
Inspectors.

(2) The council may appoint one or more persons having the necessary qualifications to be an auditor.

(3) Subject to the provisions of subsections (6) and (7) of this section, a person may be appointed to the office of auditor for a term not exceeding two years and may be re-appointed if, at the time of his re-appointment, he is eligible to hold the office.

(4) Subject to this section the council may make the appointment or appointments on such terms and conditions including the remuneration and expenses of the person to be appointed as he and the council agree.

(5) If a person who is so appointed ceases to be a member of any of the bodies referred to in subsection (1) of this section or to be so registered as required by that subsection, he is not eligible to be or continue in the office as auditor and his term of tenure of the office thereupon terminates.

(6) The Governor may on the written request of a council by order direct that it may either—

- (a) appoint a person referred to in subsection (1) of this section to be its auditor in place of the Government Inspector of Municipalities; or
- (b) have as its auditor a Government Inspector of Municipalities in place of a person referred to in that subsection,

as the case may be.

(7) Where an order is so made, no further change shall be made by that council in respect to whether its audit is carried out by a person appointed by the council or a Government Inspector of Municipalities, as the case may be, for a period of five years from the date of the making of the order.

639. (1) For the purpose of carrying out an audit mentioned in this Part, the auditor—

- (a) may administer, hear, receive, and examine, evidence upon oath or affirmation; and
- (b) may, by summons signed by him, require such persons as he thinks necessary, to appear personally before him at a time and

place specified in the summons, to give evidence or to produce to him such books and papers as appear necessary for the audit, or to do both.

(2) Where a person who being so required by summons served upon him, without just excuse neglects or refuses to comply with the tenor of the summons, or who, having appeared before the auditor, without just excuse refuses to be examined on oath or affirmation, or having taken an oath or affirmation, to answer such questions concerning the audit as are put to him, the auditor may exercise such powers as are conferred by the Justices Act, 1902, upon justices in respect of persons so refusing or neglecting in proceedings under that Act.

Cf. No. 11 of
1902, as am.
ss. 74-77.

640. (1) An auditor has, for the purpose of an audit, authority at all reasonable times and without notice to demand from the council and its officers and servants, the production of books, accounts, vouchers, papers, documents, records, and cash in hand, belonging to the municipality or being in the custody or control of the council or any of its officers or servants.

Power
to demand
production
of books, etc.
Cf. M.C. Act,
s. 490.

(2) A member, officer, or servant, of the council who does not comply with a demand so made upon him, commits an offence and is liable to a penalty not exceeding ten pounds for every day during which he does not comply with the demand.

641. (1) An officer or servant of a council shall from time to time furnish to an auditor, as and when he requires it, a statement in writing of all money received in his official capacity by the officer or servant whether on account of the municipality or otherwise.

Officers of
councils to
furnish
particulars
of money
received.
Cf. M.C. Act,
s. 491.

(2) A bank at which a municipality has an account shall from time to time furnish to an auditor, as and when he requires them, full particulars of the account.

Part
XXVIII.,
Div. 1.
Subdiv. A.
Part XXVIII.
Div. 1.
Subdiv. A.

Ss. 642, 643, 644, 645, 646.

PART XXVIII.—MISCELLANEOUS

Division 1.—Legal Proceedings by and against Municipalities.

Subdivision A.—General Provisions.

Service of
notice and
legal
proceedings.
Cf. M.C. Act,
s. 502.

642. A summons, notice, writ, or other legal process, required to be served upon a municipality may be served by being given personally to the clerk.

Documents,
how
authenti-
cated.
Cf. M.C. Act,
s. 503.

643. An order, summons, notice, or other document, is, unless this Act requires otherwise, sufficiently authenticated by a council without the common seal of the municipality, if signed by the mayor or president or clerk.

Proceedings
in estates of
bankrupts,
etc.
Cf. M.C. Act,
s. 504.

644. If a person, against whom a council has a claim or demand, takes the benefit of an Act, for the relief of bankrupt debtors, the clerk, in proceedings in respect of the claim, may represent the council, and act on behalf of the council in all respects as if the claim or demand were that of the clerk.

Council
not to prove
in bank-
ruptcy
unless
security
insufficient.
Cf. S.A. L.G.
Act, s. 700.

645. Where money is due and payable to a council by a person who becomes bankrupt and by virtue of this or another Act there is in respect of the money a charge over property of the person in favour of the council, the council shall not prove as an unsecured creditor against the person's estate, unless the council has by resolution, declared that it is of opinion that the charge is insufficient or inadequate to secure payment of the money to the council.

Council
may direct
prosecutions.
Cf. M.C. Act,
s. 505.
Cf. s. 6 ante
and No. 30
of 1918, as
am. s. 4.
"This Act"
includes
by-laws.

646. (1) The council may order, either generally or in a particular case, proceedings to be taken for the recovery of penalties, or for the punishment of a person offending against the provisions of this Act, and may order the expenses of the prosecution or other proceedings to be paid out of the municipal fund.

Ss. 646, 647, 648.

Part
XXVIII.,
Div. 1,
Subdiv. A.
Limitation
of time for
prosecutions.
Cf. R.D. Act,
s. 344.
Cf. s. 152,
ante.

(2) Proceedings in connection with the prosecution of an offence under this Act, whether a misdemeanour mentioned in section one hundred and fifty-two or a simple offence, may be commenced within, but not later than, two years after the offence has been committed.

(3) The institution of proceedings against or the conviction of a person for an offence under this Act does not affect a remedy which the council or another person has in civil proceedings.

(4) In proceedings in a Local Court or court of petty sessions, or before a justice,

Proceedings
in local
court.
Cf. M.C. Act,
s. 506.

(a) the clerk; or

(b) an officer of the council appointed for the purpose generally or in a particular case in writing signed by the mayor or president;

may represent the municipality or the council in all respects as though he were the party concerned.

(5) Notwithstanding the provisions of this section or those of section forty-one of the Interpretation Act, 1918, any person may make and prosecute a complaint of a contravention of this Act.

Cf. No. 30 of
1918, as am.
s. 41.

(6) The council shall reimburse the clerk or other officer out of its municipal fund, damages, costs, charges, and expenses, to which he is put, or with which he is chargeable, by reason of anything done, performed, suffered, or incurred, by him under this section for and on behalf of the municipality.

Reimburse-
ment of
officer.
Cf. M.C. Act,
s. 507.

647. A person who neglects to keep in repair a fence or gate separating the land owned or occupied by him from a road commits an offence.

Fences and
gates to be
kept in
repair.
Cf. R.D. Act,
s. 339.

648. A person who leaves open a gate which has, with the authority of the council, been placed across a road, commits an offence.

Gates
across roads
not to be
left open.
Cf. R.D. Act,
s. 340.

Part
XXVIII.,
Div. 1,
Subdiv. B.

Ss. 649, 650.

Property
may be
stated in
indictment,
etc., to be
property of
council.
Cf. R.D. Act,
s. 348.
Cf. s. 655
post.

649. (1) In proceedings relating to land or other property or anything belonging to, vested in, or under the care, control, or management, of the council of a municipality, the land, property, or thing may be alleged to be the property of the municipality, and if so alleged, may for the purposes of the proceedings be regarded as the property of the municipality.

Cf. subs. (1)
of this s.
ante and
s. 304 ante.

(2) The provisions of subsection (1) are in addition to and not in derogation of those of section three hundred and four.

Part XXVIII.
Div. 1,
Subdiv. B.

Subdivision B.—Evidence.

Proof
in legal
proceedings.
Cf. M.C. Act,
s. 508.
Cf. s. 6 ante
and No. 30 of
1918, as am.
s. 4, "This
Act"
includes
by-laws.

650. In a prosecution or in other legal proceedings instituted by or under the direction of the council of a municipality under the provisions of this Act, until evidence is given to the contrary, proof is not required—

- (a) of the persons constituting the council;
- (b) of an order to prosecute, or of the particular or general appointment of a clerk, or other officer of the council to represent the council or to prosecute;
- (c) of the authority of the clerk, or other officer of the council to prosecute;
- (d) of the appointment of the mayor or president, clerk, or other officer; or
- (e) of the presence of a quorum of the council at the passing of a resolution, making of an order, or the doing of an act.

Ss. 651, 652.

Part
XXVIII.,
Div. 1,
Subdiv. B.
Evidence
of by-laws,
notices, etc.
Cf. M.C. Act,
s. 509.

651. (1) The production of—

- (a) a copy of the *Gazette* containing a by-law, regulation, Order, notice, or other delegated legislation, or evidence of the exercise of a power, purporting to be made, given, or exercised, under the provisions of this Act;

or

- (b) a copy purporting to be certified as a copy of a by-law of the council of a municipality, by a certificate purporting to have been signed by the clerk of the council;

is evidence, until the contrary is proved, of the due making, existence, confirmation, approval, and giving of the by-law, regulation, Order, notice, or other delegated legislation, or of the exercise of the power, and of all preliminary steps necessary to give full force and effect to it and its provisions.

(2) The provisions of this section—

- (a) are in addition to and not in derogation of those of the Evidence Act, 1906; and
- (b) do not render valid, a by-law or other delegated legislation, which has been disallowed under subsection (2) of section thirty-six of the Interpretation Act, 1918, or which has been invalidly made.

Cf. No. 23 of
1906, as am.,
s. 73; and
No. 30 of 1918,
as am.,
s. 36 (2).

652. The production of documents, including by-laws, regulations, orders, directions, requisitions, and notices, purporting to have been issued or written by or under the direction, or on behalf, of a municipality, and purporting to be signed by the mayor or president, or clerk, or other person authorised by this Act to sign in place of them or any of them, is, until proof is given to the contrary, evidence of the documents having been so issued or written, without proof that they were, in fact, so written or issued, and without proof that the signature of the mayor or president or clerk or person so authorised is in fact his signature.

Documents
signed by
mayor,
president, or
clerk
admissible
in evidence.
Cf. M.C. Act,
s. 511.

Part
XXVIII.,
Div. 1,
Subdiv. B.
Rate book to
be evidence,
Cf. R.D. Act,
s. 266.

Ss. 653, 654.

653. In proceedings to recover, or consequent on the recovery of an amount due in respect of a rate, the rate-book purporting to have been duly signed or initialled by the mayor or president, and the entries made or purporting to have been regularly made in the rate-book, or copies of those entries or extracts from those entries, certified as correct in writing signed by the mayor or president, or the clerk, are *prima facie* evidence of the contents of the book and of the due imposition of the rate, and of the obligation of the person charged with the amount payable in respect of the rate to pay it, without evidence that the notices required by this Act have been given or other provisions of this Act have been complied with.

Evidence of
minutes.
Cf. M.C. Act,
s. 513; and
R.D. Act,
s. 141.

654. (1) Where in legal or other proceedings a book is produced and identified as the minute book of a council, the minutes,

which are recorded in the book;

which purport to have been confirmed as required by this Act; and

which purport to record the proceedings of the council at a meeting;

are, except to the extent to which the contrary is proved, conclusive proof of the proceedings of the council having taken place as so recorded, without proof

that the meeting was duly convened or held;

that the persons who attended the meeting were members of the council;

that the signature purporting to be that of the mayor or president or other person authorised to sign, in confirmation of the minutes is his signature; or

that the person who signed in confirmation of the minutes was in fact the mayor or president or other person so authorised.

Cf. s. 187
ante as to
confirmation.

(2) A certificate purporting to have been signed by the mayor or president for the time being of a municipality, that a book is a minute book of the council, is *prima facie* evidence of that fact, notwithstanding that the minutes in the book were recorded at a time when he was not present, or was not holding office, as a member of the council.

(3) Where a copy of, or extract from, the minutes in a minute book of the council, is certified by what purports to be the signature of the mayor or president of the municipality or other person authorised by this Act to sign in place of the mayor or president as being a copy of, or extract from, the book, the copy or extract has the same probative force as the original of the minutes of which it purports to be a copy or extract, notwithstanding that the original minutes were recorded at a time when he was not holding office as member of the council.

(4) The provisions of subsections (1), (2) and (3) of this section apply *mutatis mutandis* to the minute books and minutes of committees and sub-committees of councils.

655. (1) In legal proceedings under this Act in addition to other methods of proof available—

Proof of
ownership or
occupancy.
Cr. M.C. Act,
s. 514; and
R.D. Act,
s. 358.

