

Text as at 6 May 2014

## **Act of 10 September 1992 containing new provisions governing provinces**

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

To all who see or hear these presents, greetings! Be it known:

Whereas we consider it desirable to amend the Provinces Act to bring it into line with the revised Constitution and the Municipalities Act and accordingly to lay down new provisions concerning the structure of provinces and the composition and powers of their authorities;

We, therefore, having heard the Council of State and in consultation with the States General, have approved and decreed as We hereby approve and decree:

### **Title I. Definitions**

#### **Section 1**

1. In this Act the number of residents of a province means the number of residents according to the population figures on 1 January, as published by Statistics Netherlands.

2. The reference date for determining the number of residents, as referred to in section 8, is 1 January of the year preceding the year of a provincial council election. At the written request of the provincial council, Statistics Netherlands may determine the number of residents on the first day of the fourth month prior to the month of the nomination of candidates if it is likely that a number of residents specified in that section has been exceeded by the specified date. In such a case that date serves as the reference date.

#### **Section 2**

In this Act residents are persons who have their actual place of residence in the province.

### **Section 3**

Persons who have been registered as a resident of a municipality, with an address in the personal records database, are deemed for the purposes of this Act to have their actual place of residence in the province in which that municipality is located, subject to proof to the contrary.

### **Section 4**

In this Act the term public servant is deemed to include a person employed on an employment contract under civil law.

### **Section 5**

In this Act:

- a) provincial authority means every competent organ of the province;
- b) Our Minister means Our Minister of the Interior and Kingdom Relations.

## **Title II. Structure and composition of the provincial authority**

### **Chapter I. General provision**

#### **Section 6**

Each province has a provincial council, a provincial executive and a King's Commissioner.

### **Chapter II. The provincial council**

#### **Section 7**

The provincial council represents the entire population of the province.

#### **Section 8**

1. The provincial council consists of:

39 members in a province with fewer than 400,001 residents;

41 members in a province with 400,001-500,000 residents;

43 members in a province with 500,001-750,000 residents;

45 members in a province with 750,001-1,000,000 residents;

47 members in a province with 1,000,001-1,250,000 residents;

49 members in a province with 1,250,001-1,500,000 residents;

51 members in a province with 1,500,001-1,750,000 residents;

53 members in a province with 1,750,001-2,000,000 residents;

55 members in a province with over 2,000,000 residents.

2. An increase or decrease in the number of provincial council members resulting from a change in the number of residents in the province does not take effect until the next periodic provincial council election.

## **Section 9**

The King's Commissioner chairs the provincial council.

## **Section 10**

To be eligible to be a provincial council member a person must be a Dutch national and resident of the province, have attained the age of eighteen and not be disqualified from voting and standing for election.

## **Section 11**

1. The provincial council members must disclose what positions they hold other than their provincial council membership.
2. Disclosure is effected by depositing a list of the positions referred to in subsection 1 for public inspection at the offices of the province.

## **Section 12**

No person whose membership of the provincial council has been terminated since the last periodic election of provincial council members on account of acts in breach of section 15 is eligible for appointment to fill a casual vacancy.

## **Section 13**

1. A provincial council member may not also be:

- (a) a minister;
- (b) a state secretary;
- (c) a member of the Council of State;
- (d) a member of the Court of Audit;
- (e) National Ombudsman;
- (f) a deputy ombudsman as referred to in section 9, subsection 1 of the National Ombudsman Act;
- (g) a King's Commissioner;
- (h) a member of a provincial executive;
- (i) a member of the audit office;
- (j) an ombudsman or member of an ombuds committee referred to in section 79q, subsection 1;
- (k) a public servant appointed by or on behalf of the provincial authority or subordinate to it.

2. Notwithstanding subsection 1, opening words and (h), a provincial council member may also be a member of the provincial executive during the period which:

(a) starts on polling day for the election of provincial council members and ends on the date on which the members of the provincial executive cease to hold office pursuant to section 41, subsection 1 or

(b) starts on the date of his appointment as a member of the provincial executive and ends on the date on which the credentials of his successor as provincial council member have been finally approved or on which the central electoral committee decides that no successor can be appointed. He is deemed to have resigned from the provincial council from the date on which he accepts his appointment as a member of the provincial executive. Section X 6 of the Elections Act applies *mutatis mutandis*.

3. Notwithstanding subsection 1, opening words and (k) a provincial council member may also be a volunteer or other person who performs emergency services on account of a statutory duty other than in a professional capacity.

#### **Section 14**

1. Before taking office, the provincial council members must make the following oath or affirmation before the chair at a meeting:

'I do swear (declare) that in order to be appointed as a provincial council member I have not promised or given, directly or indirectly, any gift or favour to any person under any name or on any pretext whatever.

I do swear (declare and affirm) that I have not accepted and will not accept, directly or indirectly, any promise or gift in order to do or refrain from doing anything whatever in this office.

I do swear (affirm) allegiance to the Constitution and that I will obey the law and faithfully discharge my duties as a provincial council member to the best of my ability.

So help me God!

(This I declare and affirm!')

2. [*Translator's note: subsection 2 contains the same oath and affirmation in the Frisian language*]

## **Section 15**

1. A provincial council member may not:

(a) serve as counsel or adviser to the province or the provincial authority in disputes or to the counterparty in a dispute with the province or the provincial authority;

(b) serve as authorised representative of the counterparty in a dispute with the province or the provincial authority;

(c) serve as representative of or adviser to third parties who are entering into:

(1) contracts as referred to at (d) with the province;

(2) contracts to transfer immovable property to the province;

(d) enter, directly or indirectly, into a contract for:

(1) the performance of works for the province;

(2) the performance of activities for the province for hire and reward other than as an employee;

(3) the transfer of movables to the province other than for no consideration;

(4) the hiring of movables to the province;

(5) the acquisition of disputed claims against the province;

(6) the acquisition from the province by private instrument of immovable property or limited rights to which such property is subject;

(7) taking a lease or agricultural lease by private instrument from the province.

2. Our Minister may grant exemption from the provisions of subsection 1, opening words and (d).

3. The provincial council adopts a code of conduct for its members.

### **Section 16**

The provincial council adopts rules of procedure for its meetings and other activities.

### **Section 17**

1. The provincial council meets as often as it has decided to do.

2. The provincial council also meets whenever the King's Commissioner considers this necessary or at least one fifth of the number of members of which the provincial council consists so request in writing, stating reasons.

### **Section 18**

After the periodic election of its members the provincial council meets for the first time in its new composition on the day on which the members of the provincial council in its old composition cease to hold office.

### **Section 19**

1. The King's Commissioner gives the provincial council members written notice of a meeting.

2. When giving notice of a meeting, the King's Commissioner at the same time publicly announces the date, time and place of the meeting. The agenda and related resolutions, with the exception of the documents referred to in section 25, subsection 2, are deposited for public inspection at the same time as the notice is given and in the manner described in the public announcement.

### **Section 20**

1. The provincial council meeting may not be opened until the attendance list shows that over half of the members in office are present.

2. If the meeting cannot be opened pursuant to subsection 1, the King's Commissioner will reconvene the meeting, by virtue of this section, no less than twenty-four hours after delivery of the notice.

3. Subsection 1 does not apply to a meeting as referred to in subsection 2. However, the provincial council may not deliberate or decide on matters other than those for which the meeting not opened pursuant to subsection 1 was convened unless the attendance list shows that over half of the members in office are present.

## **Section 21**

1. The King's Commissioner has the right to take part in the deliberations at the meeting.

2. Members of the provincial executive may attend provincial council meetings and take part in the deliberations.

3. Members of the provincial executive may be invited by the provincial council to attend its meetings.

## **Section 22**

The members of the provincial authority and other persons who take part in the deliberations may not be prosecuted or sued, held liable or compelled to give evidence as referred to in article 165, paragraph 1 of the Code of Civil Procedure about anything they have said in a provincial council meeting or have submitted in writing to the provincial council.

## **Section 23**

1. Meetings of the provincial council are held in public.

2. The doors to a meeting must be closed if at least one tenth of the members who have signed the attendance list so request or the chair considers this necessary.

3. The provincial council then decides whether the meeting will be held behind closed doors.

4. Separate minutes are kept of a meeting held behind closed doors, and are not published unless the provincial council decides otherwise.

5. The provincial council publishes the list of decisions made at its meetings in the manner customary in the province. The provincial council does not publish the list where it relates to matters in respect of which a duty of secrecy has been imposed under section 25 or where publication would conflict with the public interest.

#### **Section 24**

A meeting held behind closed doors may not deliberate or decide on:

- (a) the admission of newly appointed provincial council members;
- (b) the adoption or amendment of the budget and the adoption of the annual accounts;
- (c) the introduction, amendment or abolition of provincial taxes; and
- (d) the appointment or dismissal of members of the provincial executive.

#### **Section 25**

1. The provincial council may, pursuant to an interest referred to in section 10 of the Government Information (Public Access) Act, impose a duty of secrecy concerning matters dealt with at a meeting behind closed doors and concerning the content of documents submitted to the provincial council. A duty of secrecy concerning matters dealt with at a meeting behind closed doors must be imposed during the meeting in question. Those present at the meeting and all those who have knowledge of the proceedings or the documents must observe the duty of secrecy until such time as it is lifted by the provincial council.

2. Pursuant to an interest referred to section 10 of the Government Information (Public Access) Act a duty of secrecy may also be imposed by the provincial executive, the King's Commissioner or a committee in respect of such documents as each of them may submit to the provincial council or its members. The documents must be marked accordingly.

3. The duty of secrecy imposed by virtue of subsection 2 in respect of documents submitted to the provincial council ceases to apply if such imposition is not ratified by the provincial council at the next meeting which is attended, according to the attendance list, by over half of the provincial council members in office.

4. The duty of secrecy imposed by virtue of subsection 2 in respect of documents submitted to provincial council members must be observed until it is lifted by the body which imposed it or by the provincial council if the document in respect of which secrecy has been imposed was submitted to the provincial council. The provincial council may make this decision only at a meeting attended, according to the attendance list, by over half of the provincial council members in office.

## **Section 26**

1. The chair maintains order at the meeting and may, in cases where such order is disrupted in any way by members of the public, direct such persons and, if necessary, any other members of the public who are present to leave.

2. He may bar members of the public who repeatedly disrupt order from meetings for a maximum of three months.

3. He may move for the expulsion from the meeting of any provincial council member whose conduct is prejudicial to the orderly dispatch of business. Such a motion is not to be debated. Upon adoption of the motion the provincial council member must leave the meeting immediately. If necessary, the chair may have him removed. Moreover, if the provincial council member repeats this behaviour, he may also be barred from meetings for a maximum of three months.

## **Section 27**

The provincial council members are not bound by a mandate when voting.

## **Section 28**

1. A provincial council member may not take part in voting on:

- a matter which concerns him personally, either directly or indirectly, or in which he is involved as a representative;
- the adoption or approval of the accounts of an organ to which he is accountable or to whose executive he belongs.

2. In the event of a written ballot, casting a vote means handing in a properly completed ballot paper.
3. An appointment is deemed to concern a person personally if he is one of those to whom the choice of persons to be appointed is limited either by nomination or on a second ballot.
4. Subsection 1 does not apply to a decision regarding the admission of provincial council members appointed after a periodic election.

### **Section 29**

1. A vote is valid only if over half of the provincial council members in office who are not required to abstain from voting have cast their vote.
2. Subsection 1 does not apply:
  - (a) in the event of a second vote on a motion or on an appointment, nomination or recommendation of one or more persons in respect of whom a vote was invalid at a previous meeting by virtue of that subsection;
  - (b) at a meeting as referred to in section 20, subsection 2 in so far as it concerns items that were put on the agenda of a previous meeting that was not opened pursuant to section 20, subsection 1.

### **Section 30**

1. To make a decision by voting requires an absolute majority of those who have cast a vote.
2. In the event of a written ballot, casting a vote means handing in a properly completed ballot paper.

### **Section 31**

1. Voting on the appointment, nomination or recommendation of persons is conducted by means of sealed and unsigned ballot papers.
2. In the event of a tied vote on the appointment of persons to whom a choice is limited either by nomination or on a second ballot, a second ballot will be held at the same meeting.

3. If there is once again a tied vote, the matter must immediately be decided by lot.

### **Section 32**

1. Voting on other matters will be conducted by roll call if the chair or one of the provincial council members so requests. In that case voting will be conducted orally.

2. In the event of a roll call vote, each provincial council member present at the meeting who is not required to abstain is obliged to cast his vote for or against the motion.

3. If no vote is requested on a motion it is deemed to be carried.

4. In the event of a tied vote other than at a plenary meeting a decision will be deferred until a subsequent meeting, when deliberations can be resumed.

5. In the event of a tied vote at a plenary meeting or at a meeting subsequently reconvened pursuant to subsection 4, the motion is not carried.

6. A plenary meeting is a meeting at which all provincial council members in office have cast their vote, provided they are not required to abstain.

