

Western Australia

Local Government (Constitution) Regulations 1998

As at 20 Jan 2006

Version 00-b0-03

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Local Government (Constitution) Regulations 1998

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Western Australia

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Local Government (Constitution) Regulations 1998*.

2. Interpretation

In these regulations, unless the contrary intention appears —

“**Form**” means a Form in Schedule 1;

“**section**” means a section of the *Local Government Act 1995*.

Part 2 — Districts and wards

Division 1 — Orders under section 2.1

3. Interpretation

- (1) If there is a reference in a provision in this Part to a district described as “district A” then a reference in that provision to “local government A” is a reference to the local government of district A.
- (2) Subregulation (1), with necessary changes, applies in respect of other districts similarly described.

4. Creating a new district: consequences

- (1) This regulation applies if an order is made under section 2.1 declaring an area of the State to be a district.
- (2) The first general meeting of the electors of the district is to be held under section 5.27 after the local government of the district accepts the annual report for its first financial year.

5. Changing district boundaries: consequences

- (1) In this regulation —
 “commencement” means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 changing the boundaries of a district (**“district A”**).
- (3) If as a result of the order the whole of the area of a ward of district A is severed from it, then on commencement —
 - (a) the ward is abolished; and
 - (b) the number of offices of councillor on the council of local government A is reduced by the number of offices of councillor for the ward.

- (4) If as a result of the order the area of district A incorporates a part of the area of another district (which is not abolished) (“**district B**”), then on commencement —
- (a) if under section 4.32 a person has, in respect of rateable property in that part of district B, made an enrolment eligibility claim that has been accepted and still has effect under section 4.33 immediately before commencement —
 - (i) the claim is to be taken to have been made and accepted in respect of district A on the day on which it was accepted in respect of district B; and
 - (ii) for the purposes of section 4.33, any ordinary elections of local government B held after the claim was so accepted are to be treated as if they had been held by local government A;
 - (b) the method of valuation of land used by local government B as a basis for a rate in respect of land in that part of district B immediately before commencement becomes the method of valuation to be used by local government A in respect of that land;
 - (c) if immediately before commencement that part of district B is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928* —
 - (i) the scheme has effect in respect of that part as if it were a scheme prepared by local government A in respect of that part, approved by the Minister under that Act, and published under that Act on commencement;
 - (ii) in so far as the scheme applies to that part, local government A is taken to be the responsible authority for the purposes of that Act; and
 - (iii) in so far as the scheme applies to that part, a reference in the scheme to local government B is

to be taken to be a reference to local government A;

- (d) if a matter or procedure under a written law in relation to any land in that part of district B has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether by local government B or another person, has effect as if it had been performed by local government A or that other person and the matter or procedure may be completed by local government A or that other person; and
- (e) actions and proceedings by or against local government B are not affected.

6. Abolishing a district: consequences

- (1) In this regulation —
 “commencement” means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 abolishing a district (**“district A”**).
- (3) On commencement —
 - (a) local government A is disestablished;
 - (b) all offices of members of the council of local government A cease to exist.
- (4) If on commencement the whole of the area of district A is included in the area of one other district (**“district B”**), whether by means of a boundary change to an existing district or by means of a declaration of a new district, then on commencement —
 - (a) the property, rights and liabilities of local government A become those of the local government B;
 - (b) if under section 4.32 a person has, in respect of rateable property in district A, made an enrolment eligibility

claim that has been accepted and still has effect under section 4.33 immediately before commencement —