- (a) the production of the rate book or of a copy or extract purporting to be certified by the mayor or president or clerk or other person authorised by this Act to sign in place of them or any of them as a copy or extract of the rate book, showing that a person is rated as the owner or occupier of land;
- (b) the production of a document purporting to be—
 - (i) a certificate signed by the Registrar of Deeds or his substitute or an assistant Registrar of Deeds, that a person appears from a memorial of registration of a deed, conveyance, or other instrument to be the owner of land;

(ii) a certificate signed by the Registrar of Titles or an Assistant or Deputy Registrar, that a person's name appears in the Register Book kept under the Transfer of Land Act, 1893, as that of the owner of land;

or

(iii) a certificate signed by the Under Secretary for Lands, or the Under Secretary for Mines, that a person is registered in the Department of Lands and Surveys, or the Department of Mines, as the case may be, as the lessee or occupier of land.

is until the contrary is proved, evidence that the person is the owner, lessee, or occupier, as the case may be, of the land; and

*Of s. 649
ante.*

(c) the production of a document purporting to be a certificate, signed by the mayor or president of the municipality or the clerk of the council of the municipality, or other person authorised by this Act to sign in place of them or any of them that anything,

whether a street or other public place, or a bridge, culvert, ferry, jetty, reserve, or other property or thing, whether of the same kind as, or a different kind from, the things here specified,

is within the district of the municipality, belongs to the municipality, is the property of, is vested in, is under the care, control, or management of, the municipality, or the council of the municipality,

is, until the contrary is proved, evidence of the matter certified.

Ss. 655, 656.

Part
XXVIII.,
Div. 1,
Subdiv. B.
Cf. subs. (1)
of this s.

(2) Courts and persons having by law, or by consent of parties, authority to hear, receive, and examine evidence shall, for the purposes of this Act, take judicial notice of the signature to a certificate mentioned in subsection (1) of this section.

(3) The averment in a claim, complaint, or other document, in proceedings instituted for the purposes of this Act that a person is or was at the stated time the owner or occupier of land, is to be presumed as proved in the absence of proof to the contrary.

656. (1) Where in proceedings before a person acting judicially it is necessary to prove the existence of a street or the alignment or width of a street, that person may accept as evidence of those matters—

Prima facie
proof of
streets.

(a) the copy of a plan which is retained in the Department of Lands and Surveys under section seventeen of the Land Act, 1933, if the Surveyor General or an officer authorised by him to do so certifies that the copy is a true copy of the original of which it purports to be a copy and that at the time of the certification the original is so retained and represents with reasonable accuracy the street and its alignment and width; or

Cf. No. 37 of
1933, s. 17.

(b) the copy of a plan retained in the Office of Titles under Part XIII. of the Transfer of Land Act, 1893, if the Chief Draftsman mentioned in section one hundred and sixty-three of that Act or an officer authorised by him to do so certifies that the copy is a true copy of the original of which it purports to be a copy and that at the time of the certification the original is so retained and represents with reasonable accuracy the street and its alignment and width.

Cf. 56 Vict.,
No. 14,
ss. 151-169.

(2) Where the certification purports to be signed and dated by the Surveyor General, Chief Draftsman, or authorised officer, the person acting

Part
XXVIII.,
Div. 1.
Subdiv. C.

Ss. 656, 657.

judicially may accept the certification in evidence as having been in fact signed by the person by whom it purports to have been signed, on the day on which it purports to have been dated, without further proof of his signature or that date or his authority to sign.

Cf. subs. (1)
of this s.

(3) The provisions of this section are in addition to and not in derogation of other methods of proving in evidence the matters mentioned in subsection (1) of this section.

Part XXVIII.
Div. 1,
Subdiv. C.

Subdivision C.—Service of Notices.

Notices,
orders, or
demands,
how served.
Cf. M.C. Act,
s. 515; and
R.D. Act,
s. 352.

657. (1) Unless this Act expressly requires otherwise, where a notice, order, requisition, demand, or other matter, is by this Act required or authorised to be given to or served upon the owner or the occupier of a building or land, or to or upon any other person, the person giving or serving it shall address it to the owner or to the occupier of the building or land or to that other person and may—

- (a) if the owner or occupier or other person and his place of residence are known to the council, serve it on the owner or occupier or other person, or leave it with an adult inmate of his place of residence;
- (b) if the owner and his place of residence are not known to the council, serve it on the occupier, if any, of the building or land or leave it with an adult inmate of his place of residence, or if there is no occupier, affix it to a conspicuous part of the building or land;
- (c) if the occupier and his place of residence are not known to the council, affix it to a conspicuous part of the building or land; or
- (d) in any case serve it by post by prepaid letter addressed to the owner or occupier or other person, and in proving service by post it is

sufficient to prove that the notice, order requisition or demand was properly addressed to the owner or occupier or other person, and was put in the post.

(2) The notice, order, requisition, demand, or other matter may be addressed by the description of "the owner" or "the occupier" of the building or land, naming it, in respect of which the notice, order, requisition, demand, or matter is given or served, without further name or description.

(3) When a document relating to land, buildings or other premises is required or authorised to be served under this Act or for a purpose of this Act on an owner or occupier whose name is unknown to the council, or whose address is unknown to the council, or who is absent from the State, the document may be served by affixing it to a conspicuous part of the premises referred to in the document, and by publishing a copy of it in the *Gazette* and a newspaper circulating in the locality of the premises, and if the name of the owner or occupier is unknown, the document may be addressed to the owner or occupier by the description of "the owner" or "the occupier" of the premises, naming them, to which the document refers without further name or description.

(4) If there are more owners or occupiers than one it is sufficient service if the document is served on one of them, and is addressed to that one with the addition of the words "and others" or "and another," as the case requires.

(5) Non-service on the owner does not affect the validity of service on the occupier, and non-service on the occupier does not affect the validity of service on the owner.

(6) In proceedings in which the document has to be proved, the defendant or person against whom it is sought to prove it is to be regarded as having

Part
XXVIII.,
Div. 1,
Subdiv. C.

S. 657.

Cf. M.C. Act,
s. 510.

received notice to produce it; and, until the contrary is shown, the document may be effectively proved by or on behalf of the complainant, plaintiff, or person seeking to prove it, by the production of what purports to be a copy of it, bearing what purports to be a statutory declaration of the officer or member of the council authorised to issue the original, or of the clerk of the council, as the case may be, that the copy is a true copy of the original, of which it purports to be a copy and until the contrary is shown, service of the document may be effectively proved by the production of what purports to be a statutory declaration by the person serving it, of the place, time and manner in which the service was effected.

(7) The validity of a document or of the service of it, is not affected by an error, misdescription, or irregularity which is not reasonably likely to mislead, or which in fact does not mislead.

Cf. s. 6 ante
and No. 30 of
1918, as am.
s. 4 "This
Act" includes
by-laws.

(8) For the purposes of this section "document" includes a requisition, notice, order or demand, or a summons or process under the Justices Act, 1902, issued or made for a purpose of this Act, and "serve" includes "deliver," "give," and "send."

(9) A complaint which it is necessary to make under or for a purpose of this Act against an owner or occupier whose name is unknown to the council may be laid against him by the description of "the owner" or "the occupier" of the premises, naming them, to which the complaint refers, without further name or description.

Cf. No. 30 of
1918, as am.
s. 31 (2) and
(3).

(10) The provisions of this section are in addition to and not in derogation of those of subsections (2) and (3) of section thirty-one of the Interpretation Act, 1918.

Ss. 658, 659.

Part
XXVIII.,
Div. 1,
Subdiv. C.

658. A notice or other matter required under this Act to be served on an owner or occupier—

Notices
to bind
future
owners or
occupiers.
Cf. M.C. Act,
s. 516; and
R.D. Act,
s. 353.

- (a) is, if due service of it has once been effected on an owner or occupier, binding on subsequent owners or occupiers to the same extent as if the notice or other matter had been served on the subsequent owners or occupiers; and
- (b) is binding on persons deriving title, whether beneficially or in a fiduciary capacity, by, from, or under, the owner or occupier served.

659. (1) When a person, whether as principal or agent, sells or otherwise disposes of rateable land in the district of a municipality, the principal or the agent, shall within twenty-one days after the sale or disposal, give to the council of the municipality written notice of the sale or disposal by serving the notice on the clerk personally or posting it to the clerk by prepaid registered letter post with a plan or description of the land and the name and address of the purchaser.

Vendors of
land to
notify
council.
Cf. R.D. Act,
s. 159.

(2) Where the sale or disposal is effected by an agent for the owner, this section is complied with if the agent gives the notice to the council and it is not necessary for the owner also to give the notice, but it is the duty of the owner to ensure that the notice is given either by his agent or himself.

(3) A person who does not comply with the requirements of this section commits an offence and the council may without affecting his liability to penalty recover from the owner rates accruing until the required notice is given but this subsection does not affect his liability for rates or that of the new owner under section five hundred and sixty.

Cf. s. 560
ante.

Part
XXVIII.,
Div. 1,
Subdiv. D.
Part XXVIII.,
Div. 1,
Subdiv. D.

S. 660.

Subdivision D.—Actions Against Municipalities for
Negligence in respect of Streets, Etc.

Conditions
under which
certain
actions may
be brought
against
municipality,
members,
officers and
servants of
the council
Cf. M.C. Act,
s. 518; and
R.D. Act,
s. 349.
Cf. No. 73 of
1954.

660. No action is maintainable against—

a municipality; or

a member, officer, or servant, of a council of a municipality in his capacity as member, officer, or servant, of the council,

in respect of a tort, the provisions of section forty-seven A of the Limitation Act, 1935 notwithstanding,

- (a) unless the action is commenced within twelve months after the cause of action arose;
- (b) unless at least thirty-five days before the action is commenced a notice in writing stating,
 - (i) particulars of the cause of action;
 - (ii) the claim; and
 - (iii) the name and address of the party about to sue;

is served on the council by delivering to the clerk in person or by posting it addressed to the clerk by prepaid registered letter post; nor

- (c) unless as soon as possible, but not more than twenty-one days, after the cause of action arose a notice in writing setting forth so far as the particulars can then be reasonably supplied,
 - (i) particulars of the cause of action;
 - (ii) where personal injury is claimed to have been sustained, particulars of the injury and the name and address of the person injured;
 - (iii) where damage to property is claimed to have been sustained, particulars of the property and the damage;

- (iv) particulars of the claim being made or about to be made; and
 - (v) an intimation, if such is the case, that action is about to be commenced against the municipality, member, officer or servant;
- is so served;
- (d) where personal injury is claimed to have been sustained, unless the person claiming to have been injured submits himself when required by the council at reasonable times to medical examination by a medical practitioner or medical practitioners nominated by the council;
 - (e) where damage to property is claimed to have been sustained, unless the owner or person having control of the property permits the property to be examined when required by the council at reasonable times by a person or persons nominated by the council; and
 - (f) unless the person claiming or about to claim against the municipality, member, officer, or servant, when required by the council at reasonable times answers in writing such reasonable inquiries relating to the cause of the action and the claim as are addressed to him by or on behalf of the council, member, officer or servant.

Division 2.—Enforcement of Act.

Subdivision A.—General.

Part XXVIII.,
Div. 2,
Subdiv. A.

661. A council has power by its members, officers, or by any of its agents, servants and workmen if they are authorised in writing by the clerk so to do to enter at reasonable hours in the daytime into and upon buildings and land within its district for the purpose of executing a work or making an inspection, or doing anything authorised to be executed, made, or done, under an Act by the council, without

Power of
entry by
officers of
council.
Cf. M.C. Act,
s. 520.

Part
XXVIII.,
Div. 2,
Subdiv. A.

Ss. 661, 662, 663, 664.

being liable to legal proceedings on account of the exercise of the power but, except where this Act provides otherwise, shall not enter upon occupied premises, unless with the consent of the occupier, until after the council has given notice of intention to do so to the occupier.

Free searches
of registers
by author-
ised person.

662. A person appointed in writing signed by the Minister or the mayor or president of a municipality may for the purpose of this Act search the public registers of the Office of Titles and Registry of Deeds or an office of the Department of Lands or Mines without payment of a fee.

Obstructing
authorised
persons.
Of M.C. Act,
s. 521.

663. A person who obstructs the council, or an agent, servant, or workman, of the council, or a person appointed by the Governor, or by the Minister, in the performance of anything which the council, its agent, servant, or workman, or a person so appointed is respectively empowered or required to do by or under this or another Act commits an offence.

Official
corruption.
Cf. Crim.
Code, ss. 8
and 82; and
Ch. LV.;
Crim. Code
Act, 1913,
s. 6; and
No. 30 of
1918, s. 45.

664. A person who—

- (a) being the holder of an office of member, or being employed or engaged by a council, corruptly asks, receives, or obtains, or agrees, or attempts, to receive or obtain, property or a benefit for himself or another person on account of anything already done, or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office, or for the discharge of which duties he was employed or engaged; or
- (b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or to attempt to procure, to, upon, or for, a person holding office of member, or a person employed or engaged by a council,

or another person, property or a benefit on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person so holding office, employed or engaged,

commits an offence.

Penalty: Twelve months' imprisonment or a fine of one hundred pounds or both.