### **Section 32a**

Documents emanating from the provincial council must be signed by the King's Commissioner and countersigned by the clerk. If the King's Commissioner is unable to act or the position of King's Commissioner is vacant, documents emanating from the provincial council must be signed by the person who deputises for the King's Commissioner as chair of the provincial council in accordance with section 75.

### **Section 33**

1. The provincial council and each provincial council member have the right to assistance from public servants.

2. The groups represented in the provincial council have the right to support.

3. The provincial council adopts an ordinance governing the provision of assistance from public servants and the provision of support to the groups represented in the provincial

council. As regards support, the ordinance is to contain rules on resource allocation and accountability.

### **Chapter III. The provincial executive**

#### **Section 34**

1. The King's Commissioner and the members of the provincial executive together constitute the provincial executive.
2. The King's Commissioner chairs the provincial executive.

#### **Section 35**

1. The provincial council appoints the members of the provincial executive.
2. The King's Commissioner is kept informed about the results of the negotiations to form a provincial executive. He is then given the opportunity to express his views on proposals for the programme of the provincial executive.

#### **Section 35a**

1. The provincial executive has at least three and at most seven members.
2. A member of the provincial executive holds his position on a full-time basis.
3. The provincial council may decide that one or more members of the provincial executive may hold his position on a part-time basis. In this case the provincial executive has at most nine members.
4. If subsection 3 applies, the provincial council determines the standard working time factor for each member of the provincial executive when appointing the member, provided always that the standard working time factor for the members of the provincial executive together does not exceed by more than ten per cent what would have been their standard working time factor if all members of the provincial executive held their positions on a full-time basis.

### **Section 35b**

1. The requirements for membership of the provincial council referred to in section 10 also apply to membership of the provincial executive.
2. The provincial council may grant exemption from the residency requirement for a term of one year. In special cases the exemption may be extended for a maximum of one year at a time.
3. No one may be a member of more than one provincial executive.

### **Section 35c**

1. A member of the provincial executive may not also be:
  - (a) a minister;
  - (b) a state secretary;
  - (c) a member of the Council of State;
  - (d) a member of the Court of Audit;
  - (e) National Ombudsman;
  - (f) a deputy ombudsman as referred to in section 9, subsection 1 of the National Ombudsman Act;
  - (g) a King's Commissioner;
  - (h) a member of a provincial council;
  - (i) a member of the audit office;
  - (j) a member of a municipal council;
  - (k) a mayor;
  - (l) a member of a municipal executive;

- (m) a member of the audit office of a municipality located in the province concerned;
- (n) a public servant who has been appointed by or on behalf of the provincial authority or is subordinate to it;
- (o) a public servant who has been appointed by or on behalf of the municipal authority of a municipality located in the province concerned or is subordinate to it;
- (p) the chair or a board member of or a public servant working for a water authority located in the province concerned;
- (q) a public servant working for a body established by joint arrangement, an organ of which is subject to the supervision of the provincial executive;
- (r) a public servant appointed by or on behalf of central government whose duties include carrying out activities involving supervision of the province;
- (s) an official who advises the provincial authority by virtue of an Act of Parliament or order in council.

2. Notwithstanding subsection 1, opening words and (h), a member of the provincial executive may also be a member of the provincial council of the province of whose provincial executive he is a member during the period which:

- (a) starts on polling day for the election of provincial council members and ends on the date on which the members of the provincial executive cease to hold office pursuant to section 41, subsection 1, or
- (b) starts on the date of his appointment as a member of the provincial executive and ends on the date on which the credentials of his successor as provincial council member have been finally approved or on which the central electoral committee decides that no successor can be appointed. He is deemed to have resigned from the provincial council from the date on which he accepts his appointment as a member of the provincial executive. Section X 6 of the Elections Act applies *mutatis mutandis*.

3. Notwithstanding subsection 1, opening words and (n), a member of the provincial executive may also be a volunteer or other person who performs emergency services on account of a statutory duty other than in a professional capacity

### **Section 36**

The appointment of members of the provincial executive following the election of the provincial council members takes place at a meeting of the provincial council in its new composition.

### **Section 37**

In the case of section 36, the appointment of a person who has accepted his appointment as a member of the provincial executive takes effect on the date when at least half of the number of members of the provincial executive determined in accordance with section 35a have accepted his appointment or, if the acceptance of the appointment takes place at a later date, on that later date.

### **Section 38**

An appointment to fill a casual vacancy is made as quickly as possible, unless the provincial council decides to reduce the number of members of the provincial executive.

### **Section 39**

A person appointed as a member of the provincial executive must inform the provincial council by no later than the tenth day after being notified of his appointment whether he accepts the appointment. If this time limit passes without receipt of any message, the appointee is deemed not to have accepted the appointment.

### **Section 40**

If the appointment is not accepted, a fresh appointment is made as quickly as possible.

### **Section 40a**

1. Before taking office, the members of the provincial executive must make the following oath or affirmation before the chair at a meeting of the provincial council:

I do swear (declare) that in order to be appointed as a member of the provincial executive I have not promised or given, directly or indirectly, any gift or favour to any person under any name or on any pretext whatever.

I do swear (declare and affirm) that I have not accepted and will not accept, directly or indirectly, any promise or gift in order to do or refrain from doing anything whatever in this office.

I do swear (affirm) allegiance to the Constitution and that I will obey the law and faithfully discharge my duties as a member of the provincial executive to the best of my ability.

So help me God!

(This I declare and affirm!')

2. [*Translator's note: subsection 2 contains the same oath and affirmation in the Frisian language*]

#### **Section 40b**

1. A member of the provincial executive may not hold any second jobs or positions which might prejudice the proper discharge of the office of a member of the provincial executive.
2. A member of the provincial executive must give the provincial council notice of his intention to accept a second job or position.
3. A member of the provincial executive must publicly disclose his second jobs or positions. Such disclosure is effected by depositing the information at the offices of the province for public inspection.
4. A member of the provincial executive who does not hold office on a part-time basis must also publicly disclose any income from second jobs or positions. Such disclosure is effected by depositing the information at the offices of the province for public inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

5. For this purpose income is deemed to mean salary within the meaning of section 9 of the Salaries Tax Act, less the final levy components referred to in section 31 of that Act.

#### **Section 40c**

1. Section 15, subsections 1 and 2 apply *mutatis mutandis* to members of a provincial executive.

2. The provincial council adopts a code of conduct for the members of the provincial executive.

#### **Section 41**

1. Following the election of the provincial council members, the members of the provincial executive cease to hold office at the moment when the provincial council has appointed at least half of the number of members of the provincial executive determined in accordance with section 35a and these appointments have been accepted.

2. If so many members of the provincial executive resign or are dismissed that the number of members of the provincial executive in office is no longer equal to at least half of the number determined in accordance with section 35a, the King's Commissioner will assume the role of the provincial executive until this is the case.

#### **Section 42**

1. A member of the provincial executive may resign at any time. He must tender his resignation to the provincial council in writing.

2. The resignation takes effect either one month after the date on which he tenders his resignation or on such earlier date as his successor accepts the appointment.

#### **Section 43**

1. Members of the provincial executive receive remuneration, regulated by or pursuant to order in council, from the province.

2. Rules may also be laid down concerning partial or full reimbursement of special expenses and other financial allowances connected with the discharge of the duties of a member of a provincial executive.

3. An order in council adopted pursuant to subsection 1 takes effect no sooner than two months after the date of issue of the Bulletin of Acts and Decrees in which it has been published. Both Houses of the States General must be informed of its publication immediately.

4. With the exception of what has been granted to them by or pursuant to Act of Parliament, members of a provincial executive receive, in that capacity, no income in any form whatever from the province.

5. The members of a provincial executive receive no payments in any form whatever for activities performed in the course of second jobs or positions held by virtue of their position as members of a provincial executive, regardless of whether or not such payments are made by the province. If such payments are made they should be credited to the province's account.

6. Payments as referred to in subsection 5 include income, by whatever name it may be known, from second jobs or positions which the member of the provincial executive ceases to hold upon the end of his term of office.

7. Income other than that referred to in subsection 5 is offset against the remuneration in accordance with section 3 of the Remuneration (Members of the House of Representatives) Act.

8. Without prejudice to subsection 5, income as referred to in subsection 7 will not be offset in the case of members of the provincial executive who perform their duties on a part-time basis.

9. Rules governing the manner in which members of the provincial executive furnish information about income as referred to in subsection 7 and the consequences of any failure to furnish such information are laid down by order in council.

#### **Section 44**

1. The provincial executive will grant leave to a member of the provincial executive at her request on account of pregnancy and childbirth. The leave starts on the day referred to in the request, which must be at most six and at least four weeks before the expected date of delivery, as shown in a certificate issued by a physician or midwife and submitted with the request.
2. The provincial executive will grant a member of the provincial executive leave on account of illness if it appears from a doctor's medical certificate attached to the request that he will probably not be able to resume his duties within eight weeks.
3. If a member of the provincial executive is himself unable to make the request on account of his illness, the King's Commissioner may make the request on his behalf if the continuity of the management of the province's affairs urgently requires that provision is made for the member to be replaced.
4. The leave will end on the day on which sixteen weeks have expired since the day on which it started.
5. A member of the provincial executive will be granted leave not more than three times during the provincial council's term of office.

#### **Section 44a**

1. The provincial executive will decide as quickly as possible on a request for leave, and in any event no later than on the fourteenth day after submission of the request.
2. The decision will be made in accordance with the medical certificate issued by a doctor or midwife and will contain the date on which the leave is to take effect.

#### **Section 44b**

1. The provincial council may appoint a replacement for a member of the provincial executive who has taken leave. Section 35a, subsections 1 and 3, second sentence, do not apply.
2. The replacement will cease to be a member by operation of law with effect from the day on which sixteen weeks have passed since the date on which the leave started.

3. If the replacement resigns or is dismissed by the provincial council before the end of the leave, the provincial council may appoint a new temporary replacement for the remainder of the leave.

#### **Section 45**

1. If a person whose appointment as a member of the provincial executive has commenced holds an office as referred to in section 35c, subsection 1 in circumstances where subsections 2 and 3 of that section do not apply, he must arrange to resign that office without delay.

2. The provincial council will dismiss him if he fails to do so.

3. The dismissal will take effect immediately after the announcement of the dismissal decision.

4. Section 4:8 of the General Administrative Law Act does not apply in the case referred to in subsection 2.

#### **Section 46**

1. If a member of the provincial executive no longer meets the requirements for membership of the provincial executive, as referred to in section 35b, subsections 1 and 2 or is about to hold an office as referred to in section 35c, subsection 1 in circumstances where subsections 2 or 3 of that section do not apply, he must immediately tender his resignation. He must give written notice of this to the provincial council.

2. Section 45, subsections 2, 3 and 4 apply *mutatis mutandis*.

#### **Section 47**

A member of the provincial executive may not act as an authorised representative or adviser in matters that are subject to a ruling by the provincial executive.

#### **Section 48 [Repealed on 12 March 2003]**

#### **Section 49**

If the provincial council rules that it no longer has confidence in a member of the provincial executive and this does not result in the immediate resignation of the member concerned, the provincial council may resolve to dismiss him. Section 4:8 of the General Administrative Law Act does not apply to the dismissal decision.

#### **Section 50**

The courts will not review the grounds on which the provincial council decides to dismiss a member of the provincial executive.

#### **Section 51 [Repealed on 12 March 2003]**

#### **Section 52**

The provincial executive adopts rules of procedure for its meetings and other activities and sends them to the provincial council.

#### **Section 53**

1. The King's Commissioner determines, having regard to provisions adopted by the provincial executive, the date, time and place of the meetings of the provincial executive.
2. The King's Commissioner announces the date, time and place of public meetings.

#### **Section 53a**

1. The King's Commissioner promotes the unity of provincial executive policy.
2. The King's Commissioner may add items to the agenda of a meeting of the provincial executive.
3. The King's Commissioner may present the provincial executive with a motion of his own with respect to items on the agenda.

#### **Section 54**

1. The meetings of the provincial executive are held behind closed doors in so far as the provincial executive has not decided otherwise.

2. The rules of procedure for the meetings of the provincial executive may include rules on public access to those meetings.

### **Section 55**

1. The provincial executive may, pursuant to an interest referred to in section 10 of the Government Information (Public Access) Act, impose a duty of secrecy concerning matters dealt with at a meeting behind closed doors and concerning the content of documents submitted to the provincial executive. A duty of secrecy concerning matters dealt with at a meeting behind closed doors must be imposed during the meeting in question. Those present at the meeting and all those who have knowledge of the proceedings or the documents must observe the duty of secrecy until such time as it is lifted by the provincial executive.

2. Pursuant to an interest referred to in section 10 of the Government Information (Public Access) Act a duty of secrecy may also be imposed by the King's Commissioner or a committee in respect of documents submitted to the provincial executive by them. The documents will be marked accordingly. The duty of secrecy must be observed until it is lifted by the organ which imposed it or by the provincial council.

3. If the provincial executive has raised matters subject to a duty of secrecy with the provincial council, the duty of secrecy must be observed until lifted by the provincial council.