- (i) the claim is to be taken to have been made and accepted in respect of district B on the day on which it was accepted in respect of district A; and
 - (ii) for the purposes of section 4.33, any ordinary elections of local government A held after the claim was so accepted are to be treated as if they had been held by local government B;
- (c) the method of valuation of land used by local government A as a basis for a rate in respect of land in district A immediately before commencement becomes the method of valuation to be used by local government B in respect of that land;
- (d) if immediately before commencement any land in district A is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928* —
 - (i) the scheme has effect in respect of that area as if it were a scheme prepared by local government B in respect of that area, approved by the Minister under that Act, and published under that Act on commencement;
 - (ii) in so far as the scheme applies to that area, local government B is taken to be the responsible authority for the purposes of that Act; and
 - (iii) in so far as the scheme applies to that area, a reference in the scheme to local government A is to be taken to be a reference to local government B;
- (e) if a matter or procedure under a written law in relation to any land in district A has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether

- by local government A or another person, has effect as if it had been performed by local government B or that other person and the matter or procedure may be completed by local government B or that other person;
- (f) if a matter or procedure under a written law has not been completed by local government A before commencement, the matter or procedure may be completed by local government B;
 - (g) a person who, immediately before commencement, has a contract of employment with local government A, is to be taken to have an identical contract of employment with local government B;
 - (h) a person who, immediately before commencement, holds an appointment made under a written law by local government A for the purposes of enforcing or administering that written law, becomes a person appointed by local government B for those purposes;
 - (i) a reference in any instrument, contract, written law, or proceedings made or commenced before commencement to local government A shall be read and construed as a reference to local government B;
 - (j) actions and other proceedings commenced by or against local government A and pending immediately before commencement may be continued by or against local government B; and
 - (k) actions and other proceedings which could have been brought by or against local government A may be brought by or against local government B.
- (5) If on commencement, a part of the area of district A is included in the area of another district ("**district B**"), whether by means of a boundary change to an existing district or by means of a declaration of a new district, then on commencement —
- (a) if under section 4.32 a person has, in respect of rateable property in that part of district A, made an enrolment

eligibility claim that has been accepted and still has effect under section 4.33 immediately before commencement —

- (i) the claim is to be taken to have been made and accepted in respect of district B on the day on which it was accepted in respect of district A; and
 - (ii) for the purposes of section 4.33, any ordinary elections of local government A held after the claim was so accepted are to be treated as if they had been held by local government B;
- (b) the method of valuation of land used by local government A as a basis for a rate in respect of land in that part of district A immediately before commencement becomes the method of valuation to be used by local government B in respect of that land;
- (c) if immediately before commencement that part of district A is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928* —
 - (i) the scheme has effect in respect of that part as if it were a scheme prepared by local government B in respect of that part, approved by the Minister under that Act, and published under that Act on commencement;
 - (ii) in so far as the scheme applies to that part, local government B is taken to be the responsible authority for the purposes of that Act; and
 - (iii) in so far as the scheme applies to that part, a reference in the scheme to local government A is to be taken to be a reference to local government B;
- (d) if a matter or procedure under a written law in relation to any land in that part of district A has not been completed before commencement, any function performed in

respect of that land under that law before commencement, whether by local government A or another person, has effect as if it had been performed by local government B or that other person and the matter or procedure may be completed by local government B or that other person;

- (e) actions and other proceedings commenced by or against local government A in relation to any land, or in relation to a matter that occurred on any land, in that part of district A and pending immediately before commencement may be continued by or against local government B; and
- (f) actions and other proceedings which could have been brought by or against local government A in relation to any land, or in relation to a matter that occurred on any land, in that part of district A may be brought by or against local government B.

7. Effect of section 2.1 order on local laws

- (1) In this regulation —
 “commencement” means the commencement of the order referred to in subregulation (2).
- (2) If as a result of an order made under section 2.1 an area of the State is declared to be a district (**“district A”**) and the area includes —
 - (a) a part of the area of a district (**“district B”**) the boundaries of which are changed by the order;
 - (b) the whole, or a part, of the area of a district (**“district C”**) that is abolished by the order; or
 - (c) a combination of the areas described in paragraphs (a) and (b),

then on commencement —

- (d) the local laws that applied in that part of the area of district B immediately before the commencement

continue to apply in respect of that part of the area of district B that is included in district A;

- (e) the local laws that applied in the whole, or that part, of the area of district C immediately before the commencement continue to apply in respect of the whole, or that part, of the area of district C that is included in district A;
- (f) the local laws of local government C continue to apply in respect of the whole, or that part, of the area of district C that is included in district A; and
- (g) the local laws of local governments B and C, in so far as they continue to apply in respect of those areas —
 - (i) are to be administered and enforced by local government A; and
 - (ii) subject to Division 2 of Part 3 of the Act, may be amended or repealed by local government A, as if they were local laws of local government A.