665. (1) It is an offence, without lawful authority,
- (a) to remove from a street, way, path, or footpath, under the care, control, or management of a council, soil, sand, sods, scrapings, paving kerbing or any other thing, whether of the same kind as, or a different kind from, those here specified, used in the construction of, or forming part of the street, way, path, or footpath;
- (b) to displace, take down, remove, make an alteration to, damage, deface, or destroy, a fence, gate, stile, or other structure, whether of the same kind as, or a different kind from those here specified, in a street, way, path, footpath, public place, reserve, or land, under the care, control, or management of a council; or
- (c) to displace, take down, remove, make an alteration to, damage, destroy, use, occupy, or otherwise deal with, anything which is under the care, control, or management of a council, or which is provided, with the consent of the council, in a street, way, path, footpath, public place, reserve, land or premises under the care, control, or management of a council.

Protection
of municipal
property.
Cf. R.D. Act,
s. 338.
Cf. Crim.
Code, ss. 8,
453, 454 and
465 (a);
Crim. Code
Act, 1913,
s. 6; and
No. 30 of 1918,
s. 45.

Part
XXVIII.,
Div. 2,
Subdiv. A.
Cf. subs. (1)
of this s.

Ss. 665, 666, 667.

(2) Where a court of petty sessions convicts a person of an offence mentioned in subsection (1) of this section, the court may on application made by or on behalf of the council whether the court does or does not inflict a penalty on the offender, order him to make good the damage or replace the property displaced, taken down, removed, damaged, defaced, or destroyed.

Cf. Crim.
Code, 1913,
Part VI.,
Div. II,
ss. 441 *et seq.*

(3) The provisions of this section do not affect the right of the council to take such proceedings, whether civil or criminal, in a court of appropriate jurisdiction as are available to the council under other laws relating to damage to or destruction of property.

Occupier
may act in
certain cases
of default
by owner.
Cf. M.C. Act,
s. 522.

666. When default is made by the owner of a building or land in the execution of a work which, under this Act he is required to carry out, the occupier of the building or land may, with the approval of the council, cause the work to be carried out, and the expense of doing so shall, unless there is an agreement between them to the contrary, be repaid to the occupier by the owner of the building or land, and the occupier may deduct the amount of the expense out of rent or other money due or from time to time becoming due from him to the owner.

Occupier
obstructing
owner in
carrying Act
into effect,
Cf. M.C. Act,
s. 523.

667. (1) Where the occupier of a building or land within a district prevents the owner from complying with the requirements of this Act in respect of the building or land after notice of his intention so to do has been given by the owner to the occupier, a court of petty sessions, upon proof that the owner has been so prevented by, and has so given notice to, the occupier, may make an order in writing directing the occupier to permit the owner to do what is necessary in order to comply with those requirements, and an order so made is not subject to appeal

(2) If, after the expiration of ten days from the date of the order, the occupier continues to prevent the owner from complying with those requirements, the occupier commits an offence, and for every day during which he continues to prevent the owner from so complying is liable to a penalty not exceeding five pounds, and the owner is not liable for an offence of non-compliance with those requirements while he is so prevented from complying with them.

668. It is the duty of the members of the Police Force of the State who find a person committing a breach of the provisions of this Act, to demand from the person his name and place of abode, and immediately to report the breach and the name and place of abode of the person to the clerk of the council in whose district the breach was committed.

Duty of
members of
Police Force
to report
breaches of
Act.
Cf. s. 6 ante
and No. 30 of
1918, as am.,
s. 4, "This
Act" in-
cludes
by-laws, etc.

669. (1) A person holding office as member, an officer, or other person employed by the council, or a member of the Police Force of the State, who finds a person committing, or who on reasonable grounds suspects a person of having committed a breach of the provisions of this Act, may demand from the person his name and place of abode.

Persons
found
committing
breach of
Act to
give name
on demand.
On default
may be
apprehended.
Cf. M.C. Act,
s. 526.
Cf. s. 6 ante
and No. 30 of
1918, s. 4,
as am.
"This Act"
includes
by-laws, etc.

(2) A person who refuses to state his name and place of abode, or who states a false name or place of abode, on demand being so made, commits an offence.

(3) A person who gives or is suspected of giving a false name or place of abode to the person making the demand may without other warrant than this Act be apprehended by the person making the demand and taken before a justice to be dealt with according to law.

Part
XXVIII.,
Div. 2,
Subdiv. B.

Ss. 670, 671, 672, 673, 674.

Part XXVIII.,
Div. 2,
Subdiv. B.

Subdivision B.—Penalties etc.

Penalty for
non-
performance
of provisions
of this Act
or for doing
of acts
prohibited
by this Act.
Cf. M.C. Act,
s. 527.
Cf. s. 6 ante
and No. 30 of
1918, as am.
s. 4, "This
Act"
includes
by-laws, etc.

670. A person who does not do a thing, which by or under this Act, he is required or directed to do, and a person who does a thing which by or under this Act he is prohibited from doing, commits an offence.

Penalties for
offences.
Cf. M.C. Act,
s. 528.
Cf. s. 6 ante
and No. 30 of
1918, as am.
s. 4, "This
Act"
includes
by-laws, etc.

671. A person guilty of an offence against this Act is liable to the penalty expressly mentioned as the punishment for the offence, or if no other penalty is expressly mentioned, to a penalty not exceeding fifty pounds.

Recovery of
penalties.
Cf. M.C. Act,
s. 529; No. 11
of 1902 as
am. s. 20, and
No. 30 of
1918, as am.
s. 42.

672. A penalty payable in respect of an offence against this Act is recoverable in the manner expressly provided, and if no other manner of recovering the penalty is provided, is recoverable summarily under the provisions of the Justices Act, 1902.

Penalties to
be paid to
council.
Cf. M.C. Act,
s. 530.
Cf. s. 523 (1)
(g) ante.

673. Penalties and other sums whether recovered at the instance, or on behalf, of the municipality or on complaint made by the council or by the direction of the council, under the provisions of this Act are, unless this Act provides otherwise, to be paid to the council, and become the property of and part of the ordinary revenue of the municipality.

Application
of penalties
recovered
against
municipal-
ities.
Cf. M.C. Act,
s. 531.

674. Penalties imposed upon a municipality are payable to the person bringing the proceedings unless the court imposing the penalties orders otherwise, and where payable are payable out of the municipal fund.

Ss. 675, 676.

675. A charge imposed or arising by or under this Act in respect of property is valid and effectual for all purposes and against all persons without registration, notwithstanding the provisions of the Transfer of Land Act, 1893, or any other Act.

Part
XXVIII.,
Div. 2,
Subdiv. C.
Charges
need not be
registered.
Cf. R.D. Act,
s. 350.

Subdivision C.—Disputes between Municipalities and
Returns by Councils.

Part XXVIII.
Div. 2.
Subdiv. C.

676. (1) Where between two or more councils there arises a difference,

- (a) whether it arises out of the construction of this Act or not;
- (b) which relates to—
 - (i) the carrying out of the provisions of this Act;
 - (ii) the fulfilment of the duties of the councils; or
 - (iii) the exercise by the councils of the powers conferred upon them;

Power of
Minister
to settle
disputes
between
councils.
Cf. M.C. Act,
s. 532.

the councils shall, unless this Act provides for settlement of the difference by other means, refer the difference to the Minister.

(2) In respect of a difference so referred to him, the Minister has the same powers as a Local Court,

- (a) of hearing, receiving and examining evidence on oath or affirmation;
- (b) of administering an oath or affirmation to witnesses;
- (c) of compelling the attendance of witnesses and the production of documents and things;
- (d) of committing for contempt; and
- (e) of doing such other things as could be done if the difference were being determined by a Local Court,

and may summon such number of assessors as he thinks fit.

Part
XXVIII.,
Div. 2,
Subdiv. C.

Ss. 676, 677.

(3) The decision of the Minister in respect of a difference so referred to him is not subject to appeal, and may, as evidenced by a certificate purporting to be signed by the Minister, be registered in and enforced as the judgment of a court of competent jurisdiction.

Councils
to furnish
returns to
Ministers or
to Parlia-
ment when
directed.
Cf. M.C. Act,
s. 533.

677. If for a period of at least thirty days, or such extended period as the Minister may in writing authorise, after being required to do so by the Minister or a person lawfully authorised by him to require the council to do so, a council

- (a) does not comply with and obey a decision of the Minister made under this Act; or
- (b) does not furnish accounts or give and furnish returns or other information requested under this Act, by the Minister in relation to council's proceedings, or in compliance with a resolution of either House of the Parliament asking for them;

the Minister,

on complaint to him of the default,

may cause,

by written direction signed by him,

all or any money payable or to become payable to the municipality,

whether out of money appropriated or made available by the Parliament of the State or of the Commonwealth, or on account of fees, fines, or penalties, which are or become payable to the council,

not be paid to the municipality

until the decision has been complied with and obeyed, or the accounts, returns, or other information, has been furnished, to the satisfaction of the Minister,

and a direction so made has effect according to its tenor and is not subject to appeal.

Ss. 678, 679, 680, 681.

Division 3.—Power to Prescribe Forms.

678. (1) The Governor may make regulations and rules of court for giving effect to this Act and prescribing the forms for use under this Act and the fees payable under the regulations and rules.

(2) Strict compliance with forms, whether prescribed by this Act, the by-laws or the regulations, is not required, and substantial compliance with them suffices for the purposes of this Act.

(3) A prescribed form may be varied to suit the circumstances of the case, and no variation in a form used invalidates the form, if the substance and effect of the form as prescribed is not altered.

Division 4.—General.

679. A council may compound, compromise, or submit to arbitration, a claim, or demand made, or a debt or sum of money owing, to or by it; or an action brought by or against it.

680. In the execution and performance by a council of the powers and duties conferred upon it by this Act, a member or an officer employed or a person engaged by the council is not personally liable in respect of the execution or non-execution of the powers or the performance or non-performance of the duties, unless it is proved that he has been guilty of wilful or intentional misconduct or of negligence, but the provisions of this section do not affect those of section six hundred and thirty-two.

681. (1) Where there is a question of general interest as to whether proper principles have or have not been applied,

(a) in the valuation under this Act of; or

Part
XXVIII.,
Divs. 3
and 4.
Part XXVIII.
Div. 3.

Power to the
Governor in
Council to
prescribe
forms.
Cf. M.C. Act,
s. 534; R.D.
Act, s. 362;
and No. 30 of
1918, s. 25.

Part XXVIII.
Div. 4.

Council
may make
composi-
tions.
Cf. R.D. Act,
s. 213.
Cf. s. 276
ante.

Limitation
of liability
of members
of council.
Cf. R.D. Act,
s. 215.

Cf. s. 632
ante.

Proceedings
to resolve
general
questions on
valuations
and rating.
Cf. R.D. Act,
s. 359A.

(b) in the imposition under this Act of a rate in respect of;

rateable property throughout the whole of the district, or throughout a ward, or other part, of the district, the council or a ratepayer of the municipality, or other person, may take proceedings under this section to have the question resolved, but this section does not enable a person to have a question relating to his own individual case resolved under this section, if it could be or could have been resolved under section five hundred and fifty-five.

Cf. s. 555
ante.

(2) The proceedings may be taken only by complaint under the Justices Act, 1902, and be determined only by a stipendiary magistrate constituting a court of summary jurisdiction.

Court may
quash.

(3) The court of summary jurisdiction may make an order quashing a valuation which in the opinion of the court has been improperly made, or a rate which in the opinion of the court has been improperly made, or a rate which in the opinion of the court has been improperly imposed.

(4) The costs of and incidental to the making and hearing of the complaint as between party and party shall be paid as taxed by the clerk of the court by the unsuccessful party to the successful party unless the court for good reason orders otherwise.

Limitation
of period for
instituting
proceedings.

(5) The time limited for the making of the complaint whether in respect of a valuation or a rate, and service of the summons issued in respect of the complaint is—

one hundred and forty days from the imposition of the rate; or

thirty-five days from service upon the person making the complaint of the notice of valuation and rate in respect of any of his rateable property in the district,

Cf. s. 542
ante as to
notice of
valuation
and rate.

whichever of those periods expires last.

(6) (a) The decision of the court of summary jurisdiction is not subject to appeal, but the court of summary jurisdiction, if required to do so by a party to the proceedings, shall state a case for determination by the Supreme Court.

Cf. s. 556 (4),
ante.

(b) The Supreme Court has jurisdiction to determine a case so stated and to make such order as to payment of costs of and incidental to the proceedings in the Supreme Court and in the court of summary jurisdiction as the Supreme Court considers just.

682. Anything which, if this Act were not in operation might be done in the exercise of a right reserved to the Crown or a person representing the Crown and relating to or affecting land alienated from the Crown, may still be done in the exercise of the right, notwithstanding that authority to do it is conferred by this Act upon a council or other authority.

Act not to
affect right
of Crown.
Cf. R.D. Act,
s. 363; No. 29
of 1911,
s. 334; and
No. 48 of 1902,
s. 211; and
s. 281 ante.

683. (1) The Governor or Minister may appoint a person to make inquiry as to a matter arising in the administration of this Act, or touching an official act, omission, or neglect of a council, member, of a council, or the clerk or other officer of a council, or in regard to the operation or effect of the provisions of this Act.

