

Municipalities' readiness to comply

WITH TREASURY'S COMPETENCY REQUIREMENTS

In just under six months the competency framework in the National Treasury's Minimum Competency Regulations (Municipal Regulations on Minimum Competency Levels, *Government Gazette* 29967 of 15 June 2007) will take full effect.

The regulations took effect on 1 January 2008 (see *LGB* 13(4) pages 16–18) but gave a five-year period of grace for all financial and supply-chain management officials throughout the country to attain the minimum competency levels contained in the competency framework. For these officials, the countdown reaches zero on 1 January 2013.

Given that there are less than six months remaining of the fifth and final year of that special dispensation, are municipalities ready to comply with the competency framework? Are municipalities on the right track? Most importantly, what happens if some officials do not qualify at the end of this dispensation? What is the legal position on 31 December 2012?

The National Treasury has addressed some of these questions and had the opportunity to clarify the legal position in a circular issued at the end of April 2012 (Circular 60). In the words of the National Treasury, the circular was issued to 'address matters raised and to address any points of clarification sought by other stakeholders'.

Municipalities' readiness

The circular is silent on municipalities' state of readiness to meet the deadline. It simply states that the purpose behind the five-year period of grace was to provide municipalities with sufficient time to address skills gaps and ensure compliance in a manner that will not disrupt day-to-day operations. It further states that the regulations take into account the differences in the size and scope of municipalities, and differentiates between the sizes of municipal budgets. The regulations further prescribe different requirements in terms of educational qualifications, financial and supply-chain management competencies, and the requirements for core managerial and occupational competencies dependent on the relevant

positions.

The circular further states that in all these variations, the National Treasury is also mindful of the value of experience and previously attained qualifications.

The only intimation offered by the circular on municipalities' readiness is the consideration of special merit cases, in terms whereof the National Treasury will extend the deadline for a further 18 months for municipalities experiencing difficulties in complying with the competency framework. This presupposes that some municipalities are likely to miss the deadline, which is alarming. However, it is unclear what the magnitude of the problem is as the information in this regard is not readily available.

It is hoped that all will be revealed after the 7 September 2012 deadline for the submission of requests for consideration as special merit cases. It is only then that the magnitude of the problem of non-compliance will likely be known.

Special measures

Even though the National Treasury does not indicate municipalities' state of readiness and the problems they face, it does, in what could be seen as a pre-emptive move, put in place special measures to cater for instances where municipalities are not able to meet the deadline. This new dispensation is available both to officials currently in the municipality's employ and to those appointed from the date on which the circular was issued (20 April 2012) onwards.

Officials currently employed in municipalities

Applications for a municipality to be considered as a special merit case and thus receive the 18-month deadline extension will be considered based on the particular circumstances of the municipality concerned. However, municipalities

must demonstrate that they have taken reasonable steps towards compliance. For example, they must show that their officials are registered for relevant training and have attended part of the planned training, but may still need time to complete it. The National Treasury will consider each case individually based on the application provided by the municipality for all affected officials.

See also Ntliziywana, P (2011) 'The implications of non-compliance with Treasury's competency requirements', *LGB* 13(4): 16–18, available for downloading from our website at <http://www.ldphs.org.za/local-government-bulletin>

months of the deadline of 1 January 2013 implies that there must be a council resolution to that effect. Otherwise the circular's use of 'council' as opposed to 'municipality' – which has been constantly used elsewhere in the circular – would make no sense. This is an onerous burden for bigger municipalities because convening a council meeting is not as easy as it is in smaller ones.

Officials appointed from 20 April 2012

The circular provides that municipalities may still appoint persons not in possession of the minimum competency requirements from other spheres of government or the private sector. However, such persons must have already attained:

- higher education qualifications;
- work-related experience; and
- core managerial and occupational competencies.

Moreover, the municipality must apply to the National Treasury to be considered a special merit case before the extension of the deadline for a further 18 months is granted. This application must be accompanied by information on why the municipality was unable to appoint a duly qualified person in terms of the regulations. Furthermore, the council must give a commitment that all required training will be completed within 18 months of the deadline of 1 January 2013, thereby ensuring that the affected official will be qualified and compliant in terms of the regulations. Also, the municipality must submit to the National Treasury a specific plan of action that it will commit to in order to ensure the official will meet the required competency levels.

The legal position on 31 December 2012

The National Treasury is not being clear on the issue of non-compliance on the effective date of the competency framework. Although it should have stated boldly that the employment contracts of defaulting officials are void after 31 December 2012, it does so in a rather polite and lukewarm tone. The statement that 'continued employability of affected officials will be impacted upon' does little to clarify the legal position. However, the implications of the special merit cases are that unless the necessary authorisation is given, the contract lapses. Otherwise, it would not make sense to apply for an 18-month extension if the contract remains valid.

Comment

It should be noted that the requirement that a council must give a commitment that all the required training will be completed within 18

However, municipalities are being given a last opportunity to get their house in order before the new competency regime kicks in. Municipalities are therefore urged to grab this opportunity with both hands, as it is highly unlikely that a further extension will be granted.

Furthermore, given that there have been constant reminders of the looming deadline and a number of initiatives (i.e. a series of circulars and guidelines issued to explain the implementation of the regulations) over the last five years to support municipalities in complying with the regulations, there is no reason for municipalities to cry foul when the extended period lapses.

Municipalities whose officials will not make the cut for consideration as special merit cases will face a serious problem come 1 January 2013. The courts will not shy away from nullifying the contracts of these officials, as has been seen in the *Paulse* case decided in terms of section 54A of the amended Systems Act and regulation 38 of the Performance Regulations (see page 18 of this issue of the *LGB*).

However, these municipalities will have only themselves to blame as their failure to comply with the regulations indicates that they have failed to take service delivery issues, which deal directly with the hopes, dreams and aspirations of their communities, seriously. We have argued elsewhere that the regulations have laid down a fair procedure by allowing employees a reasonable opportunity to obtain the new competency levels and by highlighting the objective necessity for the requirements in question (see *LGB* 13(4) page 18).

The National Treasury is therefore urged to be robust in implementing the competency framework contained in the Minimum Competency Regulations, as progress with professionalisation cannot be postponed any longer.

We also urge SAMWU and other key stakeholders to use the remaining six months (and the 18-month extension, where relevant) to bring problems encountered to the fore immediately, and not to wait for the due date to raise issues. Time is of the essence to turn local government around.



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