Division 2 — Matters under Schedules 2.1 and 2.2 to the Act

8. Proposals for creating, changing the boundaries of, or abolishing districts (Sch 2.1, cl. 2)

A proposal by affected electors under clause 2 of Schedule 2.1 to the Act is to be in the form of Form 1.

9. Request for a poll on a recommended amalgamation (Sch 2.1, cl. 8)

A request by electors under clause 8 of Schedule 2.1 to the Act asking for a recommendation of the Advisory Board that districts be abolished and amalgamated to be put to a poll of electors of the districts is to be in the form of Form 2.

10. Submission about changes to wards, names or representation (Sch 2.2, cl. 3)

A submission by affected electors under clause 3 of Schedule 2.2 to the Act is to be in the form of Form 3.

Part 3 — Offices on councils

10A. Definition of “election”

In this Part —

“election” means an election under Schedule 2.3;

“records of the election” includes —

- (a) each marked ballot paper returned to the CEO under regulation 11D(2);
- (b) each ballot paper marked by the CEO on behalf of a councillor under regulation 11E; and
- (c) each ballot papers endorsed “spoilt” under regulation 11C.

[Regulation 10A inserted in Gazette 31 Mar 2005 p. 1044.]

11. Proposals to change the method of filling the office of mayor or president (s. 2.12)

A proposal by electors under section 2.12 to change the method of filling the office of mayor or president of a local government to the other method mentioned in section 2.11(1)(a) or (b) is to be in the form of Form 4.

11A. Election of mayor, president, deputy mayor or deputy president by council (Sch. 2.3)

- (1) The CEO is to cause sufficient numbers of ballot papers to be printed for the purposes of the election.
- (2) The CEO is to cause the ballot papers to be printed so that the names of the candidates appear on the ballot paper —
 - (a) in alphabetical order; or
 - (b) in such order as is determined using a method selected by the CEO which is fair to all of the candidates.

- (3) The ballot papers are to be in the form of Forms 10 and 11 of the *Local Government (Elections) Regulations 1997*, modified as is necessary for the purposes of the election.
- (4) A councillor is to cast his or her vote by marking the ballot paper by placing a tick in the box opposite the name of the candidate whom the councillor wishes to be elected.

[Regulation 11A inserted in Gazette 31 Mar 2005 p. 1044-5.]

11B. Ballot papers to be authentic (Sch. 2.3 cls. 4 and 8)

Before giving a person a ballot paper under this Part the CEO is to initial the back of it or make sure that it is authenticated in some other way.

[Regulation 11B inserted in Gazette 31 Mar 2005 p. 1045.]

11C. Spoilt ballot papers (Sch. 2.3 cls. 4 and 8)

If the CEO is satisfied that a ballot paper given to a councillor has been spoilt by accident or mistake, the CEO is to —

- (a) give the person a replacement ballot paper; and
- (b) endorse “spoilt” on the spoilt ballot paper.

[Regulation 11C inserted in Gazette 31 Mar 2005 p. 1045.]

11D. Marking and dealing with the ballot paper (Sch. 2.3 cls. 4 and 8)

- (1) Subject to regulation 11E, a councillor who receives a ballot paper under this Part is to mark the ballot paper in such a manner that it cannot be seen by anyone else.
- (2) The councillors are to return the marked ballot paper to the CEO.