### **Section 56**

1. A meeting of the provincial executive may not conduct deliberations or make decisions unless at least half of the members in office are present.

2. If the required number of members is not present the King's Commissioner will reconvene the meeting, citing the present section.

3. Subsection 1 does not apply to a meeting as referred to in subsection 2. However, the provincial executive may not deliberate or decide on matters other than those for which the first meeting was convened unless at least half of the members in office are present.

### **Section 57**

The members of the provincial executive and other persons who take part in the deliberations cannot be prosecuted or held liable in law for anything they have said at meetings of the provincial executive or have submitted in writing to the provincial executive.

### **Section 58**

Section 28, subsections 1 to 3 and sections 29 and 30 apply *mutatis mutandis* to meetings of the provincial executive.

### **Section 59**

1. In the event of a tied vote on matters other than the appointment, nomination or recommendation of persons, a fresh vote must be held.
2. If there is once again a tied vote on the same motion, the chair has the casting vote.

### **Section 59a**

1. Documents emanating from the provincial executive are signed by the King's Commissioner and countersigned by the provincial secretary.
2. The provincial executive may permit the King's Commissioner to instruct another member of the provincial executive, the provincial secretary or one or more other public servants to sign documents in his stead.
3. The countersignature of the provincial secretary is not required if he or any other public servant has been authorised to sign documents pursuant to subsection 2.

### **Section 60**

1. The provincial council may decide which of the provincial executive's decisions are to be notified to the provincial council members. Moreover, the provincial council may determine in what cases it is sufficient for documents to be deposited for public inspection.
2. The provincial executive does not notify the provincial council of documents or deposit them for public inspection where this would conflict with the public interest.

3. The provincial executive publishes the list of decisions made at its meetings in the manner customary in the province. The provincial executive does not publish the list where it concerns matters in respect of which a duty of secrecy has been imposed under section 55 or where publication would conflict with the public interest.

## **Chapter IV. The King's Commissioner**

### **Section 61**

1. The King's Commissioner is appointed for a term of six years by royal decree on the recommendation of Our Minister.

2. Our Minister consults with the provincial council about the job requirements to be met by the person to be appointed as King's Commissioner.

3. After consulting with Our Minister the provincial council appoints from among its members a confidential committee responsible for assessing the candidates. The provincial council may decide that one or more members of the provincial executive should be added to the confidential committee as advisers. Our Minister provides the confidential committee with a list of applicants for the office of King's Commissioner, together with his view on which candidates he considers, in principle, suitable for appointment. If the confidential committee decides to include in its assessment not only these candidates but also others who have applied, it must give immediate notice of this to Our Minister. The latter must then communicate his opinion about the latter candidates to the confidential committee.

4. The confidential committee obtains the information it considers necessary about the candidates. Administrative authorities are obliged to furnish the requested information. The confidential committee reports its findings to the provincial council and to Our Minister.

5. The provincial council sends Our Minister a recommendation for an appointment within four months of the date on which applications were invited for the position. This recommendation contains the names of two persons.

6. In a special case, where the provincial council gives reasons, a recommendation need list only one name. Our Minister may disregard a recommendation listing only one name if he does not consider it to be a special case.

7. Our Minister must, in principle, accept the provincial council's recommendation in making his recommendation, including the order in which the names are listed, unless he considers that there are serious reasons to depart from it. Reasons must be given for any departure.

#### **Section 61a**

1. The King's Commissioner may be reappointed for a term of six years by royal decree on the recommendation of Our Minister.

2. The provincial council sends a recommendation to Our Minister concerning the reappointment of the King's Commissioner at least four months before the first day of the month in which the reappointment is to take effect.

3. Before the provincial council makes a recommendation it consults with Our Minister about the King's Commissioner's performance.

4. In making his recommendation Our Minister may depart from the provincial council's recommendation only on compelling grounds.

#### **Section 61b**

1. The King's Commissioner may be dismissed at any time by royal decree on the recommendation of Our Minister.

2. In the event of a dysfunctional relationship between the King's Commissioner and the provincial council, the provincial council may send a recommendation for dismissal to Our Minister.

3. Before the provincial council declares that a dysfunctional relationship exists between the King's Commissioner and itself, it will consult with Our Minister about the background to the declaration.

4. A recommendation for dismissal does not constitute a subject for deliberation and is not adopted unless the provincial council has declared no less than two weeks and no more than three months beforehand that a dysfunctional relationship exists between the King's Commissioner and the provincial council.

5. The notice convening the meeting at which the recommendation for dismissal is to be debated or decided upon is delivered to the members of the provincial council at least forty-eight hours before the start of the meeting or at such earlier time as the provincial council decides. The notice contains the resolution for the recommendation.

6. When making his recommendation Our Minister will depart from the provincial council's recommendation only on compelling grounds.

### **Section 61c**

1. The deliberations referred to in section 61, subsections 3 and 4, section 61a, subsection 3 and section 61b, subsection 3 must be held behind closed doors. Separate minutes that will not be published are drawn up of these deliberations.

2. A duty of secrecy applies to the deliberations and to the documents sent to the provincial council or sent by the provincial council to Our Minister.

3. The provincial council's recommendations as referred to in section 61, subsections 5 and 6, section 61a, subsection 2 and section 61b, subsection 2 are public, provided always that only the first name on the recommendation for an appointment referred to in section 61, subsection 5 is made public.

### **Section 61d**

Further rules may be laid down by order in council regarding the procedure to be followed in connection with the appointment, reappointment and dismissal of the King's Commissioner.

### **Section 62**

1. The King's Commissioner may be suspended by royal decree.

2. Our Minister may direct, pending a decision on suspension, that the King's Commissioner is not to perform the duties of his office.

3. A decision as referred to in subsection 2 lapses if a decision on suspension has not been made within a month.

### **Section 63**

Dutch nationality is a requirement of eligibility for appointment as King's Commissioner.

#### **Section 64**

1. Before accepting his office, the King's Commissioner must make the following oath or affirmation before the King:

'I do swear (declare) that in order to be appointed as King's Commissioner I have not promised or given, directly or indirectly, any gift or favour to any person under any name or on any pretext whatever.

I do swear (declare and affirm) that I have not accepted and will not accept, directly or indirectly, any promise or gift in order to do or refrain from doing anything whatever in this office.

I do swear (affirm) allegiance to the Constitution and that I will obey the law and faithfully discharge my duties as King's Commissioner to the best of my ability.

So help me God!

(This I declare and affirm!')

2. Where a King's Commissioner is reappointed, the oath or affirmation is made before the King or before Our Minister authorised thereto by the King.

3. [*Translator's note: subsection 3 contains the same oath and affirmation in the Frisian language*]

#### **Section 65**

1. The King's Commissioner receives remuneration, regulated by or pursuant to order in council, from the province.

2. Rules may also be laid down in this connection concerning the partial or full reimbursement of special expenses and other financial allowances connected with the discharge of his office.

3. An order in council adopted pursuant to subsection 1 takes effect no sooner than two months after the date of issue of the Bulletin of Acts and Decrees in which it has been published. Both Houses of the States General are informed of its publication immediately.
4. With the exception of what has been granted to him by or pursuant to Act of Parliament, the King's Commissioner receives, in that capacity, no income in any form from the province.
5. The King's Commissioner receives no payments of any kind whatever for activities performed in the course of second jobs or positions held by virtue of his office, regardless of whether or not such payments are made by the province. If such payments are made they should be credited to the province's account.
6. Payments as referred to in subsection 5 include income, by whatever name it may be known, from second jobs or positions which the King's Commissioner ceases to hold upon the end of his term of office.
7. Income other than that referred to in subsection 5 is offset against the remuneration in accordance with section 3 of the Remuneration (Members of the House of Representatives) Act.
8. Rules governing the manner in which the King's Commissioner furnishes information about the income referred to in subsection 7 and about the consequences of any failure to furnish such information are laid down by order in council.

## **Section 66**

1. The King's Commissioner may not hold any second jobs or positions that might prejudice the proper discharge of the office of King's Commissioner or compromise his ability to maintain his impartiality and independence or confidence therein.
2. The King's Commissioner must give the provincial council notice of his intention to accept a second job or position other than one arising from the office of King's Commissioner.
3. The King's Commissioner must publicly disclose his second jobs or positions, other than those arising from the office of King's Commissioner, and the income from them. Such disclosure is effected by depositing the information at the offices of the province for public

inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

4. For this purpose income is deemed to mean salary within the meaning of section 9 of the Salaries Tax Act 1964, less the final levy components referred to in section 31 of that Act.

### **Section 67**

1. A King's Commissioner may not also be:

- (a) a minister;
- (b) a state secretary;
- (c) a member of the Council of State;
- (d) a member of the Court of Audit;
- (e) National Ombudsman;
- (f) a deputy ombudsman as referred to in section 9, subsection 1 of the National Ombudsman Act;
- (g) a member of a provincial council;
- (h) a member of a provincial executive;
- (i) a member of the audit office;
- (j) a member of a municipal council;
- (k) a mayor;
- (l) a member of a municipal executive;
- (m) a member of the audit office of a municipality located in the province concerned;
- (n) an ombudsman or member of an ombuds committee as referred to in section 79q, subsection 1;

- (o) a public servant appointed by or on behalf of the provincial authority or subordinate to it;
- (p) a public servant appointed by or on behalf of the municipal authority of a municipality located in the province concerned or subordinate to it;
- (q) the chair or a board member of or a public servant working for a water authority located in the province concerned;
- (r) a public servant working for a body established by joint arrangement, an organ of which is subject to the supervision of the provincial executive;
- (s) a public servant appointed by or on behalf of central government whose duties include carrying out activities involving supervision of the province;
- (t) an official who advises the provincial authority by virtue of an Act of Parliament or order in council.

### **Section 68**

1. Section 15, subsections 1 and 2 apply *mutatis mutandis* to a King's Commissioner.
2. The provincial council adopts a code of conduct for the King's Commissioner.

### **Section 69**

The holder of the office of King's Commissioner is discharged from all obligations imposed by or pursuant to Act of Parliament to perform personal services.

### **Section 70**

The King's Commissioner must have his actual place of residence in the province.

### **Section 71**

1. If the King's Commissioner wishes to reside outside the province for longer than six weeks, he requires the permission of Our Minister. Permission may be given only if it does not conflict with the interests of the province.

2. The General Extension of Time Limits Act (Bulletin of Acts and Decrees 1964, 314) does not apply to the time limit referred to in subsection 1.

## **Section 72**

1. Where no statutory provisions exist, rules in respect of King's Commissioners are to be laid down by or pursuant to order in council concerning:

- (a) their appointment, suspension, temporary non-performance of their duties, resignation and dismissal;
- (b) the investigation of their suitability and competence;
- (c) their entitlement in the event of illness;
- (d) employment protection;
- (e) other matters concerning their legal status that require regulation.

2. Financial allowances payable by the province may be paid in connection with the rules concerning the matters referred to in subsection 1.

## **Section 73**

1. All documents addressed to the provincial council or to the provincial executive are opened by or on behalf of the King's Commissioner.

2. Where documents addressed to the provincial council are not immediately discussed at a meeting of the provincial council, the King's Commissioner must give notice of their receipt at the next provincial council meeting.

## **Section 74 [Repealed on 2 November 2005]**

## **Section 75**

1. If the King's Commissioner is unable to act or the office of King's Commissioner is vacant, a member of the provincial executive designated by the provincial executive deputises for the King's Commissioner. The King's Commissioner will inform Our Minister of the designation in

writing. In such a case the provincial council will be chaired by the longest serving provincial council member. If two or more provincial council members have equal seniority in terms of length of service, the oldest of them in age chairs the meeting. The provincial council may designate another provincial council member to chair the meeting.

2. If all members of the provincial executive are unable to act or all positions on the provincial executive are vacant, the longest serving provincial council member deputises for the King's Commissioner. If two or more provincial council members have equal seniority in terms of length of service, the oldest of them in age deputises for the King's Commissioner. The provincial council may designate another provincial council member to deputise for the King's Commissioner.

### **Section 76**

1. Notwithstanding section 75, the government will designate a deputy if it deems this necessary in the interests of the province. Before doing so it will hear the provincial council, unless there are serious grounds for not doing so.

2. A person designated by the government to deputise for the King's Commissioner must make the oath or affirmation before our Minister in accordance with section 64.

### **Section 77**

The payment of a fee to the person designated to deputise for the King's Commissioner is regulated by or pursuant to order in council

### **Section 78**

Sections 67 and 68 apply *mutatis mutandis* to the person designated to deputise for the King's Commissioner.

### **Section 79**

1. The provincial council may decide which of the King's Commissioner's decisions must be notified to the provincial council members. Moreover, the provincial council may determine in what cases it is sufficient for documents to be deposited for public inspection.

2. The King's Commissioner does not notify the provincial council of a decision or deposit it for public inspection where this would conflict with the public interest.