Government
inquiry may
be made.
Cf. R.D. Act,
s. 364.

(2) A person so appointed has, for the purposes of the inquiry, the powers of a Royal Commission and the chairman of a Royal Commission under the Royal Commissioners' Powers Act, 1902.

684. Where under subsection (6) of section two hundred and eighty-one, paragraph (b) of subsection (4) of section two hundred and eighty-seven, subsection (8) of section two hundred and eighty-eight, paragraph (b) of subsection (5) of section two hundred and ninety-one, subsection (2) of section three hundred and five, paragraph (a) or (c) of section three hundred and fifteen, paragraph (b) of

Arbitration
Cf. R.D. Act,
s. 365.
Cf. ss. 281
(6), 287 (4)
(b), 288 (3)
291 (5) (b),
305 (2), 315
(a) or (c),
351 (b), 352
(2), 363 (6),
364 (6), 369
(1) (b), 370
(a), 508 or
521 (2) ante.

section three hundred and fifty one, subsection (2) of section three hundred and fifty-two, subsection (6) of section three hundred and sixty-three, subsection (6) of section three hundred and sixty-four, paragraph (b) of subsection (1) of section three hundred and sixty-nine, paragraph (a) of section three hundred and seventy, section five hundred and eight, or subsection (2) of section five hundred and twenty-one, provision is made for determination of a question on matter only on a reference to arbitration,

Cf. 59 Vict.
No. 13 gen.
and ss. 2 and
7 specif.

- (a) the provisions of the Arbitration Act, 1895 apply in respect of the reference and the arbitration;
- (b) the determination shall be made by two arbitrators, one to be appointed by each party, or under that Act in default of appointment, by a party; and
- (c) if the parties have not signed or otherwise assented to an agreement to submit the question or matter to arbitration, the question or matter shall nevertheless be deemed the subject of submission under that Act.

Statistics
Act.
Cf. R.D. Act.
s. 361.

685. The council shall, as often as required by the person holding the office of Government Statistician under the Statistics Act, 1907, furnish such statistics and returns relating to the operation of the council in such forms and in such manner as he directs.

Declaration
of townsites.
Cf. R.D. Act.
s. 4; and
s. 6 ante.

686. The Governor may by Order declare land, including land which is privately owned and subdivided, to be a townsite, having such name as is specified in the Order, and may, from time to time, by subsequent Order change the name.

Ss. 687, 688, 689.

Part
XXVIII.,
Div. 4.

687. A court having the decision of a case in which the question, as to whether a structure is or is not a building, is material may, having regard to the circumstances of the case, declare that the structure is not a building.

Power of courts to declare that a structure is not a building.
Cf. s. 6 ante, "building".

688. Where through an impediment or accidental omission anything required to be done by or under this Act is not done, or is not done within the prescribed time, manner or form, the Governor for the purpose of giving effect to the intention and purposes of this Act, may by order take such measures as are necessary for rectifying the omission or removing the impediment, and may validate anything which has been done otherwise than in the prescribed time, manner, or form.

Governor may rectify omissions and irregularities.
Cf. No. 32 of 1911, as am., s. 244.

689. Where because of the relation in time of the day fixed for the coming into operation of this Act, to the time at which, or period during which, anything is required or directed to be done by or under this Act, whether it is

Transition provisions.

the preparation of an electoral roll;

the holding of an election;

the preparation of a budget;

the giving of a notice, or the making of a payment;

the imposition of a rate; or

any other thing, whether of the same kind as or a different kind from those here specified,

Part
XXVIII.,
Div. 4.

Ss. 689, 690, 691.

the Governor is of opinion that

for the purposes of giving effect to the transition from the operation of a repealed Act to the operation of this Act, and to the intention and purposes of this Act,

an Order is necessary or desirable,

whether for extending, shortening or otherwise altering or adjusting that time, or period, or altering or adjusting the manner or form in which the thing is so required or directed to be done, or otherwise, including, without limiting the generality of this section, the adjustment or apportionment of liability for rates, license fees or other dues, imposed or payable in respect of the same period under a repealed Act and under this Act,

Cf. M.C. Act,
s. 398 and
R.D. Act,
s. 245.

Cf. s. 688
ante.

the Governor, without prejudice to the generality of section six hundred and eighty-eight, may, from time to time, make Orders accordingly and may, from time to time, by subsequent Orders, amend or cancel an Order so made.

Official
notice board
of council.

690. A council shall provide at the office of the council, as its official notice board, a suitable notice board upon which notices required under this Act to be exhibited on the official notice board of the council may be exhibited and perused by the public during the time when the notices are so required to be exhibited.

Orders of the
Governor in
Council.
Order to
take effect
on publica-
tion.
Cf. M.C. Act,
s. 34.

691. (1) An Order made under the provisions of this Act when published in the *Gazette* takes effect according to its tenor on the day specified in the Order as that on which it takes effect but if a day is not so specified, takes effect on the day of the publication.

Rectifica-
tion of errors.
Cf. M.C. Act,
s. 35.

(2) An error in an Order made under the provisions of this Act may be rectified by the Governor by a subsequent Order.

Non-com-
pliance with
matters
preliminary
not to
invalidate
Order.
Cf. M.C. Act,
s. 36.

(3) An Order which purports to be made under the provisions of this Act, and which is within the powers conferred on the Governor by this Act, is not invalid because of non-compliance with a matter

Ss. 691, 692, 693, 694.

Part
XXVIII.,
Div. 4.

required by this Act to be complied with as a preliminary to the making of the Order.

692. (1) To the extent to which the provisions of Part IV. are capable of being applied with or without adaptation in respect of polls relating to loans, and other matters under this Act, those provisions with or without adaptation apply in respect of those polls.

Application
of Part IV.
to polls.

(2) Notwithstanding the provisions of subsection (1) of this section the Governor may make such regulations as he thinks necessary or convenient in relation to preparation for, conducting, and ascertaining the result of those polls and ensuring the purity of the conduct of them and may impose a penalty not exceeding one hundred pounds for a breach of a regulation so made.

Cf. subs. (1)
of this s.

693. Where this Act constitutes an amount payable whether as rates or otherwise, to a council a charge upon land, the council may, in accordance with the provisions of Acts authorising the lodging of caveats, lodge a caveat in respect of the charge and may withdraw a caveat so lodged, but this express inclusion of this right does not prejudice or otherwise affect a right of a council under any Act to lodge and withdraw a caveat in respect of any other charge upon or interest in land or other property.

Council may
lodge
caveats.
Cf. 56 Vict.
No. 14, s. 137;
No. 15 of
1904, s. 284;
No. 37 of
1933, s. 152
and 13 of
1906, s. 8.
Cf. s. 576
ante as to
rates.

694. (1) Every council shall keep a register to be known as the "register of orders" in which the clerk shall record details of any order made by the council under the provisions of this Act, the Health Act, 1911 or another act under which the council has power to make the order and which is made in relation to any land or any building thereon or both.

Register of
orders made
by council.

(2) The clerk shall also record in the register the sum of any money owing to the council and the amount of all costs, charges and expenses of any proceedings to recover the sum where the sum is

under the provisions of this or another Act constituted a charge on the land, other than a charge for outstanding rates, and shall show therein the amount of the charge and particulars of the land.

(3) When an order or charge, particulars of which have been so recorded, is withdrawn, cancelled, discharged or satisfied, the clerk shall record the fact against the appropriate entry.

(4) The register shall be open to inspection during the ordinary office hours of the council by any person interested and extracts may be copied therefrom by the person free of charge.

S. 4
Cf. No. 30 of
1918, as am.,
s. 14.

FIRST SCHEDULE.

ACTS REPEALED.

Road Districts Act, 1919.

Municipal Corporations Act, 1906.

Cattle Trespass, Fencing and Impounding Act, 1882, with the exception of—

the title and preamble;

sections one and two;

section twenty-three to section twenty-six both inclusive;

section thirty;

sections forty-four and forty-five;

the First Schedule; and

the Second Schedule, to and including the words, "Small cattle" in line six but excluding the sub-heading, "The Trespass Scale" in line two.

Sand Drift Act, 1919.

The Geraldton Sand-hills Planting Act, 1872.

Closed Roads Alienation Act, 1932.

An Ordinance to regulate the Grazing of Cattle and certain other Stock kept in Towns, 14 Vict., No. 8 1850.

Leonora Tramways Act, 1909.

Reserve Funds (Local Authorities) Act, 1950.

Pensioners (Rates Exemption) Act, 1922 (so far as it relates to the Road Districts Act, 1919 and the Municipal Corporations Act, 1906).

An Act to provide for the Destruction of Goats within the precincts of the Municipality of Geraldton, 45 Victoriae No. 3.

Second Schedule.

SECOND SCHEDULE.

S. 5.

Abattoirs Act, 1909.

Nos. 31 of
1909, 17 of
1931, 8 of
1941, 58 of
1952, and 73
of 1954, gen.
and s. 6
specif.

Cf. s. 512 (c)
ante.

Agricultural Areas, Great Southern Towns, and Goldfields
Water Supply Act, 1947.

No. 63 of
1947 gen.
and ss. 2 and
5 specif.

Cf. Part
XVII. ante.

Agriculture Protection Board Act, 1950.

Nos. 76 of
1950, 19 of
1951, 84 of
1953, 73 of
1954, 8 of
1956, and
2 of 1957,
gen. and
ss. 5 and
8 (j)
specif.

Cf. Part
XXVI. ante.

Albany Harbour Board Act, 1926.

Nos. 52 of
1926, 38 of
1928, 73 of
1954, 52 of
1955, gen.
and s. 24
specif.
and No. 50 of
1959.

Cf. ss. 199
and 300
ante.

Alsatian Dog Act, 1929.

Nos. 34 of
1929, 6 of
1938 and 61
of 1952, s. 7.
Cf. s. 207
ante.

Anglo-Persian Oil Company Limited's Private Act, 1919.

A Private
Act, p. 335
of Sess. Vol.
1919 gen. and
s. 14 specif.
Cf. s. 330
ante.

Argentine Ant Act, 1959.

No. 43 of
1959.

Assistance by Local Authorities in Wiring Dwellings for
Electricity Act, 1953.

No. 41 of
1953, s. 5.
Cf. ss. 376,
523, 529 (b),
599 and 601
ante.

Bees Act, 1930.

Nos. 18 of
1930 and 70
of 1950.
6 of 1957.
Cf. s. 196
ante.

Betting Control Act, 1954.

No. 63 of
1954, 60 of
1956, 36 of
1957 and No.
76 of 1959.

Second Schedule.

Brands Act, 1904.

NO. 61 of
1904, 14 of
1907, 24 of
1932, 13 of
1935, 5 of
1948, 55 of
1952; and
44 of 1956,
gen. and
ss. 34 to
43 specif.
Cf. s. 474 (7)
ante.

British Imperial Oil Company, Limited (Private) Act, 1925.

Private Act,
p. 227 of
Sess. Vol.
1925 gen. and
s. 14 specif.
Cf. s. 330
ante.

Bunbury Electric Lighting Act, 1911.

No. 18 of
1911, 12 of
1924, 14 of
1928; gen.
and s. 4
specif.
Cf. Part
XXVI. ante.

Bunbury Harbour Board Act, 1909.

No. 22 of
1909, 38 of
1928, 73 of
1954, and
51 of 1957,
gen. and ss.
20, 21 and 24
specif. and
No. 48 of 1959
Cf. ss. 199
and 300 ante.

Bunbury Motor-bus Service Act, 1914.

No. 10 of
1914 gen. and
ss. 4 and 5
specif.
Cf. ss. 599
and 601, ante

Bush Fires Act, 1954.

No. 53 of
1954, 33 of
1957, gen.
Cf. s. 211
and Part
XVII. ante.

Carnarvon Electric Light and Power Act, 1919.

No. 44 of
1919, 13 of
1924, gen.
and ss. 2, 3
4 and 5
specif.
Cf. s. 603 (1)
(a), ante.

Cattle Trespass, Fencing, and Impounding Act, 1882.

46 Vict.
No. 7, 1882,
48 Vict.
No. 16.
25 of 1922,
66 of 1952,
46 of 1957,
gen.

City of Fremantle (Free Literary Institute) Act, 1948.

No. 65 of
1948 gen. and
ss. 10 and 15
to 19 inc.
specif.
Cf. ss. 328,
329 and 446,
ante.

City of Perth Improvement Act, 1913.

No. 13 of
1913 gen.

Second Schedule.