[Regulation 11D inserted in Gazette 31 Mar 2005 p. 1045.]

r. 11E

11E. Assistance to be given to councillors who cannot otherwise vote (Sch. 2.3 cls. 4 and 8)

- (1) If a councillor who receives a ballot paper under this Part cannot vote without assistance because of impairment of sight or any other impairment or condition affecting the councillor's ability to read or to write, the councillor may request the CEO to mark on the ballot paper the vote that the councillor wishes to cast.
- (2) If a request is made under subregulation (1) the CEO, or another local government employee authorised for that purpose by the CEO, is to mark the ballot paper to record the vote that the councillor wishes to cast.

[Regulation 11E inserted in Gazette 31 Mar 2005 p. 1045-6.]

11F. Declaration and notice of result of election — (Sch. 2.3 cls. 4 and 8)

- (1) The person conducting the election is to declare the result of the election to the councillors at the meeting at which the election was held.
- (2) The declaration is to include —
 - (a) the names of the candidates; and
 - (b) the name and term of office of the candidate declared elected.
- (3) The declaration may include the number of votes received by each candidate.
- (4) The person conducting the election is also to give local public notice of the result of the election in the form of Form 19 of the *Local Government (Elections) Regulations 1997*, modified as is necessary for the purposes of this regulation.

[Regulation 11F inserted in Gazette 31 Mar 2005 p. 1046.]

11G. Records of election to be retained (Sch. 2.3 cls. 4 and 8)

- (1) As soon as practicable after the result of the election is declared the CEO is to —
 - (a) put the records of the election in one or more parcels;
 - (b) secure each parcel; and
 - (c) endorse each parcel by signing and dating it.
- (2) The CEO is to keep the parcels in safe custody and retain them for a period of at least 4 years after the declaration of the result of the election.
- (3) If, after the period mentioned in subregulation (2), the parcels are to be destroyed, the destruction is to be carried out by or under the supervision of the CEO in the presence of at least 2 employees.

[Regulation 11G inserted in Gazette 31 Mar 2005 p. 1046.]

12. Disqualification for membership; serious local government offences (s. 2.22)

For the purposes of the definition of “serious local government offence” in section 2.22(3) —

- (a) the period referred to in paragraph (a) of the definition is —
 - (i) 2 years in the case of an offence against the Act; or
 - (ii) 3 months in the case of an offence against the former provisions;and
- (b) the amount referred to in paragraph (b) of the definition is —
 - (i) \$10 000 in the case of an offence against the Act; or
 - (ii) \$5 000 in the case of an offence against the former provisions.

r. 13

13. Oaths, affirmations and declarations (ss. 2.29, 2.42)

- (1) For the purposes of sections 2.29 and 2.42 —
 - [(a), (b) deleted]*
 - (c) the form of declaration for a mayor, president, deputy mayor, deputy president or councillor is that in Form 7;
 - (d) the form of declaration for a commissioner is that in Form 8.
- (2) A declaration required by section 2.29 to be made by a person elected as a mayor or president is to be made before —
 - (a) the immediate predecessor of the person in the office of mayor or president; or
 - (b) an authorized person.
- (3) A declaration required by section 2.29 to be made by a person elected as a councillor, deputy mayor or deputy president is to be made before an authorized person.
- (4) A declaration required by section 2.42 to be made by a person appointed as a commissioner is to be made before an authorized person.
- (5) In this regulation —

“authorized person” means a person before whom a statutory declaration can be made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

[Regulation 13 amended in Gazette 20 Jan 2006 p. 380-1.]

Part 4 — Miscellaneous

14. Transitional provision: Certain council members (s. 9.71)

- (1) To avoid doubt it is declared that for the purposes of the application of Part 2, Division 5 of the Act and section 2.32 to —
- (a) the remainder of the term of office of a member of council referred to in clause 6 of Schedule 9.3; or
 - (b) the term of office of a member of council elected at an election referred to in clause 13 of Schedule 9.3,
- the member is to be regarded as being an elector of the district so long as he or she continues to —
- (c) reside in the district; or
 - (d) be, within the meaning of the former provisions, the owner or occupier of rateable property in the district.