## **Chapter IVA. The audit office**

### **§ 1. The provincial audit office**

#### **Section 79a**

1. The provincial council may establish an audit office.
2. The following sections of this chapter and chapter XIA apply if the provincial council establishes an audit office.
3. Chapter IVB applies if the provincial council does not establish an audit office.

#### **Section 79b**

The provincial council determines the number of members of the audit office.

#### **Section 79c**

1. The provincial council appoints members of the audit office for a term of six years.
2. If an audit office consists of two or more members, the provincial council appoints a chair from among the members.
3. The provincial council may appoint deputy members. If an audit office consists of one member, the provincial council will in any event appoint one deputy member. The provisions of this division apply *mutatis mutandis* to deputy members.
4. The provincial council may reappoint a member.
5. The provincial council must consult with the audit office before making the appointments referred to in subsections 1 to 4.
6. The provincial council terminates the appointment of a member of the audit office:
  - (a) if he resigns;

- (b) if he accepts a position that is incompatible with membership;
- (c) if he has been convicted of an indictable offence by judgment which has become final and unappealable or has been deprived of his liberty by a custodial measure imposed in such a judgment;
- (d) if he has been made the subject of a guardianship order, has been declared bankrupt, has obtained a moratorium on the payment of debts or has been committed to prison for failure to pay debts by judgment which has become final and unappealable;
- (e) if, in the opinion of the provincial council, he has seriously abused the trust placed in him.

7. The provincial council may terminate the appointment of a member of the audit office:

- (a) if he is permanently unfit to perform his duties owing to illness or infirmity;
- (b) if he contravenes section 79h in conjunction with section 15, subsections 1 and 2.

#### **Section 79d**

1. The provincial council suspends a member of the audit office if:

- (a) he is in pre-trial detention;
- (b) he has been convicted of an indictable offence by judgment which has not yet become final and unappealable or has been deprived of his liberty by a custodial measure imposed in such a judgment;
- (c) he has been made the subject of a guardianship order, has been declared bankrupt, has obtained a moratorium on the payment of debts or has been committed to prison for failure to pay debts by judgment which has not yet become final and unappealable.

2. The provincial council may suspend a member of the audit office if he is the subject of a judicial investigation into an indictable offence or if there other serious grounds to suspect facts and circumstances that would warrant dismissal other than on the grounds referred to in section 79c, subsections 6 (a) and 7 (a).

3. The provincial council must terminate the suspension as soon as the ground for the measure ceases to exist, provided always that the suspension will in any event end after six months in a case as referred to in subsection 2. In that case the provincial council may extend the measure for a maximum of three months at a time.

#### **Section 79e**

Section 11 applies *mutatis mutandis* to the members of an audit office.

#### **Section 79f**

1. A member of an audit office may not also be:

- (a) a minister;
- (b) a state secretary;
- (c) a member of the Council of State;
- (d) a member of the Court of Audit;
- (e) National Ombudsman;
- (f) a deputy ombudsman as referred to in section 9, subsection 1 of the National Ombudsman Act;
- (g) a member of the provincial council of the province concerned;
- (h) the King's Commissioner of the province concerned;
- (i) a member of the provincial executive of the province concerned;
- (j) mayor of a municipality located in the province concerned;
- (k) a member of the municipal executive of a municipality located in the province concerned;
- (l) a public servant appointed by or on behalf of the provincial authority or subordinate to it;

- (m) a public servant appointed by or on behalf of central government whose duties include carrying out activities involving supervision of the province;
- (n) an official who advises the provincial authority by virtue of an Act of Parliament or order in council.

2. Notwithstanding subsection 1, opening words and (l) a member of an audit office may also be a volunteer or other person who performs emergency services on account of a statutory duty other than in a professional capacity.

### **Section 79g**

1. Before taking office, members of an audit office must make the following oath or affirmation before the chair at a meeting of the provincial council:

'I do swear (declare) that in order to be appointed as a member of the audit office I have not promised or given, directly or indirectly, any gift or favour to any person under any name or on any pretext whatever.

I do swear (declare and affirm) that I have not accepted and will not accept, directly or indirectly, any promise or gift in order to do or refrain from doing anything whatever in this office.

I do swear (affirm) allegiance to the Constitution and that I will obey the law and faithfully discharge my duties as a member of the audit office to the best of my ability.

So help me God!

(This I declare and affirm!')

2. [*Translator's note: subsection 2 contains the same oath and affirmation in the Frisian language*]

### **Section 79h**

Section 15, subsections 1 and 2 apply *mutatis mutandis* to the members of the audit office.

### **Section 79i**

1. The audit office adopts rules of procedure for its activities and, if the audit office consists of two or more members, also for its meetings.
2. The audit office sends the rules of procedure to the provincial council for its information and publishes them in the manner referred to in section 136, subsection 2.

### **Section 79j**

1. After consulting with the audit office, the provincial council makes available to the audit office the resources it needs for the proper performance of its duties.
2. On the recommendation of the chair or the sole member of the audit office, the provincial executive appoints as many officers of the audit office as are necessary for the proper performance of its duties.
3. The public servants who perform duties for the audit office do not perform duties for any other organ of the province as well.
4. The public servants who perform duties for the audit office are accountable only to the audit office in respect of their duties.

### **Section 79k**

The members of the audit office receive remuneration for their activities and an allowance for expenses as determined in a provincial ordinance.

## **§ 2. The joint audit office**

### **Section 79l**

Notwithstanding section 79a, a provincial council, acting together with the provincial council or provincial councils of one or more other provinces in accordance with sections 40 and 41, subsection 1 in conjunction with section 8, subsection 2 of the Joint Arrangements Act or with the council or councils of one or more municipalities, whether acting together with the provincial council of one or more other provinces or not, in accordance with sections 51 and 52, subsection 1 in conjunction with section 8, subsection 2 of the Joint Arrangements Act,

may establish a joint audit office. Sections 10, subsection 2 and 3, 10a, 11, 15, 16, 17, 20, subsection 3, 21, 22, 23, 43 and 54 of that Act do not apply.

### **Section 79m**

1. Sections 79b to 79f, 79h, 79i and 79j, subsections 1, 3 and 4 apply *mutatis mutandis* to a joint audit office, provided always that in sections 79b to 79d, 79i, subsection 2 and 79j, subsection 1 the term 'provincial council' should in each case be read as meaning 'provincial councils of the participating provinces together' or, if the audit office has been established in part by municipalities, as 'provincial councils and the councils of the participating provinces and municipalities together'.

2. Section 79g applies to a joint audit office, provided always that the term 'provincial council' should in each case be read as meaning 'provincial council of the province which has been designated for this purpose in the arrangement establishing the joint audit office' or, if the audit office has been established in part by municipalities, as 'provincial council of the province or the council of the municipality which has been designated for this purpose in the joint arrangement establishing the joint audit office'.

### **Section 79n**

Without prejudice to section 79m, subsection 1 in conjunction with section 79f, if the provincial council or provincial councils of one or more provinces establish a joint audit office with the council or councils of one or more municipalities, a member of the audit office may not also be:

- (a) a mayor;
- (b) a member of a municipal executive;
- (c) a member of the council of a participating municipality;
- (d) a public servant appointed by or on behalf of the municipal authority of a participating municipality or subordinate to it;
- (e) a public servant appointed by or on behalf of central government whose duties include carrying out activities involving supervision of a participating municipality;

- (f) an official who advises the municipal authority of a participating municipality by virtue of an Act of Parliament or order in council.

### **Section 79o**

The arrangement establishing the joint audit office must contain rules on at least:

- (a) the appointment, on the recommendation of the chair or the sole member of the audit office, of the public servants needed for the proper performance of the duties of the audit office;
- (b) the remuneration which the members of the audit office receive for their activities and the allowance for expenses.

## **Chapter IVB. Audit office function**

### **Section 79p**

1. If no audit office has been established as referred to in chapter IVA, the provincial council must adopt rules in an ordinance for the exercise of the audit office function.
2. Sections 183, 185a and 186 apply *mutatis mutandis* to the exercise of the audit office function.
3. Section 79f (with the exception of subsection 1 (g)) applies *mutatis mutandis* to persons exercising the audit office function.

## **Chapter IVC. The ombudsman**

### **§ 1. General provisions**

#### **Section 79q**

1. Subject to the provisions of this chapter, the provincial council may instruct a provincial ombudsman or ombuds committee or a joint ombudsman or ombuds committee to hear petitions as referred to in section 9:18, subsection 1 of the General Administrative Law Act.

2. An ombudsman or ombuds committee as referred to in subsection 1 may be established only on 1 January of any year. If the provincial council so decides, it will send its establishment decision to the National Ombudsman before 1 July of the year preceding that in which the establishment is to take effect.

3. The establishment of an ombudsman or ombuds committee as referred to in subsection 1 may be terminated only on 1 January of any year. If the provincial council so decides, it will send its termination decision to the National Ombudsman before 1 July of the year preceding that in which the termination is to take effect.

## **§ 2. The provincial ombudsman**

### **Section 79r**

1. If the provincial council instructs a provincial ombudsman to hear petitions it will appoint him for a term of six years.

2. The provincial council appoints a deputy ombudsman. This division applies *mutatis mutandis* to the deputy ombudsman.

3. The provincial council terminates the appointment of an ombudsman:

- (a) if he resigns;
- (b) if he is permanently unfit to perform his duties owing to illness or infirmity;
- (c) if he accepts a position as referred to in section 79s, subsection 1;
- (d) if he has been convicted of an indictable offence by judgment which has become final and unappealable or has been deprived of his liberty by a custodial measure imposed in such a judgment;
- (e) if he has been made the subject of a guardianship order, has been declared bankrupt, has been declared subject to a debt repayment arrangement for natural persons, has obtained a moratorium on the payment of debts or has been committed to prison for failure to pay debts by judgment which has become final and unappealable;

(f) if, in the opinion of the provincial council, he has seriously abused the trust placed in him.

4. The provincial council suspends the ombudsman if:

(a) he is in pre-trial detention;

(b) he has been convicted of an indictable offence by judgment which has not yet become final and unappealable or has been deprived of his liberty by a custodial measure imposed in such a judgment;

(c) he has been made the subject of a guardianship order, has been declared bankrupt, has been declared subject to a debt repayment arrangement for natural persons, has obtained a moratorium on the payment of debts or has been committed to prison for failure to pay debts by judgment which has not yet become final and unappealable.

#### **Section 79s**

1. The ombudsman may not hold any positions which might prejudice the proper discharge of his office or compromise the maintenance of his impartiality and independence or confidence therein.

2. Section 11 applies *mutatis mutandis* to the ombudsman.

#### **Section 79t**

1. Before taking office, the ombudsman must make the following oath or affirmation before the chair at a meeting of the provincial council:

'I do swear (declare) that in order to be appointed as ombudsman I have not promised or given, directly or indirectly, any gift or favour to any person under any name or on any pretext whatever.

I do swear (declare and affirm) that I have not accepted and will not accept, directly or indirectly, any promise or gift in order to do or refrain from doing anything whatever in this office.

I do swear (affirm) allegiance to the Constitution and that I will obey the law and faithfully discharge my duties as ombudsman to the best of my ability.

So help me God!

(This I declare and affirm!')

2. [*Translator's note: subsection 2 contains the same oath and affirmation in the Frisian language*]

### **Section 79u**

1. On the recommendation of the ombudsman, the provincial executive appoints such staff as are necessary for the proper performance of his duties.
2. The ombudsman receives no instructions regarding the performance of his duties, either in general or in relation to a specific case.
3. The staff of the ombudsman perform no duties for any administrative authority into whose actions the ombudsman may institute an investigation.
4. The staff of the ombudsman are accountable only to the ombudsman in respect of the duties performed for him.

### **Section 79v**

The ombudsman sends an annual report of his activities to the provincial council.

### **Section 79w**

The ombudsman receives remuneration and an allowance for expenses as determined in an ordinance adopted by the province.

## **§ 3. The provincial ombuds committee**

### **Section 79x**

1. If the provincial council instructs a provincial ombuds committee to hear petitions it will determine the number of members of the committee.
2. The provincial council appoints the members of the ombuds committee for a term of six years.
3. The provincial council appoints the chair and deputy chair of the ombuds committee from among the committee members.

#### **Section 79y**

1. The ombuds committee sends an annual report of its activities to the provincial council.
2. Sections 79r, subsections 3 and 4, 79s, 79t, 79u and 79w apply *mutatis mutandis* to the ombuds committee and to each individual member.

#### **§ 4. The joint ombudsman and the joint ombuds committee**

##### **Section 79z**

1. For the hearing of petitions the provincial council may establish a joint ombudsman or a joint ombuds committee with one or more municipal councils, with one or more other provincial councils, with the general board of one or more water authorities or with the general board of one or more public bodies or joint organs established by joint arrangement.
2. The ombudsman or ombuds committee sends an annual report of its activities to the representative assemblies of the participating legal persons.
3. Sections 79r to 79u, 79w and 79x apply *mutatis mutandis* to the ombudsman and to each individual member of the ombuds committee.