City of Perth Act, 1914.	Nos. 27 of 1914 and 26 of 1917 gen.
City of Perth Act, 1925.	Nos. 11 of 1925, 26 of 1926, and 38 of 1956, gen. Cf. s. 364 (4) (b), ante.
City of Perth Endowment Lands Act, 1920.	No. 31 of 1920, 15 of 1936, gen.
City of Perth Parking Facilities Act, 1956.	No. 86 of 1956, gen. and s. 6 specif. Cf. s. 312 ante.
City of Perth Superannuation Fund Act, 1934.	No. 14 of 1934, 18 of 1941, 30 of 1946, 54 of 1947, 28 of 1949, 35 of 1954, 29 of 1956 gen. Cf. s. 169 ante.
City of Perth Scheme for Superannuation (Amendments Authorisation) Acts, 1941, 1946, 1947, 1949, 1954 and 1956.	Nos. 18 of 1941, 30 of 1946, 54 of 1947, 28 of 1949, 35 of 1954, and 29 of 1956. Cf. s. 169 ante.
City of Perth (Rating Appeals) Act, 1940.	No. 49 of 1940, and 61 of 1954, gen. and s. 3 specif. Cf. Div. 5 of Part XXV. ante.
City of Perth Sanitation Act, 1945.	No. 37 of 1945 gen.
City of Perth Electricity and Gas Purchase Act, 1948.	No. 33 of 1948 gen. Cf. s. 503. ante.
Collie Hospital Agreement Act, 1937.	No. 19 of 1937 gen. and s. 3 specif.
Collie Recreation and Park Lands Act, 1931.	Nos. 1 of 1931, 32 of 1932, 9 of 1941, 11 of 1942 and 27 of 1944 gen. and s. 9 specif.
Commonwealth Oil Refineries, Limited (Private) Act, 1940.	Private Act, p. 237 of Sess. Vol. 1940 gen. and s. 14 specif. Cf. s. 330 ante.

Second Schedule.

Nos. 62 of
1947, 22 of
1950, 41 of
1951, 73 of
1954, and
14 of 1957,
gen. and ss.
8 and 122
specif.
Cf. s. 330 and
Part XVII.
ante.

Country Areas Water Supply Act, 1947.

Nos. 82 of
1948, 15 of
1951, and 73
of 1954, gen.
and ss. 4, 11
(3), 35 and
120 specif.
Cf. Part
XIII. and
s. 374 ante.

Country Towns Sewerage Act, 1948.

Nos. 6 of
1903, 1 of
1923, 24 of
1928 and 74
of 1948 gen.
and ss. 6, 15,
19 and 34a
specif.
Cf. s. 207
ante.

Dog Act, 1903.

Nos. 32 of
1946, 28 of
1951, and 73
of 1954, gen.
and ss. 31A
and 50
specif.

Eastern Goldfields Transport Board Act, 1946.

Nos. 19 of
1945 and 72
of 1953 gen.
and **Parts II.**
and IV.
specif.
Cf. ss. 436
and 503 ante.

Electricity Act, 1945.

Nos. 57 of
1909, 64 of
1912 and 11
of 1918 gen.
and s. 9
specif.
Cf. s. 209
ante.

Employment Brokers Act, 1909.

58 Vict. 12,
1894;
1 and 2
Edw. VII.,
No. 14, 1902;
and 2 gen.
Cf. s. 204
ante.

The Explosive Substances Act, 1894.

59 Vict. 38,
1895;
2 Edw. VII. 2,
1902.

The Explosives Act, 1895.

Second Schedule.

Factories and Shops Act, 1920.

Nos. 44 of
1920, 4 of
1922, 41 of
1923, 6 of
1932, 54 of
1937, 26 of
1939, 47 and
60 of 1946,
41 of 1947,
15 and 54 of
1948, 46 of
1951, 59 of
1952, 27 of
1954, 84 of
1956, 44 of
1957 and 65
of 1959 gen.
Cf. ss. 209,
212, 228
and 503 ante.

Fauna Protection Act, 1950.

Nos. 77 of
1950, and 38
and 73 of
1954, gen.
and ss. 17
and 28 (d)
specif.
Cf. s. 197
ante.

Firearms and Guns Act, 1931.

Nos. 8 and
25 of 1931,
42 of 1939,
85 of 1953,
and 70 of
1956, gen.
and s. 5 (3)
(d) specif.
Cf. ss. 204,
224 and 234
(2) ante.

Fire Brigades Act, 1942.

Nos. 35 of
1942, 31 of
1949, 41 of
1951 and 34
of 1959 gen.
Cf. s. 211 and
Part XVII.

Fisheries Act, 1905.

Nos. 18 of
1905, 24 of
1911, 9 of
1913, 4 of
1921, 27 of
1938, 35 of
1940, 22 of
1946, 39 of
1947, 10 of
1948, 48 of
1949, 55 of
1951, and
64 of 1956
gen. and
s. 6 (b)
and (c), 9,
10 and 11
specif.
Cf. s. 213
ante.

Forests Act, 1919.

No. 8 of
1919, and 43
of 1954, gen.
and ss. 63, 64
68, 69 and 71
specif.
Cf. ss. 234
(2) (m) and
503 (1) (k)
ante.

Second Schedule.

50 Vict., 34,
1886; Private
Act of 1893;
Nos. 15 of
1938, 17 of
1940, 77 of
1947, 30 of
1950, 42 of
1952, and
58 of 1956,
gen. and
ss. 15 to 23
inc. specif.
Cf. ss. 330
and 503 ante.

The Fremantle Gas and Coke Company's Act, 1886.

2 Edw. VII.,
17, 1902; Nos.
35 of 1906, 25
of 1911, 4 of
1913, 38 of
1928, 54 of
1930, 17 of
1931, 39 of
1932, 73 of
1934, and
42 of 1937,
gen. and ss.
23 and 26
specif.
Cf. ss. 199,
280 and 300
ante.

Fremantle Harbour Trust Act, 1902.

No. 19 of
1925, 13 of
1956 gen.
Cf. s. 364 (4)
(b) ante.

Municipality of Fremantle Act, 1925.

Private Act
of 1903, Nos.
15 of 1909,
37 and 61 of
1915, 3 of
1921, 9 of
1924, 24 of
1925, 13 of
1931, 4 of
1933, 27 of
1934, 18 of
1937, 26 of
1943, 42 of
1946 and 36
of 1952 gen.
and ss. 3, 4,
46 and 47
specif.
Cf. ss. 330
and 503 ante.

**Fremantle Municipal Tramways and Electric Lighting Act,
1903.**

No. 75 of
1947, 58 of
1956, gen.
and s. 4
specif.
Cf. ss. 330
and 503 ante.

Gas Standards Act, 1947.

Nos. 3 of
1910 gen. and
ss. 3 and 4
specif.
Cf. ss. 330
and 503 ante.

Geraldton Municipal Gas Supply Act, 1910.

Second Schedule.

Government Railways Act, 1904.

Nos. 23 of
1904, 29 of
1907, 58 of
1926, 36 of
1933, 15 of
1933, 72 of
1947, 78 of
1948, 32 of
1951, 86 of
1953, 13 and
73 of 1954,
61 of 1955,
37 of 1957
and 8 of 1959
gen. and s.
88 specif.
Cf. s. 512 (d)
ante.

Government Stock Saleyards Act, 1941.

No. 15 of
1941 gen.
Cf. s. 195 and
512 (1) ante.

Health Act, 1911.

Nos. 34 of
1911, 3 and 28
of 1912, 55 of
1915, 17 of
1918, 15 of
1919, 5 of
1922, 50 of
1926, 30 of
1932, 5 and
38 of 1933,
16 of 1935,
32 of 1937,
34 of 1942,
14 and 21 of
1944, 22, 70
and 71 of
1948, 25 of
1950, 11 and
25 of 1952, 34
and 45 and
73 of 1954,
and 29 of
1955, 17 of
1956, 21 of
1957 and 22
of 1959 gen.
Cf. ss. 228,
523 (1) (1)
and (n), 529,
547 (7) and
548 ante.

Hospitals Act, 1927.

Nos. 23 of
1927, 9 of
1948, 16 of
1953, and 51
of 1955, gen.
and Part IV.
specif.

Industrial Arbitration Act, 1912.

Nos. 57 of
1912, 45 of
1920, 50 of
1925, 41 of
1930, 6 and
31 of 1935,
26 of 1937,
49 of 1941,
46 of 1948,
42 of 1949,
20 and 56 of
1950 and 5 of
1952 gen.
Cf. Part VI.
ante.

Industrial Development (Kwinana Area) Act, 1952.

No. 2 of 1952
(1 Eliz. 2
No. 2), 37 of
1952, 3 of
1953 and 14
of 1959 gen.
and s. 3
specif.

Second Schedule.

Nos. 49 of
1945 and 63
and 67 of
1953 gen. and
s. 13 specif.

Industrial Development (Resumption of Land) Act, 1945.

Nos. 11 of
1922, 42 of
1923, 34 of
1924, 17 of
1941, 37 of
1947, 69 of
1950, 20 of
1951, 33 of
1953, and 55
of 1954, 23 of
1956, 39 of
1957, gen.
Cf. s. 212
ante.

Inspection of Machinery Act, 1921.

Nos. 30 of
1918, 31 of
1929, 28 of
1938, 8 of
1948, and 73
of 1954, 7 of
1957, 34 of
1957, gen.
and ss. 3, 4,
14, 15, 16,
17, 24, 36 and
41 specif.

Interpretation Act, 1918.

No. 45 of
1926, 33 of
1957, gen.
and s. 5
specif.

Jetties Act, 1926.

No. 26 of
1953 gen.

Kwinana Road District Act, 1953.

Nos. 37 of
1933, 47 of
1934, 4 of
1936, 39 of
1937, 20 of
1938, 36 of
1939, 45 of
1945, 35 of
1946, 53 and
68 of 1948,
58 of 1950,
66 of 1953,
and 17 of
1954, 41, 48
and 51 of
1956, gen.
Cf. s. 234 (2)
(m) ante.

Land Act, 1933.

Nos. 43 of
1925, 43 of
1941, and 73
of 1954, gen.
Cf. Part XIII
and s. 529
(b) ante.

Land Drainage Act, 1925.

Nos. 42 of
1951, and 20
of 1955, gen.
and s. 19
specif.
Cf. ss. 234
and 446 ante.

Library Board of Western Australia Act, 1951.

No. 25 of
1953 gen.
Cf. s. 529
(f) ante.

Local Authorities Royal Visit Expenditure Authorisation
Act, 1953.

Second Schedule.

Local Authorities, University of Western Australia Medical School Appeal Fund Contributions Authorisation Act, 1955.	No. 22 of 1955 gen. Cf. s. 529 (g) ante.
Main Roads Act, 1930.	Nos. 5 of 1930, 2 of 1932, 3 and 4 of 1937, 29 of 1938, 48 of 1939, 34 of 1952, 73 of 1954, and 6 of 1955, gen. and ss. 2, 27 and 33 specif., and 38 of 1959. Cf. Part XII. ante.
McNess Housing Trust Act, 1930.	Nos. 36 of 1930, 28 of 1937, 30 of 1938, 21 of 1940, 27 of 1948, and 73 of 1954, gen. and s. 17A specif.
Meat Industry (Treatment Works) Licensing Act, 1937.	No. 46 of 1937 gen. and ss. 4 and 10 specif. Cf. s. 512 (c) ante.
Melville Tramways Act, 1914.	Nos. 8 of 1914 and 24 of 1917 gen. and s. 3 (2) specif.
Metropolitan Market Act, 1926.	Nos. 55 of 1926 and 37 of 1941 gen. and s. 12 specif. Cf. ss. 209 and 223 and Part XXI. ante.
Metropolitan Region Town Planning Scheme Act, 1959.	No. 78 of 1959.
Metropolitan Water Supply, Sewerage, and Drainage Act, 1909.	Nos. 43 of 1909, 30 of 1925, 2 of 1941, 13 and 41 of 1951, 73 of 1954, and 33 of 1955, 27 of 1956, gen. and s. 29 specif. Cf. s. 330 and Part XVII. ante.
Northam Municipal Ice Works Act, 1921.	Nos. 12 of 1921 and 3 of 1927 gen. and s. 4 specif. Cf. s. 503 (1) (g) ante.

Second Schedule.

Nos. 60 of
1950, 7 of
1951, 6 of
1953, and 73
of 1954,
48 of 1957
gen. and Part
VII., Div. 1
specif.
Cf. ss. 523
and 547 (7)
ante.

Noxious Weeds Act, 1950.

No. 1 of 1952
(1 Eliz. 2 No.
1) gen. and
22 of 1956
s. 3 specif.

Oil Refinery Industry (Anglo-Iranian Oil Company Limited)
Act, 1952.

59 Vict., 30
Nos. 60 of
1947, 59 of
1954, and 17
of 1955, gen.
Cf. s. 234
and Part
XIX. ante.

Parks and Reserves Act, 1895.

Nos. 18 of
1923, 26 of
1936, 5 of
1938 and 7 of
1943 gen.
Cf. Part
XXV. ante.

Pensioners Rates Exemption Act, 1922 (except in so far as
it is repealed by this Act).

No. 67 of
1950 gen.

Perth Town Hall Act, 1950.

No. 58 of
1953 gen.

Perth Town Hall Agreement Act, 1953.

No. 8 of 1917
gen.
Cf. ss. 199
and 300 ante.