- (2) In subregulation (1) —

“former provisions” means the *Local Government Act 1960* as in force immediately before the day on which the *Local Government Act 1995* came into operation.

15. Local Government (Constitution) Regulations 1996 repealed

The *Local Government (Constitution) Regulations 1996* are repealed.

Form 1. Proposal to create, change the boundaries of, or abolish a district
[r.8]

1. The affected electors, whose names, details and signatures are set out in the attached list, propose that an order should be made under section 2.1 of the *Local Government Act 1995* in relation to the district of [name of district proposed to be created, affected or abolished].
2. A summary of the purposes of the proposed order is as follows:
[Here set out summary]
3. The following documents are attached to and form part of this proposal:
 - a statement setting out clearly the nature of the proposal and the effects of the proposal on local governments; and
 - a plan illustrating any proposed changes of the boundaries of a district.
4. This proposal is served on behalf of the listed signatories by —
Name: _____ Signature: _____
Contact address: _____ Phone No.: _____
Date: _____

Under clause 2(1)(d) of Schedule 2.1 to the *Local Government Act 1995* a proposal that an order be made under section 2.1 of the Act to create, change the boundaries of, or abolish a district can be made to the Local Government Advisory Board by affected electors who —

- are at least 250 in number; or
- are at least 10% of the total number of affected electors.

[Form 1 continued]

List of affected electors (form of each page of signatories)

We, the undersigned, propose that an order be made under section 2.1 of the *Local Government Act 1995* for the purposes summarized in item 2 of this proposal in relation to the district named in item 1.

Full name of affected elector ²	Address which entitles, or would entitle, you to vote in the elections of the local government of the district proposed to be created, affected or abolished	Signature of affected elector	Date

2 An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

An “affected elector” is —

- an elector whose eligibility as an elector comes from residence, or ownership or occupation of property, in the area directly affected by the proposal; or
- a person who would be an elector if the area directly affected by the proposal became, or became part of, a district.

Sch. Schedule 1 — Forms

Form 2. Request for poll on a recommended amalgamation [r. 9]

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Request for a poll on a recommended amalgamation¹

To: The Minister for Local Government.

1. The electors of the district of [name of district whose electors are making the request], whose names, details and signatures are set out in the attached list, request that the recommendation of the Local Government Advisory Board that the districts of [names of the 2 or more districts to be abolished or amalgamated] be abolished and amalgamated, be put to a poll of electors of the districts.
2. This request is served on behalf of the listed signatories by —

Name:
Contact address:
Date:

Signature:
Phone No.:

List of electors (form of each page of signatories)

We the undersigned, electors of the district of [name of district whose electors are making the request], request that the recommended abolition and amalgamation of the districts of [names of the 2 or more districts to be abolished or amalgamated] be put to a poll of electors of those districts under the *Local Government Act 1995*.

Full name of elector ²	Address which entitles you to vote in the elections of the local government of a district recommended for amalgamation	Signature of elector	Date

-
- 1 Under clause 8 of Schedule 2.1 to the *Local Government Act 1995*, a request asking for a recommendation of the Local Government Advisory Board that districts be abolished and amalgamated to be put to a poll of electors of the districts can be made to the Minister for Local Government by —
 - at least 250 of the electors of one of the districts; or
 - at least 10% of the electors of one of the districts.
 - 2 An “elector” is one of the following —
 - a resident owner or occupier enrolled to vote at State elections;

- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

Sch. Schedule 1 — Forms

**Form 3. Submission about changes to wards, name or representation
[r. 10]**

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Submission about changes to wards, name or representation¹

To: The ²Mayor/President of [name of local government].