##### **Section 79aa**

If the provincial council establishes an ombudsman or ombuds committee in accordance with the Joint Arrangements Act, the provisions of that Act concerning joint organs apply only in so far as they are not inconsistent with the nature of the duties entrusted to the ombudsman or the ombuds committee.

## **Chapter V. The committees**

### **Section 80**

1. The provincial council may establish provincial committees to prepare decisions of the provincial council and consult with the provincial executive or the King's Commissioner. In doing so, it will regulate the duties, powers, composition and procedures of the committees, including the manner in which the provincial council members can inspect documents in respect of which the committee has imposed a duty of secrecy. Such inspection may be refused only in so far as it conflicts with the public interest.
2. Neither the King's Commissioner nor the members of the provincial executive may be members of a provincial committee.
3. When assembling a provincial committee, the provincial council must arrange, where provincial council members are to be appointed, for a proportionate representation of the groups represented in the provincial council.
4. A provincial committee is chaired by a provincial council member.
5. Sections 19 and 21 to 23 apply *mutatis mutandis* to the meeting of a provincial committee, provided always that the term 'King's Commissioner' in section 19 is read as meaning 'chair of the provincial committee' and that in section 23, subsection 5 'section 25' is read as meaning 'section 91'.

### **Section 81**

1. The provincial council or the provincial executive may establish executive committees to exercise the powers assigned to them by the provincial council or the provincial executive, as the case may be. In so doing, they will regulate the duties, powers, composition and procedures of the committee, including the manner in which they can inspect documents in respect of which an executive committee has imposed a duty of secrecy. Such inspection may be refused only in so far as it conflicts with the public interest.
2. Neither the King's Commissioner nor the members of the provincial executive may be members of an executive committee established by the provincial council. Provincial council

members may not be members of an executive committee established by the provincial executive.

3. Sections 136, subsection 2, 137 and 138 apply *mutatis mutandis* to a decision to establish an executive committee.

4. Section 19, subsection 2 and sections 22 and 23, subsections 1 to 4 apply *mutatis mutandis* to a meeting of an executive committee established by the provincial council, provided always that the term 'the King's Commissioner' in section 19, subsection 2 is read as meaning 'the chair of an executive committee'.

5. In so far as necessary in connection with the nature and scope of the powers assigned to an executive committee, the provincial executive regulates the public nature of the meetings of an executive committee established by it.

## **Section 82**

1. The provincial council or the provincial executive may establish committees other than those referred to in section 80, subsection 1 and section 81, subsection 1.

2. Section 81, subsection 2 applies *mutatis mutandis* to such another committee, with the exception of a committee established to advise on decisions on notices of objection and a committee charged with handling and advising on complaints.

3. The provincial council or the provincial executive, as the case may be, regulates the public nature of the meetings of such another committee established by it.

4. Sections 136, subsection 2, 137 and 138 apply *mutatis mutandis* to a decision to establish such another committee.

## **Section 83**

1. The provincial council or the provincial executive arranges for an executive committee established by it to account to the provincial council or the provincial executive, as the case may be.

2. The provincial council or the provincial executive may annul both written and non-written decisions by an executive committee established by the provincial council or the provincial executive, as the case may be, and intended to have any legal consequence. The provincial council may assign its power of suspension to the provincial executive. Parts 10.2.2 and 10.2.3 of the General Administrative Law Act apply *mutatis mutandis* to the annulment of non-written decisions intended to have any legal consequence.

3. In so far as necessary in connection with the nature and scope of the powers assigned to an executive committee, the provincial council or the provincial executive will arrange for the further supervision of the exercise of such powers by an executive committee established by it. Such further supervision may include approving the decisions of an executive committee. Approval may be withheld only if a decision would conflict with the law or with the public interest. Part 10.2.1 of the General Administrative Law Act applies *mutatis mutandis* to the approval of decisions other than written decisions.

**Section 84 [Repealed on 12 March 2003]**

**Section 85 [Repealed on 12 March 2003]**

**Section 86 [Repealed on 12 March 2003]**

**Section 87 [Repealed on 12 March 2003]**

**Section 88 [Repealed on 12 March 2003]**

**Section 89 [Repealed on 12 March 2003]**

**Section 90 [Repealed on 12 March 2003]**

**Section 91**

1. A committee may, pursuant to an interest referred to in section 10 of the Government Information (Public Access) Act, impose a duty of secrecy concerning matters dealt with at a meeting behind closed doors and concerning the content of documents submitted to the committee. A duty of secrecy concerning matters dealt with at a meeting behind closed doors must be imposed during the meeting in question. Those present at the meeting and all those

who have knowledge of the proceedings or the documents must observe the duty of secrecy until such time as it is lifted by the committee.

2. Pursuant to an interest referred to section 10 of the Government Information (Public Access) Act a duty of secrecy may also be imposed by the chair of a committee, the provincial executive or the King's Commissioner in respect of such documents as each of them may submit to a committee. The documents must be marked accordingly. The duty of secrecy must be observed until it is lifted either by the organ which imposed it or by the provincial council.

3. If a committee has raised matters subject to a duty of secrecy with the provincial council, the duty of secrecy must be observed until it is lifted by the provincial council.

### **Section 92 [Repealed on 12 March 2003]**

## **Chapter VI. Financial allowances for provincial council and committee members**

### **Section 93**

1. Provincial council members, as well as provincial council members granted temporary termination of membership in connection with pregnancy and childbirth or illness pursuant to section X 10 of the Elections Act, receive remuneration for their activities and an allowance for expenses as determined in a provincial ordinance.

2. The provincial council may make an ordinance containing rules concerning the partial or full reimbursement of special expenses and other financial allowances connected with the discharge of the duties of a provincial council member.

3. Subsections 1 and 2 do not apply to a provincial council member who is also a member of a provincial executive pursuant to section 13, subsection 2.

4. The ordinances referred to in subsections 1 and 2 are made in accordance with rules laid down by or pursuant to order in council.

### **Section 94**

1. The members of a committee established by the provincial council or the provincial executive receive, if they are not members of the provincial council or provincial executive, the following remuneration fixed by provincial ordinance:

(a) an allowance for attending committee meetings, and

(b) reimbursement of travelling and accommodation expenses for journeys within the province.

2. In special cases the provincial council may determine by ordinance that the members of the executive of an executive committee or other committee as referred to in section 82 are to receive fixed remuneration for their activities.

3. Further rules concerning the allowance referred to in subsection 1 (a) will be laid down by or pursuant to order in council. Further rules may also be laid down by or pursuant to order in council concerning the other remuneration referred to in this section.

## **Section 95**

The ordinances referred to in sections 93 to 94 are sent to Our Minister.

## **Section 96**

1. The members of the provincial council and of a committee established by the provincial council or the provincial executive receive, in such capacity, no remuneration or allowances from the province other than those granted to them by or pursuant to Act of Parliament.

2. They receive benefits payable by the province other than in the form of remuneration or allowances only in so far as the provincial council has made provision for this in an ordinance. Such an ordinance requires the approval of Our Minister.

## **Chapter VII. The provincial secretary and provincial clerk**

### **§ 1. General provisions**

#### **Section 97**

1. Each province has a provincial secretary and a provincial clerk.

2. A provincial secretary may not also be the provincial clerk.

### **Section 98**

Section 15, subsections 1 and 2 apply *mutatis mutandis* to the provincial secretary and provincial clerk.

## **§ 2. The provincial secretary**

### **Section 99**

The provincial executive appoints the provincial secretary. It may also suspend and dismiss him.

### **Section 100**

1. The provincial secretary assists the provincial executive, the King's Commissioner and the committees established by the provincial executive in the performance of their duties.

2. The provincial executive adopts further rules on the duties and powers of the provincial secretary in a set of instructions.

### **Section 101**

The provincial secretary attends the meetings of the provincial executive.

### **Section 102 [Repealed on 2 November 2005]**

### **Section 103**

1. The provincial executive arranges for deputisation for the provincial secretary.

2. Section 97, subsection 2 and sections 98 to 102 apply *mutatis mutandis* to the person who deputises for the provincial secretary.

## **§ 3. The provincial clerk**

### **Section 104**

The provincial council appoints the provincial clerk. It may also suspend and dismiss him.

#### **Section 104a**

1. The provincial clerk assists the provincial council and the committees established by it in the performance of their duties.
2. The provincial council adopts further rules on the duties and powers of the provincial clerk in a set of instructions.

#### **Section 104b**

The provincial clerk attends the meetings of the provincial council.

#### **Section 104c [Repealed on 2 November 2005]**

#### **Section 104d**

1. The provincial council arranges for deputisation for the provincial clerk.
2. Section 97, subsection 2, section 98 and sections 104 to 104c apply *mutatis mutandis* to the person who deputises for the provincial clerk.

#### **Section 104e**

1. The provincial council may adopt rules governing the organisation of the provincial clerk's office.
2. The provincial council may appoint, suspend and dismiss public servants employed in the provincial clerk's office.

### **Title III. Powers of the provincial authority**

#### **Chapter VIII. General provisions**

#### **§ 1. Introductory provisions**

#### **Section 105**

1. The power to regulate and administer the internal affairs of the province is vested in the provincial authority.
2. A provincial authority may be required to regulate and administer these internal affairs by or pursuant to an Act of Parliament other than the present Act in order to ensure its implementation, provided always that directions may be issued to the provincial authority and decisions may be imposed on the provincial authority or adopted in its stead only if the power to do so has been granted by Act of Parliament.
3. Without prejudice to the provisions of sections 108, subsection 5 and 117, subsection 4, central government will reimburse such of the costs incurred in implementing subsection 2 as are borne by the province.

### **Section 106**

If necessary, a distinction may be made between provinces by or pursuant to Act of Parliament.

### **Section 107**

1. Where the exercise of powers to regulate and administer is required of it by or pursuant to an Act of Parliament other than the present Act, a provincial authority may assign such powers in respect of the territory of one or more municipalities, urban regional bodies as referred to in section 104 of the Joint Arrangements Act or water authorities, to the authorities of those municipalities, urban regional bodies or water authorities in so far as the nature and scale of such powers lend themselves to being assigned and those authorities agree to the assignment.
2. A decision referred to in subsection 1 regulates the consequences of revoking the decision.
3. The draft of a decision referred to in subsection 1 requires the approval of the provincial council and the councils of the municipalities or the general boards of the urban regional bodies and water authorities concerned.
4. A decision referred to in subsection 1 must be sent to Our Minister concerned within a week.

5. Sections 136 to 138 apply *mutatis mutandis* to the publication of a decision referred to in subsection 1.
6. The regulations on the provincial authority's powers, their exercise and supervision, except those relating to meetings, apply *mutatis mutandis* to the powers assigned pursuant to subsection 1.
7. The provincial authority does not exercise supervision and does not issue regulations concerning the exercise of the powers assigned pursuant to subsection 1.
8. If a request by a municipal authority or the board of an urban regional body or water authority to take a decision as referred to in subsection 1 is rejected, the provincial authority will give reasons for the rejection.
9. Subsection 7 does not apply to the assignment of powers to an urban regional body.
10. If a provincial authority decides to assign a power to an urban regional body it must send a copy of that decision to Our Minister of the Interior and Kingdom Relations.

## **Section 108**

1. In this section:

- (a) plan means a decision containing a coherent set of mutually coordinated options regarding orders or decisions to be made by the provincial authority or other acts to be performed in order to achieve one or more objectives;
- (b) policy report means a written report on the policies pursued by the provincial authority in one or more policy areas or parts thereof and the connections within or between them.

2. A provincial authority may be required by central government to adopt a plan or policy report and, for the purposes of its preparation, to follow a given procedure only in the cases prescribed by Act of Parliament.

3. An obligation as referred to in subsection 2 applies for a maximum term of four years, unless provided otherwise by Act of Parliament.

4. A provincial authority may be required by central government to adopt a plan or policy report and, for the purposes of its preparation, to follow a given procedure in cases other than those prescribed by Act of Parliament for a maximum term of four years as part of the regulation of a temporary specific-purpose grant as referred to in section 17 of the Grants to Local Government Act.

5. A provincial authority may not be required or requested to adopt a plan or policy report or, for the purposes of its preparation, to follow a given procedure until it has been shown how compensation will be made for the financial consequences for the province.

6. This section does not apply to the budget referred to in section 193 or to the annual accounts and annual report referred to in section 201.

### **Section 109**

1. A provincial authority may be required to adopt a plan or policy report as referred to in section 108 and, for the purposes of its preparation, to follow a given procedure only if:

- (a) this is necessary in order to coordinate provincial policy with the policy of central government;
- (b) the development of policy in a new policy area makes this necessary.

2. A provincial authority will not be required to adopt a plan or policy report as referred to in section 108 or, for the purposes of its preparation, to follow a given procedure if:

- (a) this would impose intolerable constraints on the provincial authority's discretion to pursue its substantive or financial policy;
- (b) the administrative costs are not in reasonable proportion to the expected benefits or make substantial inroads on the resources available for the policy area concerned;
- (c) integration with an existing plan or policy report or with the budget referred to in section 193, or the annual accounts and the annual report referred to in section 201, would be possible;

(d) it would as a result become impossible to promote a coherent approach to provincial policy through the coordination of its various parts;

(e) the sole intention is to obtain information.