Ports and Harbours Act, 1917.

Nos. 21 of
1920 and 18
of 1948 gen.
and s. 19
specif.
Cf. s. 452
and 478 ante.

Prevention of Cruelty to Animals Act, 1920.

2 Edw. VII.,
47, 1902; Nos.
8 of 1906,
60 of 1926,
35 of 1933,
41 of 1945,
23 of 1950,
48 of 1953,
3 of 1954, and
59 of 1955,
55 of 1956
gen. and
ss. 2, 100 to
107 inc. and
117 specif.
Cf. Parts
XI and XII
ante.

Public Works Act, 1902.

Second Schedule.

Rights in Water and Irrigation Act, 1914.

Nos. 19 of
1914, 16 of
1939, 32 of
1941, 3 of
1945, 9 of
1949, 18 of
1951, and 73
of 1954, gen.
and ss. 4 and
32 specif.
Cf. Part III.
of the Water
Boards Act,
1904.
Cf. s. 251 and
Part XVII.
ante.

Roads Agreements between the State Housing Commission
and Local Authorities Act, 1950.

No. 15 of 1950
gen. and
s. 5 specif.
Cf. Part
XXVI. ante.

Royal Powers Act, 1953.

No. 43 of 1953
gen.
Cf. s. 683
ante.

Rural and Industries Bank Act, 1944.

Nos. 51 of
1944, 36 of
1947, 14 of
1949, 40 of
1950, 4 of
1951, 23 of
1953, 73
of 1954, 15
and 31 of
1956, as
affected by
No. 53 of
1947.
Cf. s. 89 of
No. 51 of
1944 gen.
Cf. ss. 578, (7)
581, 593
594, and 596,
ante.

Soil Conservation Act, 1945.

Nos. 15 of
1945, and 32
of 1955, gen.
and s. 3 and
Parts III.,
IV. and V.
specif.
Cf. s. 515
ante.

South Fremantle Oil Installations Pipe Line Act, 1948.

No. 48 of
1948 gen. and
s. 12 specif.
Cf. s. 330
ante.

South-West State Power Scheme Act, 1945.

No. 56 of
1945 gen. and
s. 5 specif.
Cf. s. 436 and
503 ante.

Special License (Waroona Irrigation District) Act, 1945.

No. 16 of
1932 gen. and
s. 3 specif.
Cf. s. 437
ante.

Second Schedule.

Nos. 60 of
1945, 33 of
1948, 4 of
1952, 23 and
73 of 1954,
41 of
1955, 58 of
1956, gen.
and ss. 32,
34, 37 to
43 inc. and
s. 72 specif.
and Nos. 5,
30 and 68
of 1959.
Cf. ss. 330,
436 and 503
ante.

State Electricity Commission Act, 1945.

Nos. 51 of
1946, 27 of
1947, 19 of
1948, 27 of
1950, 52 of
1951, 23 of
1952, 77 of
1953, 12 and
73 of 1954,
32 of 1956,
and No. 45 of
1959 gen. and
s. 22 specif.

State Housing Act, 1946.

Nos. 42 of
1933, 47 of
1938, 9 of
1940, 4 of
1946, 59 of
1948, 83 of
1953, 68 of
1954, 60 of
1956, 61 of
1957, gen.
and 57 of
1959.
Cf. s. 503
ante.

State Transport Co-ordination Act, 1933.

No. 46 of
1947.
Cf. ss. 234 (2)
(j) and 244
(x) ante.

Street Photographers Act, 1947.

Nos. 58 of
1947, 12 of
1949 and 12
of 1950 gen.
and s. 6
specif.
Cf. s. 169
ante.

Superannuation, Sick, Death, Insurance, Guarantee and
Endowment (Local Governing Bodies' Employees) Funds
Act, 1947.

Nos. 45 of
1925 and 3 of
1939 gen.
and ss. 8, 9
and 10
specif.
Cf. s. 293
ante.

Swan River Improvement Act, 1925.

Private Act,
p. 203 of
Sess. Vol.
1928 gen. and
s. 14 specif.
Cf. s. 330
ante.

Texas Company (Australasia) Limited (Private) Act, 1928.

Second Schedule.

The Tramways Act, 1885.

49 Vict., 23,
1885, Nos. 12
of 1903 and
30 of 1904
gen. and
ss. 19, 20 and
21 specif.
Cf. ss. 311,
330 and 503
ante.

Timber Industry Regulation Act, 1926.

Nos. 59 of
1926, 20 of
1937, 41 of
1946 and 48
of 1950 gen.
Cf. s. 212
ante.

Town Planning and Development Act, 1928.

Nos. 39 of
1928, 16 of
1943, 41 of
1944, 16 of
1945, 29 of
1947, 79 of
1953, 73 of
1954, and 63
of 1955, 79 of
1956, 63 and
79 of 1957,
and 49 of 1959
gen. and
ss. 6 and 7
specif.
Cf. s. 248
ante.

Traffic Act, 1919.

Nos. 60 of
1919, 16 of
1922, 37 of
1924, 46 of
1925, 22 of
1926, 11 of
1927, 20 of
1930, 3 of
1931, 21 of
1932, 43 of
1933, 39 of
1935, 16 of
1941, 32 of
1943, 24 and
48 of 1946,
24 of 1947,
51 of 1948,
29 of 1949,
24 of 1950,
57 of 1951,
29 and 35 of
1952, 74 of
1953, 47 of
1954, and 37
of 1955, 74
and 86 of
1956, 49, 76
and 78 of 1957
and Nos. 12,
52 and 67
of 1959, gen.
and ss. 14, 47
and 48 specif.
Cf. ss. 226,
244 and 312
ante.

Second Schedule.

Nos. 31 of
1912 and 30
of 1940 gen.
and ss. 4, 5, 6
and 7 specif.
Cf. s. 503
ante.

Tramways Purchase Acts, 1912 and 1940.

Nos. 37 of
1911, 23 of
1917, 17 of
1929, 43 of
1944, 40 of
1947, 3 of
1955, and
25 of 1957,
gen. and
s. 36 of
No. 37 of
1911 and s. 2
of No. 17 of
1929 specif.

University of Western Australia Act, 1911.

Nos. 2 and 39
of 1919, 29 of
1925, 10 of
1926, 29 of
1929, 33 of
1930, 33 of
1931, 13 of
1936, 41 of
1938, 5 of
1943, 49 of
1946, 61 of
1950, 44 of
1951, 5 of
1953, and 44
of 1954,
57 and 82
of 1956
gen. and
s. 6 specif.
Cf. s. 523 (1)
(m) ante.

Vermin Act, 1918.

Nos. 4 of
1904, 19 of
1914, 4 of
1919, 8 of
1925, 16 of
1925, 26 of
1928, 25 of
1937, 10 of
1941, 6 of
1942, 26 of
1947, 10 of
1949, 41 of
1951, 32 of
1953, and
73 of 1954,
gen. and
Part III.
specif.
Cf. Part
XVII. ante.

Water Boards Act, 1904.

Nos. 50 of
1915, 42 of
1926 and 7 of
1941 gen.
Cf. ss. 223,
252, 490, 491,
492 and 493
ante.

Weights and Measures Act, 1915.

Nos. 52 of
1948, 5 of
1950, 12 of
1953, and 73
of 1954, gen.
and ss. 14
and 39
specif.
Cf. Part XII.
and s. 503
ante.

Western Australian Government Tramways and Ferries Act,
1948.

1960.]

Local Government.

[No. 84.

Third Schedule, Fourth Schedule.

THIRD SCHEDULE.

S. 24.

Western Australia.

Local Government Act, 1960.

I, _____, of _____,

solemnly and sincerely declare that all of the signatures on pages _____ of the petition annexed to this declaration and marked with the letter " " and signed by me are the genuine signatures of the persons whose signatures they purport to be.

And I make this solemn declaration by virtue of section 106 of the Evidence Act, 1906.

Declared at _____, this _____ day of _____, 19____. } Signature of declarant.

Before me,

(Signature and qualification of person taking the declaration.)

FOURTH SCHEDULE.

S. 38.

Form A.

Western Australia.

Local Government Act, 1960.

OATH OF ALLEGIANCE.

I, _____, of _____,

sincerely promise and swear that I will be faithful and bear true allegiance to*
So help me God.

Signed this.....day of.....19....

by

Before me.....

* Set out the Royal Style and Titles.

Fourth Schedule.

S. 38.

Form B.

Western Australia.

Local Government Act, 1960.

AFFIRMATION.

I, _____, of _____,

in exercise of my right to make a solemn affirmation instead
of taking an oath, sincerely promise and affirm that I will
be faithful and bear true allegiance to*

Signed this day of 19...

by

Before me.....

* Set out the Royal Style and Titles.

S. 38.

Form C.

Western Australia.

Local Government Act, 1960.

DECLARATION.

I, _____, of _____,

having been elected to the office of Mayor*/President*/
councillor* of the

of _____, hereby declare that I take

the office upon myself, and will duly and faithfully fulfil
the duties of the office according to the best of my judgment
and ability.

Signed this day of 19...

by

Before me.....

* Strike out words not applicable.

FIFTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

ELECTORAL LIST FOR THE
OF

(Or if the municipal district is divided into wards, for the
ward of the of)
for the year ending , 19 .

No.	Elector's Surname	Elector's Other Names	Elector's Address	Situation and description of Land Owned or Occupied	Unimproved Value	Annual Value	Number of votes to which Elector Entitled. State whether as Rate- payer or otherwise

(Signed)

Clerk.

Fifth Schedule.

1960.]

Local Government.

[No. 84.

Sixth Schedule.

S. 46 (2).

SIXTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

APPLICATION TO BE INCLUDED IN ELECTORAL LIST.

To the Clerk of the _____ of _____ :

Sir,

I, _____ of _____

hereby claim to have my name added to the electoral list

for (the _____ Ward of)* the

of _____ in accordance with the following

particulars:—

Surname of Claimant	Other Names of Claimant	Address	Particulars of the Rateable Land in the Municipality in respect of which the Claimant is Owner or Occupier

Dated the _____ day of _____ 19 _____ .

Signature.....

Full name in block letters.....

* Strike out the words in the brackets if not applicable.

Footnote: For eligibility to be an elector for a municipality or ward see
s.44 of the Local Government Act, 1960.

Seventh Schedule.

SEVENTH SCHEDULE.

S. 47 (1) (a)
and (2) (a).

Form A.

Western Australia.

Local Government Act, 1960.

APPLICATION BY A PERSON WHOSE NAME HAS BEEN
OMITTED FROM THE ELECTORAL LIST TO HAVE HIS
NAME INSERTED OR TO HAVE PARTICULARS OF
VALUATION OR NUMBER OF VOTES AMENDED.

To the Clerk of the _____ of _____ :

Sir,

I, _____ of _____
hereby apply to have my name inserted on the Electoral
List for (the _____ Ward of)* the
of _____ in accordance with the following
particulars:—

Surname of Claimant	Other Names of Claimant	Address	Particulars of where the Valuation of the Land or Number of Votes is Incorrect	Particulars of the Rateable Land in the Municipality in respect of which the Claimant is Owner or Occupier

Dated the _____ day of _____, 19 _____.

Signature.....

Full name in block letters.....

* Strike out the words in the brackets if not applicable.

Footnote: For eligibility to be an elector for a municipality or ward see
s.44 of the Local Government Act, 1960.

Form B.

S. 47 (1) (b)
and (2) (a).

Western Australia.

Local Government Act, 1960.

APPLICATION UNDER SECTION FORTY-FOUR.

To the Clerk of the _____ of _____ :

Sir,

I, _____ of _____
hereby give you notice that (here state matter and grounds
of application).....

Dated this _____ day of _____, 19 _____.

Signature.....

Name in block letters.....

To be served in duplicate on the Clerk.

S. 58.

EIGHTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

ELECTORAL ROLL FOR (THE WARD OF)*
THE OF FOR THE
YEAR ENDING 19 .

No.	Elector's Surname	Elector's Other Names	Elector's Address	Situation and description of Land Owned or Occupied	Unimproved Value	Annual Value	Number of votes to which Elector Entitled. State whether as Rate-payer as otherwise

(Signed)

* Strike out the words in the brackets if not applicable.

Clerk.

Eight Schedule.

No. 84.]

Local Government.

[1960.

Ninth Schedule, Tenth Schedule.

NINTH SCHEDULE.

S. 93.

Western Australia.

Local Government Act, 1960.

NOMINATION OF MAYOR, PRESIDENT, OR COUNCILLOR.

To the Returning Officer of the _____ of _____ :
 Sir,

I (_____)* of (_____)† hereby
 propose (_____)* of (_____)† as
 a fit and proper person to be **Mayor, President, or
 Councillor of the Municipality of _____ or of the
 Ward of the Municipality of _____
 (as the case may be).

Dated the _____ day of _____ 19 ____ .

Signature of proposer.....

I consent to act if elected, and declare that I am qualified
 to act if elected to the office for which I am being proposed.