1. The affected electors of the district of [name of district], whose names, details and signatures are set out in the attached list, submit that an order should be made under the *Local Government Act 1995* for the following purpose:

[Here set out the purpose]

for the following reasons:

[Here set out the reasons]

[Attach any other relevant documentation, including a map if appropriate]

2. This submission is served on behalf of the listed signatories by —

Name:

Signature:

Contact address:

Phone No.:

Date:

-
- 1 Under clause 3 of Schedule 2.2 to the Local Government Act 1995, a submission that an order be made under the Act about wards, the name of a district or ward or the number of councillors for a district or ward can be made to the local government concerned by affected electors who —

- are at least 250 in number; or
- are at least 10% of the total number of affected electors.

- 2 Delete the one that does not apply.

[Form 3 continued]

List of affected electors (form of each page of signatories)

We the undersigned, submit that an order should be made under the *Local Government Act 1995* for the purpose set out in item 1 of this submission in relation to the [name of local government].

Full name of affected elector ³	Address which entitles you to vote in the elections of the local government to which this submission relates	Signature of affected elector	Date

3 An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

An “affected elector” is an elector whose eligibility as an elector comes from residence, or ownership or occupation of property, in the area directly affected by the submission.

1. The method of filling the office of ²mayor/president currently used by the [name of local government] is ²election by electors of the district/election by the council from amongst the councillors.
2. The electors of [name of district], whose names, details and signatures are set out in the attached list, propose that the method of electing the mayor/president of the [name of local government] be changed to ²election by the council from amongst the councillors/ election by electors of the district.
3. A summary of the reasons for the proposed change is as follows:
[Here set out summary]
4. This proposal is served on behalf of the listed signatories by —
Name: Signature:
Contact address: Phone No.:
Date:

[Form 4 continued]

List of electors (form of each page of signatories)

We the undersigned, propose that the method of filling the office of ²mayor/president of the [name of local government] be changed to ²election by the council from amongst the councillors/ election by electors of the district.

Full name of elector ³	Address which entitles you to vote in the elections of the local government to which this proposal relates	Signature of elector	Date

1 Under section 2.11(1) of the *Local Government Act 1995*, the method of filling the office of mayor or president of a local government is either —

- election by the electors of the district; or
- election by the council from amongst the councillors.

Under section 2.12 of the Act, a proposal to change from one method to the other method can be made to the local government by electors of the district who —

- are at least 250 in number; or
- are at least 10% of the total number of electors of the district.

2 Delete the one that does not apply.

3 An elector is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

[Forms 5 and 6 deleted in Gazette 20 Jan 2006 p. 381.]

Sch. Schedule 1 — Forms

Form 7. Declaration by elected member of council

[r. 13(1)(c)]

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Declaration by elected member

I,,
of
having been elected to the office of ¹mayor/ deputy mayor/ president/ deputy president/
councillor of the ²
declare that I take the office upon myself and will duly, faithfully, honestly, and with
integrity, fulfil the duties of the office for the people in the district according to the best
of my judgment and ability, and will observe the code of conduct adopted by the ²
..... under section 5.103 of the *Local Government Act 1995*.

Declared at on

by

Before me:

1 Delete those that do not apply.

2. Insert the name of the local government.

Form 8. Declaration by commissioner [r. 13(1)(d)]

Local Government Act 1995
Local Government (Constitution) Regulations 1998
Declaration by commissioner

I,,
of,
having been appointed to the office of commissioner
of the ¹
declare that I take the office upon myself and will duly, faithfully, honestly, and with
integrity, fulfil the duties of the office according to the best of my judgment and ability.

Declared at on
by
Before me:

¹ Insert the name of the local government

Notes

- ¹ This is a compilation of the *Local Government (Constitution) Regulations 1998* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Local Government (Constitution) Regulations 1998</i>	26 Jun 1998 p. 3449-74	26 Jun 1998
<i>Local Government (Constitution) Amendment Regulations 2005</i>	31 Mar 2005 p. 1044-6	7 May 2005 (see r. 2)
<i>Local Government (Constitution) Amendment Regulations 2006</i>	20 Jan 2006 p. 380-1	20 Jan 2006