3. If the provisions laid down by or pursuant to section 108 and this section are derogated from in a bill introducing or amending provisions requiring the adoption of a plan or a policy report as referred to in section 108 and, for the purposes of its preparation, the following of a given procedure, the reasons for such derogation must be stated in the explanatory memorandum to the bill.

## **§ 2. Relationship with central government**

### **Section 110**

Our Minister concerned informs the provincial executive, on request, of his positions and intentions regarding matters of importance to the province, unless this would not be in the public interest.

### **Section 111**

Our Minister concerned gives the provincial executive the opportunity, on request, to consult on matters of importance to the province, unless this would not be in the public interest.

### **Section 112**

1. Our Minister concerned gives the provincial executives concerned – or a body which can be deemed representative of them – the opportunity, if necessary within a specified time limit, to give their views on bills, draft orders in council or draft ministerial orders if they:

(a) require regulation or administration on the part of the provincial authorities;

(b) change the functions and powers of the provincial authorities to a significant extent, or

(c) involve the finances of the provinces to a significant extent.

2. Bills as referred to in subsection 1 must include in their explanatory memorandum an account of how they will affect the organisation and operation of the provinces and an

account of the views given as referred to in subsection 1 by the provincial executives concerned or by a representative body.

3. Our Minister concerned is not obliged to invite the views referred to in subsection 1 in advance if this is not possible for reasons of urgency. In such a case the views will be invited and made public as quickly as possible.

### **Section 113**

1. Legislation that requires regulation or administration on the part of provincial authorities or changes the functions and powers of the provincial authorities to a significant extent may not derogate from the provisions of this Act unless this must be considered a particularly appropriate way of serving the relevant public interest.

2. The grounds for the proposed derogation must be stated in the explanatory memorandum accompanying the draft legislation referred to in subsection 1.

### **Section 114**

1. Our Minister is charged with coordinating central government policy affecting provinces. He also promotes the policymaking discretion of the provincial authorities.

2. Our Ministers under whose responsibility measures and intentions of relevance to central government policy on provinces are implemented must consult with Our Minister about such measures and intentions at an early stage.

3. Our Minister must raise any reservations he may have about a measure or intention in so far as he considers such measure or intention to be incompatible with the decentralisation policy pursued by the government.

### **Section 115**

1. Our Minister promotes decentralisation for the benefit of the provinces.

2. Notwithstanding the provisions of section 117, subsection 2 of the Municipalities Act (Bulletin of Acts and Decrees 1992, 96), proposals for measures that treat certain matters as

part of central government policy may be made only if the matter in question cannot be dealt with efficiently and effectively by the provincial authorities.

### **Section 116**

On request, the provincial executive must provide Our Ministers with information and advice about everything concerning the province, unless the King's Commissioner is expressly requested to do so.

### **Section 117**

1. The cases in which the provincial executive is required systematically to furnish information to Our Minister concerned are regulated by Act of Parliament or by order in council made pursuant to an Act of Parliament. Provision may be made in this connection for further regulations applying the Act of Parliament or order in council to be laid down by ministerial order.

2. Following consultation with Our Minister, provision may be made in an order in council on the recommendation of Our Minister of Economic Affairs for data described in the order concerned to be furnished to Statistics Netherlands for statistical purposes.

3. Further general rules will be laid down by order in council concerning the furnishing and gathering of information as referred to in subsections 1 and 2.

4. How compensation will be provided to offset the financial consequences of the obligation to furnish and gather the information referred to in subsections 1 and 2 and the duty to furnish and gather incidental information will be regulated by order in council, in so far as this is not done by Act of Parliament.

5. The proposals for the orders in council referred to in subsections 3 and 4 will be made by Our Minister.

### **Section 118**

The power to make provincial ordinances continues to exist in respect of subjects covered by Acts of Parliament or orders in council in so far as the ordinances will not conflict with such Acts of Parliament or orders in council.

## **Section 119**

The provisions of provincial ordinances on subjects covered by an Act of Parliament or an order in council cease to have effect by operation of law.

### **§ 3. Special provisions**

## **Section 120**

1. Where powers of the provincial council have been assigned to an executive committee and such committee fails to make a decision required of it by or pursuant to an Act of Parliament other than the present Act or fails to do so properly, the provincial council will do so in its stead.

2. Where powers of the provincial executive have been assigned to an executive committee and such committee fails to make a decision required of it by or pursuant to an Act of Parliament other than the present Act or fails to do so properly, the provincial executive will do so in its stead.

## **Section 121**

1. Where the provincial council, provincial executive or the King's Commissioner fails to make a decision required by or pursuant to an Act of Parliament other than the present Act or fails to do so properly, fails to perform or properly perform an act required by or pursuant to an Act of Parliament other than the present Act, fails to achieve a result required by or pursuant to an Act of Parliament other than the present Act or fails to achieve it properly or in time, Our Minister concerned must take a decision to intervene and take whatever action is required in the name of the provincial council, provincial executive or King's Commissioner at the expense of the province.

2. Other than where speed is of the essence, Our Minister concerned will not implement the decision to intervene until after a time limit specified in the decision has expired, within which the provincial council, provincial executive or King's Commissioner will have a further opportunity to do what is required by the decision themselves. If the situation is so urgent that Our Minister concerned is unable to record in advance in writing the decision to intervene, he will arrange as quickly as possible thereafter for the decision to be put in writing and made public.

3. If the decision to intervene concerns a result which is required by or pursuant to an Act of Parliament other than the present Act that will not be achieved in time, Our Minister concerned

will state in the decision what decisions, acts or results must be taken, implemented or achieved within the time limit referred to in subsection 2. Our Minister concerned may set different time limits for different decisions, acts or results. If the provincial council, provincial executive or King's Commissioner, as the case may be, fails to do what is required by the intervention decision within this period, Our Minister concerned will intervene and take whatever action is needed to achieve the desired result.

4. Notice of a decision to intervene and of an intention to make such a decision must be given in a newspaper or free sheet or in some other suitable way. A copy of the decision and of the intention is sent to Our Minister and the provincial council.

5. If two or more of Our Ministers consider applying subsection 1 to implement related decisions, acts or results in respect of the same province, they may assign their powers pursuant to this section to one of their number.

#### **Section 121a**

1. When implementing a decision to intervene, Our Minister concerned has the powers possessed by the provincial council, provincial executive or King's Commissioner by or pursuant to this Act or the other Act of Parliament referred to in section 121, subsection 1. Notwithstanding section 176, subsection 1 Our Minister concerned, if necessary, represents the province both at law and otherwise.

2. In so far as the provincial authority could have charged the costs of exercising the powers referred to in subsection 1 to third parties if it had exercised them itself, it may recover from such third parties costs charged to it by Our Minister. The provincial authority may collect the amount by service of a distress warrant.

#### **Section 121b**

Our Minister concerned may revoke a decision to intervene if the provincial council, provincial executive or King's Commissioner shows satisfactorily that they will do what is required of them in the decision without reservation.

#### **Section 121c**

Our Minister concerned may designate public servants to supervise the performance of duties entrusted to the provincial authority by or pursuant to an Act of Parliament other than the present Act. These public servants possess the powers conferred by sections 5:15 to 5:17 of the General Administrative Law Act. Sections 5:12, 5:13 and 5:20 of the General Administrative Law Act apply *mutatis mutandis*.

#### **Section 121d**

1. If Our Minister concerned makes a decision or an order on behalf of the provincial council, provincial executive or King's Commissioner when implementing a decision to intervene, an objection may be lodged with Our Minister concerned, for the purposes of section 7:1 of the General Administrative Law Act. The decision on the objection is made by Our Minister concerned.

2. Our Minister concerned is the defendant in the event of an application for judicial review of a decision as referred to in subsection 1 made on behalf of the provincial council, provincial executive or King's Commissioner.

3. The provincial authority may not apply for judicial review of a decision as referred to in subsection 1.

#### **Section 121e**

1. The provincial authority cooperates in the implementation of a decision to intervene. Our Minister concerned may issue directions concerning the implementation of such a decision. As soon as requested by Our Minister concerned, the provincial authority will make available the public servants needed for implementation of the decision and furnish all information necessary to implement the decision to intervene.

2. Our Minister concerned may designate public servants who, for the purposes of implementing a decision to intervene, have the powers conferred by sections 5:15 to 5:17 of the General Administrative Law Act. Sections 5:12, 5:13 and 5:20 of the General Administrative Law Act apply *mutatis mutandis*. On request, the provincial authority must provide the designated public servants with the facilities they need.

#### **Section 121f**

Rules may be laid down by order in council, on the recommendation of Our Minister, concerning the systematic provision of information to Our Minister concerned, regarding the implementation by the provincial authority of the other Act of Parliament referred to in section 121, subsection 1. Further rules concerning the applicability may be laid down by ministerial order.

**Section 121g [Repealed on 1 January 2013]**

**§ 4. Administrative enforcement action**

**Section 122**

1. The provincial authority may impose an order enforceable by remedial action.
2. The power to impose an order enforceable by remedial action is exercised by the provincial executive if the order serves to enforce rules administered by the provincial authority.
3. The power to impose an order enforceable by remedial action is exercised by the King's Commissioner if the order serves to enforce rules administered by him.
4. An executive committee to which powers of a provincial council or provincial executive have been assigned may impose an order enforceable by remedial action and grant leave for entry into a dwelling only if this power too has been expressly assigned.

**Section 123 [Repealed on 1 January 1998]**

**Section 124 [Repealed on 1 January 1998]**

**Section 125 [Repealed on 1 January 1998]**

**Section 126 [Repealed on 1 January 1998]**

**Section 127 [Repealed on 1 January 1998]**

**Section 128 [Repealed on 1 January 1998]**

**Section 129 [Repealed on 1 January 1998]**

**Section 130 [Repealed on 1 January 1998]**

**Section 131 [Repealed on 1 January 1998]**

**Section 132 [Repealed on 1 October 2012]**

**Section 133 [Repealed on 1 January 1998]**

**Section 134 [Repealed on 1 January 1998]**

**Section 135 [Repealed on 1 December 1998]**

## **§ 5. Publication and entry into force of orders containing generally binding regulations**

### **Section 136**

1. Orders of the provincial authority containing generally binding regulations are not binding until they have been published in the provincial bulletin.
2. The provincial bulletin is published online in such a way as to be generally accessible. After publication the provincial bulletin must remain generally accessible online. If online publication is wholly or partly impossible, the provincial authority must arrange for publication in some other form. Further rules are to be laid down concerning the provisions of the first and second sentences by or pursuant to order in council.
3. Notwithstanding subsection 1, an order within the meaning of that subsection may provide that a schedule that accompanies the order is to be published by being deposited for public inspection.
4. No costs may be charged for inspecting a decision published in the manner referred to in subsection 1.
5. When an order that requires approval is published, either the date of the decision granting approval is also stated or notice is given of the fact that under section 10:31, subsection 4 of the General Administrative Law Act a decision granting approval is deemed to have been made.

### **Section 137**

1. The texts of orders of the provincial authority containing generally binding regulations are made available to all in consolidated form by means of a generally accessible online medium designated by order in council.
2. The consolidated text of an order which has been made available pursuant to subsection 1 must remain available if the order is subsequently amended or revoked.
3. Our Minister may lay down rules governing the manner in which the texts referred to in subsection 1 are made available.
4. Categories of orders to which subsection 1 is not applicable may be designated by or pursuant to order in council.

### **Section 138**

Any person may, on request, obtain a printed copy of orders of the provincial authority containing generally binding regulations. The copy must be provided at no more than cost price.

### **Section 139**

Published orders enter into force on the eighth day after that of publication, unless another date has been specified in such orders.

### **Section 140**

The provisions of sections 136 and 139 apply *mutatis mutandis* to the revocation of orders containing generally binding regulations.

## **§ 6. Time limits**

### **Section 141**

Sections 1 to 4 of the General Extension of Time Limits Act apply *mutatis mutandis* to time limits set in a provincial ordinance, unless provided otherwise in the ordinance.

### **Section 142 [Repealed on 1 January 1994]**

## **Chapter IX. Powers of the provincial council**

### **Section 143**

1. Provincial ordinances are adopted by the provincial council in so far as the power of adoption has not been granted to the provincial executive or the King's Commissioner by Act of Parliament or by the provincial council pursuant to Act of Parliament. The provincial council may not adopt ordinances containing generally binding regulations unless it has first enabled the provincial executive to express its wishes and reservations to the provincial council.
2. The other powers referred to in section 105, subsection 1 are vested in the provincial council.
3. The other powers referred to in section 105, subsection 2 are vested in the provincial executive, in so far as they have not been granted to the provincial council or the King's Commissioner by or pursuant to Act of Parliament.

### **Section 143a**

1. A provincial council member may submit a motion for an ordinance or some other motion to be considered in the provincial council.
2. The provincial council regulates how a motion for an ordinance should be submitted and dealt with.
3. The provincial council regulates how and on what conditions other motions are submitted and dealt with.