Signature of candidate.....

*Insert name. †Insert residence, calling and number on the roll.

** Strike out whichever is not applicable.

TENTH SCHEDULE.

S. 101.

Western Australia.

Local Government Act, 1960.

BALLOT PAPER

.....of.....
 Election of Mayor (or President) on the _____ day of
 19 ____ .

List of Candidates for Election.

☐
☐
☐

Directions.—In order to cast a VALID vote place in EACH square a NUMERAL commencing with the numeral "1," whether there are only TWO squares or more than TWO squares. The numeral "1" indicates the elector's first choice, the numeral "2" indicates the elector's second choice, the numeral "3" indicates the elector's third choice and so on, but DO NOT PLACE A CROSS IN A SQUARE.

Tenth Schedule, Eleventh Schedule.

S. 101.

Western Australia.

Local Government Act, 1960.

BALLOT PAPER.

.....(Ward of the)*.....of.....
 Election of a Councillor (or Councillors) on the day of
 19

List of Candidates for Election.

☐
☐
☐

* Omit words in brackets if not applicable.

Directions.—In order to cast a VALID vote place in EACH square a NUMERAL commencing with the numeral "1," whether there are only TWO squares or more than TWO squares. The numeral "1" indicates the elector's first choice, the numeral "2" indicates the elector's second choice, the numeral "3" indicates the elector's third choice and so on, but DO NOT PLACE A CROSS IN A SQUARE.

S. 105.

ELEVENTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

DECLARATION OF OFFICE FOR RETURNING OFFICER,
 DEPUTY RETURNING OFFICER, PRESIDING OFFICER,
 SUBSTITUTE PRESIDING OFFICER, POLL CLERK OR
 SCRUTINEER.

.....of.....

I, of duly appointed
 to the office of Returning Officer (or Deputy Return-
 ing Officer, Presiding Officer Substitute Presiding Officer,
 Poll Clerk, or Scrutineer) at this election, hereby solemnly
 declare that I will faithfully act and assist in that office,
 and will not attempt to ascertain, nor by word or action
 directly or indirectly aid in discovering, for whom any elector
 votes, unless in answer to a question which I am legally
 bound to answer, or in compliance with the provisions of
 the abovementioned Act.

Signed this day of 19

by

Before me

Twelfth Schedule.

TWELFTH SCHEDULE.

S. 111 (3)
(a).

Western Australia.

Local Government Act, 1960.

Form No. 1.

APPLICATION FOR AN ABSENT VOTE CERTIFICATE
AND ABSENT VOTING PAPER OR VOTING PAPERS.

To the Returning Officer for the Municipality of the.....
.....of.....:

I, (insert full name, address and occupation), hereby apply for an absent vote certificate and an absent voting paper or voting papers to enable me to vote in absence at the forthcoming election or poll or both (as the case requires).

I solemnly and sincerely declare—

(a) that I am enrolled on the Electoral Roll for the
Municipal District of the of ;

(b) that the ground on which I apply to vote by post
is:—

(i) that I will not throughout the hours of polling
on the day of 19
(the day on which the forthcoming election
or poll is to be held) be within that Muni-
cipal District;

(ii) that I will not throughout the hours of poll-
ing on the day of 19
(the day on which the forthcoming election
or poll is to be held) be within five miles of
the nearest polling booth at which I am
eligible to vote;

(iii) that I am seriously ill or infirm and by reason
of my illness or infirmity will be precluded
from attending at a polling booth to vote;

(iv) that I will, by approaching maternity, be pre-
cluded from attending at a polling booth to
vote;

(v) that my religious beliefs prevent me from
exercising a vote on the day of the election

Twelfth Schedule.

(Note.—The elector will strike out such of the above grounds as do not apply to his or her particular case.)

or.

S. 102 (4)
(b).

To the Returning Officer of the Council of the Municipality
of the of .

I, _____ of _____ hereby

I lodge this application as a standing request that you supply me with Absent Voting Papers and Absent Voting Certificates for the purpose of voting in absence at all elections and polls connected with the municipality at which I am entitled to vote.

This request is your authority so to do until it is countermanded by me by written advice to that effect.

I solemnly and sincerely declare that—

- (1) I am an elector of the municipality, and enrolled or entitled to be enrolled on the electoral list;
- (2) I reside more than twenty miles from the nearest polling place within the area of the municipality.

I request that an absent vote certificate and an absent voting paper or voting papers (as the case requires) be forwarded to me at the following address:—

And I make this solemn declaration by virtue of section one hundred and six of the Evidence Act, 1906.

Declared at
and signed by
in his own handwriting
before me

(Signature of Applicant.)

Date.....

(Signature of Witness.)

(State qualifications of Witness.)

Cf. s. 111 (5)
ante.

Note.—Penalty for making a false statement in the application is that prescribed by S.111(5).

Twelfth Schedule.

No person shall witness the signature of an Elector to an application unless:—

- (a) he has satisfied himself as to the identity of the applicant; and
- (b) he has seen the applicant sign the application in his (the applicant's) own handwriting.

Penalty: £50. S. 111 (7).

Cr. s. 111 (7)
ante.

Western Australia.

S. 111 (4)
(g).

Local Government Act, 1960.

Form No. 2.

ABSENT VOTE CERTIFICATE.

I hereby certify that _____ of
is entitled to vote in absence in respect of the Municipality
of the _____ of _____ at the election
and poll (as the case requires) to be held on
the _____ day of _____ 19 ____.

(Signature of Returning Officer.)

Signed by the abovenamed	}	(Signature of elector in his own handwriting.)
.....in his		
own handwriting in my presence—		

(Signature of authorised witness.)

(State qualifications of authorised witness.)

Note.—The attention of the elector and the authorised witness is specially directed to the necessity of strictly observing the requirements indorsed on the back of each absent voting paper and to the fact that the absent voting papers when marked must be forwarded to the returning officer.

Twelfth Schedule, Thirteenth Schedule.

S. 111 (4).
(g).

Western Australia.

Local Government Act, 1960.

Form No. 3.

ABSENT VOTING PAPER.

(Front of Form.)

(Here set out form of voting paper as the case may require.)

The requirements of sections 113, 114, 115 and 116 of the abovementioned Act should be carefully read, and in particular the elector should note that he must not mark his vote on the voting paper until after he has first exhibited the voting paper (unmarked) to an authorised witness, mentioned in section 113 a copy of which appears on the back of this ballot paper.

(Back of Form.)



The provisions of section 113 of the abovementioned Act are as follows:—

(Here copy the provisions of that section.)

S. 190 (5)
(c).

THIRTEENTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

FORM OF RECORDING RESOLUTION TO MAKE AND
SUBMIT BY-LAWS FOR CONFIRMATION BY
THE GOVERNOR.

The Municipality of the _____ of _____

By-laws relating to _____

In pursuance of the powers conferred upon it by the abovementioned Act and of all other powers enabling it, the Council of the abovementioned Municipality hereby records

1960.]

Local Government.

[No. 84.

Thirteenth Schedule, Fourteenth Schedule.

having resolved on the day of

19 , to make and submit for confirmation by the Governor
the following by-laws:—

(Here, set out the by-laws.)

Dated this day of 19 .

(Seal of the Municipality.)

FOURTEENTH SCHEDULE.

S. 258 (4)
(b).

Western Australia.

Local Government Act, 1960.

FORM OF RECORDING RESOLUTION TO ADOPT AND SUBMIT ADOPTION OF DRAFT MODEL BY-LAWS FOR CONFIRMATION BY THE GOVERNOR.

The Municipality of the of

Adoption of Draft Model By-laws relating to.....

In pursuance of the powers conferred upon it by the
abovementioned Act the Council of the abovementioned
Municipality hereby records having resolved on the

day of 19 to adopt such of the draft
Model By-laws published in the *Gazette* of the
day of 19 (with such alterations) as
are here set out.

Draft Model By-law. Alterations.

No. 1. After the word, " " in line five
add the words, " ."

or

Substitute for the words, " "
in lines six and seven, the words, " "
."

or

Delete the words, " " in
lines eight and nine.

Dated the day of 19 .

(Seal of the Municipality.)

FIFTEENTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

S. 455 (1).

PART 1.—FORM OF POUNDKEEPER'S BOOK.

IMPOUNDED		RELEASED, SOLD OR DESTROYED	
Date and Time		Date and Time	
Description of Cattle, colours and brands		Whether released or Sold	
By whom impounded		If destroyed, by whose order	
For what cause		To whom delivered or proceeds paid	
Owner or supposed Owner		Sales	
Time and mode of giving notice		Trespass	
Ranger	Charges Payable	Other charges	
Impounding		Total	
Sustenance		Profit on Sale	
Trespass		Loss on Sale	
Advertising, etc.		Signature and address of person receiving cattle released	
Selling charges			
Total			
Date and Time		Amount received for—	
Whether released or Sold		Sales	
If destroyed, by whose order		Trespass	
To whom delivered or proceeds paid		Other charges	
Sales		Total	
Trespass		Profit on Sale	
Other charges		Loss on Sale	
Total		Signature and address of person receiving cattle released	

Fifteenth Schedule.

Western Australia.

Local Government Act, 1960.

S. 458 (2)
(b).

Part 2.

RANGER'S FEES.

Table of Fees Chargeable by Ranger, officer or other
authorised person in respect of Cattle
Impounded by him.

	If impounded after 6 a.m. and before 6 p.m.			If impounded after 6 p.m. and before 6 a.m.		
	£	s.	d.	£	s.	d.
(1) Entire horses, mules, asses, camels, bulls or boars, per head	2	0	0	4	0	0
(2) Mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, calves, rams or pigs, per head	1	0	0	2	0	0
(3) Wethers, ewes, lambs, goats, per head	4	0		6	0	

No charge is payable in respect of a suckling animal under the age of six months running with its mother.

The above fees include driving, leading or otherwise transporting the animal or animals no more than a distance of two miles. Where the distance is more than two miles, an additional charge of one shilling for each mile or part thereof in excess of two miles shall be paid to the ranger in respect of each animal impounded other than a suckling animal as provided.

If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.

Western Australia.

Local Government Act, 1960.

S. 462 (1).

Part 3.

TABLE OF POUNDAGE FEES FOR CATTLE IMPOUNDED.

	First 24 hours or part.			Subsequently each 24 hours or part.		
	£	s.	d.	s.	d.	
(1) Entire horses, mules, asses, camels, bulls or boars above or apparently above the age of two years, per head	1	0	0	5	0	
(2) Entire horses, mules, asses, camels, bulls or boars under the age of two years	10	0		2	6	
(3) Mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, calves, rams or pigs, per head	5	0		1	0	

Fifteenth Schedule.

	First 24 hours or part £. s. d.	Subsequently each 24 hours or part s. d.
(4) Wethers, ewes, lambs, goats, per head	2 0	1 0
No charge is payable in respect of a suckling animal under the age of six months running with its mother.		
If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.		

TABLE OF CHARGES FOR SUSTENANCE OF
CATTLE IMPOUNDED.

	For each 24 hours or part. s. d.
(1) Entire horses, mules, asses, camels, bulls, mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, or calves, per head	7 6
(2) Pigs of any description, per head	5 0
(3) Rams, wethers, ewes, lambs or goats, per head	2 0
No charge is payable in respect of a suckling animal under the age of six months running with its mother.	
If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.	

S. 463 (1).

Western Australia.

Local Government Act, 1960.

Part 4.

RATES FOR DAMAGE BY TRESPASS BY CATTLE.

Description of Cattle	Trespass in En- closed Growing Crop of any kind, or Garden or Enclosure from which the crop has not been removed or in an enclosed public cemetery or sanitary site	Trespass in an Unenclosed Paddock or Meadow of Grass or of Stubble	Trespass in other Unenclosed Land
	£ s. d.	s. d.	s. d.
1. Entire horses, mares, geldings, fillies, colts, foals, bulls, oxen, steers, heifers, calves, asses, mules, or camels—per head	1 0 0	4 0	0 3
2. Pigs of any description—per head	1 0 0	4 0	0 3
3. Sheep of any description—per head	0 2 0	1 0	0 1
4. Goats—per head	0 2 0	1 0	0 1

No damage is payable in respect of a suckling animal under the age of six months running with its mother.

If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.

1960.]

Local Government.

[No. 84.

Fifteenth Schedule.

Western Australia.

S. 469 (5)

Local Government Act, 1960.

Part 5.

FORM OF ADVERTISEMENT IN THE GOVERNMENT
GAZETTE OR NEWSPAPER CIRCULATING
IN THE LOCALITY.

Impounded at (here state the place), the
following (here describe the number and
kind of cattle, colours and brands (if any)). If not claimed,
will be sold on (here state the date of
proposed sale).

Dated the day of , 19 .

.....
Poundkeeper.

S. 540 (1).

SIXTEENTH SCHEDULE.
 Western Australia.
 Local Government Act, 1960.
 FORM OF RATE BOOK.