### **Section 143b**

1. A provincial council member may submit a motion to amend a draft ordinance or draft decision that has been put on the agenda of a provincial council meeting.
2. Section 143a, subsection 2 applies *mutatis mutandis*.

### **Section 144 [Repealed on 12 March 2003]**

## **Section 145**

The provincial council makes the ordinances that it considers necessary in the interests of the province.

## **Section 146**

1. The provincial council may require in its ordinances that municipal authorities or, in the case of public works, the boards of water authorities cooperate in their implementation.
2. The costs of the cooperation referred to in subsection 1 are remunerated by the province in so far as they are incurred by the municipalities or water authorities concerned.

## **Section 147**

1. The provincial council adopts an ordinance containing rules governing the manner in which residents and interested parties are involved in the preparation of provincial policy.
2. The public participation referred to in subsection 1 is granted by application of part 3.4 of the General Administrative Law Act, in so far as not provided otherwise in the ordinance.

## **Section 148 [Repealed on 12 March 2003]**

## **Section 149 [Repealed on 12 March 2003]**

## **Section 150**

1. A provincial council may set penalties for infringement of its ordinances and the ordinances of organs to which the power to make ordinances has been delegated pursuant to section 152, provided that the penalties may not differ from or exceed detention for a term not exceeding three months or a second-category fine, whether or not combined with publication of the court judgment.
2. The offences referred to in subsection 1 are summary offences.

## **Section 151**

1. A provincial council member may put questions to the provincial executive or King's Commissioner orally or in writing.
2. A provincial council member may request the provincial council for leave to put a question about a subject not mentioned on the agenda referred to in section 19, subsection 2, in order to obtain information about this subject from the provincial executive or King's Commissioner. The provincial council may adopt further rules about this.

### **Section 151a**

1. The provincial council may, at the suggestion of one or more of its members, institute an inquiry into the management of provincial affairs by the provincial executive or King's Commissioner.
2. The decision to institute an inquiry will include a description of the subject of the inquiry and explanatory notes. This description may be altered by the provincial council pending the inquiry.
3. The inquiry must be conducted by a committee of inquiry established by the provincial council. The committee must have at least three members and consist solely of provincial council members.
4. Sections 22, 80, subsection 3, and 91, subsection 1 apply *mutatis mutandis* to a committee of inquiry.
5. The committee of inquiry may exercise the powers granted by this Act only if at least three of its members are present.
6. The powers and activities of a committee of inquiry are not suspended by the resignation of the provincial council.
7. Sections 136, subsection 2, 137 and 138 apply *mutatis mutandis* to the decision to institute an inquiry and establish a committee of inquiry as well as to the decision to alter the description of the subject of an inquiry.

8. Before the provincial council decides to institute an inquiry, it must adopt by ordinance further rules concerning such inquiries. These will in any event include rules on the manner in which official assistance is provided to the committee.

### **Section 151b**

1. Members and former members of the provincial council, the King's Commissioner and former King's Commissioners, members and former members of the provincial executive, members and former members of the audit office established by the provincial council, members and former members of a committee established by the provincial council or provincial executive, and public servants and former public servants appointed by or on behalf of the provincial authority or subordinate to it are obliged to comply with a demand from the committee of inquiry to allow all documents in their possession to be inspected, copied or otherwise examined where this is reasonably considered to be necessary by the committee of inquiry for the purposes of the inquiry referred to in section 151a.

2. If a demand as referred to in subsection 1 relates to documents originating from an institution of the European Union or of the central government and examination of these documents by the committee of inquiry could harm the interests of the European Union or of the State, the demand may be complied with only with the consent of Our Minister.

3. Public servants appointed by or on behalf of the provincial authority or subordinate to it are obliged to render an inquiry as referred to in section 151a all the assistance requested by the committee of inquiry.

### **Section 151c**

1. The persons referred to in section 151b, subsection 1 are obliged to comply with a summons from the committee of inquiry to appear as a witness or an expert.

2. A witness or expert who is heard by the committee of inquiry may not also be a member of the committee of inquiry.

3. Witnesses are obliged to testify.

4. Experts are obliged to provide their services impartially and to the best of their knowledge in that capacity.

5. The committee of inquiry may decide that witnesses are to be heard only after they have made an oath or affirmation. In such cases they must swear or affirm at a session of the committee of inquiry, in the presence of the chair, that they will tell the whole truth and nothing but the truth.
6. The witnesses and experts are heard in a public session of the committee of inquiry. The place and time of the public session must be publicly announced in good time by the chair.
7. The committee of inquiry may, where there is serious cause, decide to conduct a hearing or part of a hearing in private. The members and deputy members of the committee must observe secrecy about matters that come to their attention during a closed session.
8. A witness is entitled to representation during a hearing. Where there is serious cause, the committee may decide that the witness must be heard without representation.
9. Statements made before the committee of inquiry cannot serve as evidence in law, except in the case referred to in article 207, paragraph 1 of the Criminal Code.

#### **Section 151d**

1. Witnesses and experts are summoned in writing. The letter containing the summons is sent by registered post or recorded delivery.
2. The committee of inquiry may direct that witnesses and experts who have not appeared, despite having been summoned in accordance with subsection 1, are to be brought before it by the justice authorities in order to fulfil their obligation. The committee of inquiry must give the witness or expert notice of this in writing in the manner referred to in subsection 1. The decision specifies a time limit within which the party concerned can prevent enforcement by discharging his obligation after all.

#### **Section 151e**

1. No one can be compelled to disclose confidential information to a committee of inquiry where this would cause disproportionate harm to the practice of his profession or to his business or the business where he is or has been employed.

2. Persons who are bound by a duty of secrecy by virtue of their office, profession or employment may decline to give evidence, but only in relation to matters which have come to their attention in that capacity. They may decline to allow inspection, copying or other forms of examination of documents or parts thereof which are covered by their duty of secrecy.

3. The King's Commissioner and former King's Commissioners, members and former members of the provincial executive, members and former members of a committee established by the provincial executive, and public servants and former public servants appointed by or on behalf of the provincial executive or subordinate to it are not obliged to comply with section 151b, subsections 1 and 3 and section 151c, subsection 3 if furnishing the information would conflict with the public interest.

4. The committee of inquiry may request that a claim of conflict with the public interest as referred to in subsection 3 be confirmed by the provincial executive or, where the information relates to the King's Commissioner's management of affairs, by the King's Commissioner.

#### **Section 151f**

The provincial executive includes in the draft budget the costs of an inquiry in a given year as estimated by the provincial council.

#### **Section 152**

1. The provincial council may assign powers to the provincial executive and to an executive committee established by it, unless this would be inconsistent with the nature of the power concerned.

2. The provincial council may in any event not assign the power:

(a) to institute an inquiry as referred to in section 151a, subsection 1;

(b) to adopt or amend the budget referred to in section 193;

(c) to adopt the annual accounts referred to in section 202;

(d) to set a penalty for an infringement of provincial ordinances;

- (e) to adopt ordinances as referred to in sections 216, subsection 1, 217, subsection 1, and 217a, subsection 1;
- (f) to designate one or more auditors as referred to in section 217, subsection 2;
- (g) to levy taxes other than the duties referred to in section 223, subsection 1, and the duties levied under Acts of Parliament other than this Act.

3. The power to adopt ordinances and enforce them by setting penalties or taking administrative enforcement action may be assigned by the provincial council only in relation to the adoption of further rules relating to certain matters designated by it in its ordinances.

4. Section 136, subsection 2 and sections 137 and 138 apply *mutatis mutandis* to a decision made pursuant to subsection 1.

### **Section 153**

1. The regulations relating to the powers of the provincial council and to their exercise and supervision apply *mutatis mutandis* to the powers assigned pursuant to section 152.

2. The regulations concerning meetings are not included in those referred to in subsection 1.

### **Section 154 [Repealed on 12 March 2003]**

### **Section 155**

Ordinances concerned in whole or in part with public works are sent to Our Minister concerned.

### **Section 156**

1. The provincial council may change the name of the province.

2. The provincial council's decision will be brought to the attention of Our Minister.

3. The decision will state the date on which it is to take effect, which is to be no less than one year after the date of the decision.

## **Section 157 [Repealed on 12 March 2003]**

### **Chapter X. Powers of the provincial executive**

#### **Section 158**

1. The provincial executive is in any event competent:

- (a) to conduct the day-to-day management of the province, in so far as the provincial council or the King's Commissioner has not been charged with this by or pursuant to Act of Parliament;
- (b) to prepare and implement decisions of the provincial council, unless the King's Commissioner has been charged with this by or pursuant to Act of Parliament;
- (c) to adopt rules concerning the organisational public service structure of the province, with the exception of the organisation of the office of the provincial clerk;
- (d) to appoint, suspend and dismiss public servants, other than the provincial clerk and the public servants working in the office of the provincial clerk;
- (e) to decide on the performance of juristic acts by the province under private law;
- (f) to decide to conduct legal actions, objection procedures or administrative review procedures on behalf of the province, provincial council or provincial executive or to perform acts in preparation for such litigation, unless the provincial council decides otherwise in cases concerning it;
- (g) to supervise public works in so far as supervision is not assigned by Act of Parliament to others or public works are not managed by central government;
- (h) in respect of civil defence preparations.

2. The provincial executive may decide to form and take part in foundations, partnerships, companies, associations, cooperative societies and mutual associations only if this must be considered a particularly appropriate way of serving the relevant public interest. No decision may be made until after the provincial council has been sent a draft of the decision and has

had the opportunity to bring its wishes and reservations to the attention of the provincial executive.

3. A decision as referred to in subsection 2 requires the approval of Our Minister. Approval may be withheld only if the decision conflicts with the law or the public interest.

4. Even before it is decided to institute legal proceedings, the provincial executive must take all protective measures and do whatever is necessary to prevent prescription or loss of rights or title.

**Section 159 [Repealed on 12 March 2003]**

**Section 160 [Repealed on 12 March 2003]**

**Section 161 [Repealed on 12 March 2003]**

**Section 162 [Repealed on 12 March 2003]**

**Section 163**

1. The provincial executive may assign powers to an executive committee established by it, unless this would be inconsistent with the nature of the power concerned.

2. Sections 136, subsection 2, 137 and 138 apply *mutatis mutandis* to a decision made pursuant to subsection 1.

3. No decision may be made by the provincial executive under subsection 1 until after the provincial council has been sent a draft of the decision and has had the opportunity to bring its wishes and reservations to the attention of the provincial executive.

**Section 164 [Repealed on 1 January 1998]**

**Section 165**

1. The regulations relating to the powers of the provincial executive, their exercise and supervision, apply *mutatis mutandis* to the powers assigned pursuant to section 163.

2. The regulations concerning meetings are not included in those referred to in subsection 1.

## **Section 166**

1. The provincial executive may authorise one or more of its members to exercise one or more of its powers, unless this would be inconsistent with the arrangement on which the power is based.
2. Powers exercised by virtue of an authorisation are exercised in the name and under the responsibility of the provincial executive.
3. The provincial executive may issue all directions which it considers necessary in this regard.

## **Section 167**

1. The provincial executive and each of its members separately are accountable to the provincial council for the management of provincial affairs by the executive.
2. They must furnish the provincial council with all information it needs to perform its duties.
3. They must furnish the provincial council orally or in writing with the information requested by one or more provincial council members, unless this would conflict with the public interest.
4. They must furnish the provincial council in advance with information about the exercise of the powers referred to in section 158, subsection 1 (e), (f), and (h) if the provincial council so requests or if such exercise may have far-reaching consequences for the province. In the latter case, no decision may be made by the provincial executive until after the provincial council has been given the opportunity to bring its wishes and reservations to the attention of the provincial executive.
5. Notwithstanding subsection 4, if the exercise of the power referred to in section 158, subsection 1 (f) does not permit of any delay, they must furnish the provincial council as quickly as possible with information about the exercise of this power and the decision made in this regard.

## **Section 168**

The provincial council makes an ordinance to regulate the manner in which the provincial executive considers administrative disputes that are subject to its decision.

### **Section 169**

1. The following provisions apply by way of addition to section 7:22 of the General Administrative Law Act regarding witnesses and experts who are heard when a dispute as referred to in section 168 is considered.
2. Witnesses and experts may be summoned by the provincial executive at the request of interested parties or otherwise.
3. Those summoned are obliged to comply with the summons. Witnesses are obliged to testify and experts to provide their services as such, unless they have a right to decline to give evidence by virtue of a duty of confidentiality derived from their office or profession. Witnesses take the oath or affirm that they will tell the truth and nothing but the truth and experts that they will give their account in good conscience.
4. The provincial executive may direct that witnesses and experts who have not appeared, despite being legally summoned to do so, are to be brought before it by the justice authorities in order to fulfil their obligations.
5. Witnesses and experts summoned by the provincial executive receive an allowance on request for travelling and accommodation expenses and loss of time, to be arranged by the province and charged to the province's account.