Number of Assess- ment	Rateable Owner			Description and Situation of Rate- able Land	Title Reference*	Original Location	Sub- divisional Plan No.	Lot No.	Area*			Unim- proved Capital Value	Annual Value	Values Altered otherwise than on Appeal	Values Altered on Appeal	Amount Payable in Respect of Rates
	Surname	Other Names or Initials	Address*						Acre	R.	P.					

* The council may but is not obliged to cause these particulars to be recorded.

Seventeenth Schedule.

SEVENTEENTH SCHEDULE.

S. 542 (1).

Western Australia.

Local Government Act, 1960.

NOTICE AND VALUATION AND RATE.

Year commencing 1st July, 19 , and ending 30th June,
19 , to .

Notice is hereby given that the council of the
of has ordered and directed that land of
which you are the owner and which is mentioned in this
notice, be valued and rated as follows:—

No. of Assess- ment	Land Rated	Unim- proved Value	Annual Value	Description of Rate	Rate in the £	Amount payable in re- spect of rate

You are hereby required to pay the above amount of
£ at the office of the council.

If the amount shown as payable in respect of rate is not
paid in full within one month of the date hereof, it may
be recovered by action in court.

If payment of the amount is allowed to fall into arrears
for a period of three years or more, the council may—

- (1) take the land, and let it on lease;
- (2) sell the land;
- (3) have the land vested in the municipality; or
- (4) have the land revested in the Crown.

Dated this day of , 19 .

Date of service .

Clerk.

N.B.—You are requested to bring or send this notice when
making payment.

Division 5 of Part XXV. of the abovementioned Act pro-
vides the grounds on which and the time and manner in
which individual appeals in respect of valuations may be
instituted, and s. 681 relates to general appeals.

Cf. Part
XXV.
Div. 5, ss. 554
et seq.
Cf. s. 681.

Discount.—(If discount is allowable, state here the dis-
count and the circumstances under which it is allowable.)

Cf. s. 550 (2)
as to
discount.

Eighteenth Schedule.

S. 559 (1).

EIGHTEENTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

NOTICE OF APPEAL AGAINST VALUATION.

To the Registrar of the Valuation Court at _____,
 and to the Clerk of the Council of _____
 of _____ :

Take notice that I appeal against the valuation in the Rate Book in respect of the undermentioned property on the grounds stated.

Description and situation of rateable land:—

Grounds of appeal:—

Dated the _____ day of _____ 19 ____.

Signature.....

Name in block letters.....

Address in block letters.....

Note.—Where the appeal is in respect of the valuation of property owned by the appellant or his principal, the appeal will not be entertained if the appellant does not deposit with the clerk at the time of service of this notice an amount equal to one-fourth of the general rate imposed in respect of the property, unless the appellant or his principal is exempted under the provisions of section five hundred and sixty-one, from paying rates in respect of the property.

A copy of this notice must be served on the clerk first and then a copy of it must be served on the registrar. If requested to do so, the clerk shall endorse on the copy to be served on the registrar acknowledgment of service of the notice, and if a deposit is paid, acknowledgment of receipt of the deposit in the following form:—

I acknowledge

(a) having been served this _____ day of _____ 19 ____ with a copy of this notice;

*(b) having received this _____ day of _____ 19 ____, the sum of £ _____,

being the deposit required under s. 559 of the above-mentioned Act.

Dated the _____ day of _____ 19 ____

Signed _____
 Clerk of the Council of the _____ of _____.

NINETEENTH SCHEDULE.

S. 578 (1) (a).

Western Australia.

Local Government Act, 1960.

.....of.....

**NOTICE OF INTENTION TO LET LAND FOR
NON-PAYMENT OF RATES.**

To

Notice is hereby given that the sum of pounds
 shillings and pence is now due and
unpaid to the Council of the of ,
for rates in respect of (here describe the land—Location No.,
Lot No., etc.) situated in Street (or Road or
other situation, setting out a sufficient description of the
land to identify it).

Payment of that sum is hereby demanded.

If that sum is not paid within one hundred and five days
from the date of service of this notice the council will take
possession of and lease the land, under the provisions of the
abovementioned Act.

(Mayor) (or President) (or clerk).

Council Office,

, 19 .

TWENTIETH SCHEDULE.S. 578 (1)
(b).

Western Australia.

Local Government Act, 1960.

.....of.....

NOTICE.

To or the owner of, or other person or
persons interested in (here describe the land sufficiently
to identify it).

You are hereby informed that rates to the amount of
£ in respect of the abovementioned land,
are due and in arrear for a period of three years and upwards
to the abovementioned Municipality.

Payment of that sum is hereby demanded.

In default of compliance with this demand, the Council
will, after the lapse of one hundred and five days from the
date of the affixing of this notice upon this land, namely
the day of 19 , take possession
of and deal with the land under the provisions of the above-
mentioned Act.

Mayor or President (or Clerk).

Council Office,

, 19 .

Twenty-first Schedule, Twenty-second Schedule.

TWENTY-FIRST SCHEDULE.

Western Australia.

Local Government Act, 1960.

of

NOTICE.

Possession has been taken of this land, being Allotment No. of section (or portion) No. (here describe situation of land), by the council in accordance with the provisions of the abovementioned Act, and it is to be let on lease.

Mayor or President (or Clerk).

Council Office,

, 19 .

S. 583 (2)
(e).

TWENTY-SECOND SCHEDULE.

Western Australia.

Local Government Act, 1960.

Form No. 1.

Municipality of the

of

NOTICE REQUIRING PAYMENT OF RATES PRIOR TO SALE.

The several registered proprietors or owners in fee simple, or persons appearing by the last memorial in the Office of the Registrar of Deeds to be seised of the fee simple respectively of the several pieces of land described in the third column of the Appendix to this notice and persons appearing in the Register Book or by memorial in the Office of the Registrar of Deeds to have respectively an estate or interest in the land, and whose names appear in the first column of the Appendix to this notice.

Take notice that—

- (1) Default has been made in the payment to the council of the abovenamed Municipality of a rate charged on the several pieces of land described in the third column of the Appendix to this Notice, and the default has continued in respect of each separate piece of land for a period greater than three years;
- (2) The total amount owing to the council in respect of rates and other amounts charged on each piece of land is shown in the second column of the Appendix set opposite the description of that piece of land;

Twenty-second Schedule.

- (3) Payment of these amounts representing rates, or
(as the case requires)

is hereby required; and

- (4) In default of payment, the pieces of land will be offered for sale by public auction after the expiration of one hundred and five days from the date of service of this notice at a time appointed by the Council.

The pieces of land in respect of which the rates specified in the second column of the Appendix are owing are those severally described in the third column of the Appendix and set opposite the respective amounts so specified.

Dated the day of 19 .

Clerk of the Council.

APPENDIX.

Names of Registered Proprietors or Owners, and also of all other Persons having an Estate or Interest in the Land	Amount owing showing separately the amount owing as Rates, and any other Amounts owing	Description of the several Pieces of Land referred to

Western Australia.

S. 583 (3).

Local Government Act, 1960.

Form No. 2.

Municipality of the of .

NOTICE REQUIRING PAYMENT OF RATES
PRIOR TO SALE.

Where the Land is under the Transfer of Land Act, 1893. To A.B., of the registered proprietor in fee simple of the land hereinafter described, and C.D. (and E.F.) a person (or persons) appearing by the Register Book to have an estate or interest in the land.

Twenty-second Schedule, Twenty-third Schedule.

Where the land is not under the Transfer of Land Act, 1893. To A.B., the person or persons appearing by the last memorial in the Office of the Registrar of Deeds to be seised of the fee simple of the land hereinafter described, and to C.D. (and E.F.) a person (or persons) appearing by a memorial in the Office of the Registrar of Deeds to have an estate or interest in the land.

Take notice that—

- (1) Default has been made in the payment to the above-mentioned municipality of rates imposed in respect of land described at the end of this notice and the default has continued for a period greater than three years;
- (2) The total amount owing to the municipality for rates imposed in respect of the land is (state amount in figures) and the total amount owing to the municipality for other amounts payable in respect of the land is (state amount in figures);
- (3) Payment of these amounts representing rates, or (as the case requires) is hereby required; and
- (4) In default of payment, the land will be offered for sale by public auction after the expiration of one hundred and five days from the date of this publication of this notice at a time appointed by the council of the municipality.

The land in respect of which the rates are owing is—

(Describe the land sufficiently to identify it.)

Dated the

day of

19

Clerk of the Council.

TWENTY-THIRD SCHEDULE.

Western Australia.

Local Government Act, 1960.

DEBENTURE.

Municipality of the _____ of _____.

Loan No. _____ for £ _____

Debenture No. _____ for £ _____ due _____ 19 ____.

This debenture is one of a series of _____ debentures issued by the Municipality of the _____ of _____

for the purpose of securing a loan of _____ pounds (£ _____) borrowed in accordance with the provisions of the abovementioned Act, and repayable with interest at the rate of _____ per centum per annum, payable at the times and in manner set out in the Schedule of Debentures indorsed on the back of this debenture.

Twenty-third Schedule.

This debenture having been issued under paragraph (a) of subsection (1) of section six hundred and four of the abovementioned Act, a sinking fund is not required for the redemption of the loan and payment of interest, but the council undertakes to set aside from time to time a half-yearly sum of set out in the fifth column of the Schedule, indorsed on the back of this debenture, to meet the principal and interest on the loan.

This debenture entitles the bearer to the sum of being one half-yearly payment on account of the loan and interest payable on the day of 19 , and representing the amount of principal and interest as set opposite the number of this debenture in the fourth and third columns respectively of the Schedule indorsed on the back of this debenture, the interest being computed at the specified rate per annum up to the due date of this debenture for the preceding half-year on the amount of principal owing under all outstanding debentures of this series at the commencement of the half-year as set opposite the number of this debenture in the second column of that Schedule.

The sum of principal and interest is payable at and is charged in accordance with the provisions of the abovementioned Act upon the revenue of the municipality.

Dated this day of one thousand
nine hundred and .

(Seal of the Municipality.)

SCHEDULE OF DEBENTURES REFERRED TO:

First Column	Second Column	Third Column	Fourth Column	Fifth Column	Sixth Column
Number of Debenture	Principal outstanding at the beginning of each half-year	Portion of half-year's payment applied to interest	Portion of half-year's payment applied to principal	Total half-yearly payment secured by debenture	Date payable

Twenty-fourth Schedule, Twenty-fifth Schedule.

S. 604 (1)
(b).
Cf. Gazette
13th Apr.,
1934, p. 518,
Form No.
28a.

TWENTY-FOURTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

Municipality of the _____ of _____ .
Loan No. _____ for £ _____
Debenture No. _____ for £ _____ due _____ 19 _____ .

This debenture is issued by the Municipality of the _____ of _____ for the purpose of securing a loan of £ _____ borrowed in accordance with the provisions of the abovementioned Act.

By this debenture the Municipality undertakes—

- (1) to repay at _____ the amount of the loan to the bearer of this debenture on the _____ day of _____ 19 _____ ; and
- (2) until repayment of the loan, to pay on the surrender of the appropriate coupon issued with this debenture interest on the amount of the loan by equal half-yearly payments on the _____ day of _____ , and the _____ day of _____ , at _____ to bearer of the coupon; and
- (3) to invest in accordance with the provisions of the abovementioned Act the sum of £ _____ per centum of the loan in each year until it is repaid for the purpose of establishing and maintaining a sinking fund for the redemption of the loan.

Dated this _____ day of _____ one thousand nine hundred and _____ .

(Seal of the Municipality.)

S. 604 (1)
(b).

TWENTY-FIFTH SCHEDULE.

Western Australia.

Local Government Act, 1960.

DEBENTURE COUPON.

Municipality of the _____ of _____
Loan No. _____
No. of Debenture _____ Coupon No. _____
Interest coupon for £ _____ , being one half-year's
interest due on the _____ day of _____ 19 _____ .

Twenty-fifth Schedule, Twenty-sixth Schedule.

This coupon will be paid on presentation at—

.....
Mayor/President.

.....
Clerk.

The Municipality of the
of

TWENTY-SIXTH SCHEDULE.

Ss. 28, 611
(3).

Voting Paper.

For use at polls of electors concerning alteration of districts;
and concerning loans; and for other polls or referendums.

Western Australia.

Local Government Act, 1960.

VOTING PAPER.

The propositions submitted to the electors is—

- (a) that the Municipality unite with the Municipality of (or as the case may be); or s. 30 (1)
(c).
- (b) that the council proceed to borrow the sum of pounds (£) Loan No. in s. 611 (3).
terms of the advertisement which appeared in the
Government Gazette published on the day
of 19 ;

(or using such wording for the proposition as the case requires).

If the elector wishes to vote in favour of the proposition he must place the numeral "1" in the square set against the word "Yes" hereunder.

If the elector wishes to vote against the proposition, he must place the numeral "1" in the square set against the word "No" hereunder.

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