### **Section 170**

Section 169 also applies to those cases which, as prescribed by the provincial authority, are to be considered on the basis of the ordinance referred to in section 168.

### **Section 171**

1. To consider the cases referred to in sections 168 and 170, the provincial executive forms one or more chambers from among its members.

2. Each chamber has at least three members, one of whom may be the King's Commissioner, acting as the chair.
3. The provincial executive regulates the composition and activities of the chambers.
4. The chair of a chamber may assign the consideration of simple cases to a single-member chamber consisting of one member appointed by him from the chamber. This member is at all times authorised to refer the matter back to the competent chamber if, in his opinion, the case is not a simple one.
5. The provisions laid down by or pursuant to sections 168 and 169 apply *mutatis mutandis* to consideration by such chambers.
6. Decisions of a full-bench chamber or single-member chamber are signed by the chair or member respectively and co-signed by the person acting as clerk to the chamber. The decisions are deemed to be decisions of the provincial executive.

## **Section 172**

1. The chair of a chamber as referred to in section 171, subsection 2 and the member of a single-member chamber may give a decision without applying section 7:16 and sections 7:18 to 7:22 of the General Administrative Law Act if the application for relief is manifestly inadmissible or if further consideration of the case seems unnecessary to them because:
  - a. the application is manifestly unfounded;
  - b. the disputed decision manifestly cannot be upheld;
  - c. the disputed decision has been revoked or amended by the competent government body and that body has manifestly met the applicant's objections.
2. The intention to make a decision in a case in the manner referred to in subsection 1 is announced to the interested parties by the chair of a chamber as referred to in section 171 or the member of a single-member chamber respectively. The announcement contains a notification of the provisions of subsection 3.

3. An interested party may lodge a written objection with the provincial executive against the proposed manner of disposal within 14 days after the announcement of the intention to dispose of the case in this way if the proposal is made by the chair of a chamber as referred to in section 171 or, if the proposal is made by the member of a single-member chamber, with the chamber from which the member was appointed.

4. Before giving a decision on the objection, the provincial executive or the chamber from which the member of the single-member chamber was appointed respectively give the party that lodged the objection requesting such a decision an opportunity to be heard at a public meeting and to inspect the documents relating to his case unless they are of the opinion that the objection is well founded.

5. The provincial council regulates all other matters relating to the lodging and consideration of and the decision on the objection in the ordinance referred to in section 168.

### **Section 173 [Repealed on 1 October 2012]**

### **Section 174**

The provincial executive endeavours to settle all disputes between the municipalities, water authorities and bodies established by joint arrangement located in its province amicably.

## **Chapter XI. Powers of the King's Commissioner**

### **Section 175**

1. The King's Commissioner oversees:

- (a) the timely preparation, adoption and implementation of provincial policy and of the resulting orders and decisions, and proper coordination between those involved in such preparation, adoption and implementation;
- (b) proper cooperation between the province and other provinces and government authorities;
- (c) the quality of public participation procedures;
- (d) the careful handling of notices of objection;

(e) the careful handling by the provincial authority of complaints.

2. The King's Commissioner publishes, together with the documents referred to in section 201, a Citizens Annual Report including in any event:

(a) a report on the quality of provincial services;

(b) his findings on subsection 1 (c).

3. The King's Commissioner also ensures that provincial interests are effectively represented.

### **Section 176**

1. The King's Commissioner represents the province at law and otherwise.

2. The King's Commissioner may assign the function of representation referred to in subsection 1 to a person designated by him.

### **Section 177 [Repealed on 1 January 1998]**

### **Section 178 [Repealed on 1 January 1998]**

### **Section 179**

1. The King's Commissioner is accountable to the provincial council for his management of provincial affairs.

2. He must furnish the provincial council with all the information it needs to perform its duties.

3. He must furnish the provincial council orally or in writing with the information requested by one or more of its members, unless this would conflict with the public interest.

### **Section 180**

Sections 168 to 170 apply *mutatis mutandis* to the King's Commissioner's consideration of administrative disputes that are subject to his decision.

### **Section 181 [Repealed on 1 October 2012]**

## **Section 182**

In accordance with rules to be laid down in a set of official instructions issued by the government, the King's Commissioner is charged with:

- a. promoting cooperation among civil servants working in the province and with the provincial authority, the municipal authorities and the water authority boards;
- b. regularly visiting the municipalities in the province;
- c. advising the government or Our Ministers on subjects other than those referred to in section 116;
- d. coordinating preparations for civil defence by the civil servants working in the province, the provincial authority, the municipal authorities and the water authority boards;
- e. keeping and recording documents addressed to him related to his official instructions.

2. In accordance with rules to be laid down in the official instructions referred to in subsection 1, the King's Commissioner may be charged by Act of Parliament with duties other than those referred to in subsection 1.

3. The official instructions are laid down by order in council. The recommendation is made by or on behalf of Our Minister.

4. An order in council adopted in accordance with subsection 3 takes effect no sooner than two months after the date of issue of the Bulletin of Acts and Decrees in which it has been published. Both houses of the States General are informed of the publication immediately.

5. Sections 79 and 179 do not apply to the implementation of the official instructions.

## **Chapter XIA. Powers of the audit office**

### **Section 183**

1. The audit office audits the efficiency, effectiveness and regularity of the management conducted by the provincial authority. An audit by the audit office of the regularity of the

provincial authority's management does not include an audit of the annual accounts as referred to in section 217, subsection 2.

2. The audit office may institute an audit at the request of the provincial council.

#### **Section 184**

1. The audit office may examine all documents in the possession of the provincial authority in so far as it considers this necessary for the discharge of its functions.

2. The provincial authority must, on request, supply all information which the audit office considers necessary for the discharge of its functions.

3. If accounting duties have been outsourced to a third party, subsection 1 applies *mutatis mutandis* to the accounts of the third party concerned or of the person who keeps accounts on the instructions of that third party.

#### **Section 185**

1. The audit office has the powers described in the following subsections in relation to the following bodies and for the following periods:

- (a) public bodies and joint organs established pursuant to the Joint Arrangements Act in which the province participates: for the years during which the province participates in the arrangement;
- (b) public companies and private limited liability companies in which the province holds over fifty per cent of the issued share capital: for the years during which the province holds over fifty per cent of the issued share capital;
- (c) other legal persons under private law to which the province (or a third party acting for the province's account and risk) has, directly or indirectly, provided a grant, loan or guarantee for a sum amounting to at least fifty per cent of the revenue of the body concerned: for the years to which the grant, loan or guarantee relates.

2. The audit office may require the body concerned to furnish further information about its annual accounts and hand over reports about them drawn up by those who audited the

annual accounts, as well as other documents relating to the body concerned which are in the possession of the provincial authority. If one or more documents are missing, the audit office may direct the body concerned to produce them.

3. The audit office may institute an audit at the body concerned, or at the third party that keeps accounts on behalf of that body, if the documents referred to in subsection 2 give reason to do so. The audit office must notify the provincial council and the provincial executive of its intention to institute such an audit.

### **Section 185a**

The audit office is responsible for supervising compliance with section 217, subsection 8.

### **Section 186**

1. The audit office records its findings and opinion in reports, provided always that these do not include data and findings which are of a confidential nature.

2. The audit office must inform the provincial council, the provincial executive and, if applicable, the body concerned of the comments and reservations which it considers relevant in the light of its findings. It may make proposals to the provincial council or the provincial executive in this regard.

3. The audit office draws up a report of its activities in the preceding year before 1 April of each year.

4. The audit office sends a copy of its reports to the provincial council and the provincial executive. If it has instituted an audit in accordance with section 185, the audit office also sends a copy of the report to the body concerned.

5. The audit office's reports are public.

## **Title IV. Provincial finances**

### **Chapter XII. General provisions**

#### **Section 187 [Repealed on 1 January 1998]**

## **Section 188 [Repealed on 21 February 1997]**

## **Section 189 [Repealed on 21 February 1997]**

## **Section 190**

1. Budgets, budget amendments, multi-year estimates, annual accounts and annual reports are to be organised in accordance with rules laid down by or pursuant to order in council.
2. Rules are also to be laid down by or pursuant to the order in council referred to in subsection 1 concerning:
  - (a) documents to be adopted by the provincial executive for the implementation of the budget and the annual accounts;
  - (b) information to be furnished by the provincial executive to third parties on the basis of the budget and the annual accounts and the auditing of this information.
3. Further rules may also be laid down by or pursuant to the order in council referred to in subsection 1 concerning the periodic provision of information for third parties. It may be provided, in agreement with Our Minister of Economic Affairs, that the information for third parties will be sent to Statistics Netherlands.
4. The information for third parties referred to in subsection 2 (b) must be sent to Our Minister within the time limits referred to in sections 195, subsection 2 and 204. Section 17a, subsection 4 of the Grants to Local Government Act applies *mutatis mutandis*.
5. If Our Minister finds that the information referred to in subsection 2 (b) or the information referred to in subsection 3, in so far as it must be furnished to Our Minister, has not been furnished or has not been furnished in time, or is not of adequate quality, he will notify the provincial executive.
6. The provincial executive may, until two weeks before the expiry of the time limits referred to in subsection 4, address a written and reasoned request to Our Minister for extension of the time limit for sending the information until the date named in the request at the latest. Our Minister must decide on this request within two weeks.

7. If the information referred to in subsection 2 (b) or the information referred to in subsection 3, in so far as it must be furnished to Our Minister, has not been furnished or has not been furnished in time, or is not of adequate quality, Our Minister will direct the provincial executive to furnish information of adequate quality within ten working days.

8. If the provincial executive fails to comply with the direction referred to in subsection 7, Our Minister of the Interior and Kingdom Relations and Our Minister of Finance may decide to suspend, wholly or partly, payments under section 15, subsection 1 of the Grants to Local Government Act to the province concerned for a maximum of twenty-six weeks. Section 17b, subsections 4, 5 and 6 of the Grants to Local Government Act applies *mutatis mutandis*.

### **Section 191**

Expenditure may be imposed on provinces only by or pursuant to Act of Parliament.

### **Section 192 [Repealed on 12 March 2003]**

## **Chapter XIII. Budget and annual accounts**

### **§ 1. The budget**

#### **Section 193**

1. The provincial council shows on the budget each year the amounts which it makes available for all tasks and activities and the financial resources it expects to be able to use for this purpose.

2. The provincial council must ensure that the budget is balanced in both structural and real terms. It is not bound by this requirement if it is reasonable to assume that a budget balanced in both structural and real terms is achievable within a few years.

3. Subject to the provisions of sections 212 and 213 expenditure and the corresponding balance sheet changes may be charged to the province only up to the amounts shown in the budget for this purpose.

4. The budget year coincides with the calendar year.

#### **Section 194**

1. Each year, well in advance of the date of adoption referred to in section 195, subsection 1, the provincial executive must present to the provincial council a draft provincial budget, with notes, and a multi-year estimate, with notes, for at least the three years following the year to which the budget relates.

2. The draft budget and the other documents referred to in subsection 1 are deposited for public inspection and are generally available as soon as they have been presented to the provincial council. Such deposit and availability must be publicly announced.

3. The provincial council debates the draft budget no sooner than two weeks after the public announcement.

### **Section 195**

1. The provincial council adopts the budget in the year preceding the year to which it relates.

2. The provincial executive sends the budget adopted by the provincial council, together with the documents referred to in section 194, subsection 1 to Our Minister within two weeks of its adoption but in any event before 15 November of the year preceding that to which the budget relates.

### **Section 196**

1. Decisions to amend the budget may be made until no later than the end of the relevant budget year.

2. Section 194, subsection 2, section 195, subsection 2 and, except in cases of urgency, section 194, subsection 3 apply *mutatis mutandis*.

### **Section 197**

The following are mandatory items of provincial expenditure:

- (a) interest and repayments on loans entered into by the province and all other debts that are due and payable;
- (b) expenditure imposed on the province by or pursuant to Act of Parliament;

- (c) expenditure resulting from the cooperation required of the provincial authority in order to implement Acts of Parliament and orders in council, in so far as this expenditure has not been charged to others.

### **Section 198**

1. If the provincial council declines to include mandatory items of expenditure in the budget, Our Minister will do so.
2. If, moreover, the provincial council declines to provide sufficient financial cover for the expenditure referred to in subsection 1, Our Minister must for this purpose reduce either the amount set aside for contingencies or, if this sum is insufficient, the other optional expenditure.

### **Section 199**

Where necessary, Our Minister will instruct the competent public servant to pay from provincial funds expenditure that has been entered in the budget as mandatory.

### **Section 200 [Repealed on 1 August 1996]**

## **§ 2. The annual accounts**

### **Section 201**

1. For each budget year the provincial executive renders account to the provincial council for its management of affairs, by submitting its annual accounts and annual report.
2. The provincial executive also submits the reports referred to in section 217a, subsection 2.
3. Once the documents referred to in subsections 1 and 2 and in section 217, subsections 3 and 4 have been put on the agenda for debate in the manner referred to in section 19, subsection 2, the provincial council deposits them for public inspection and makes them generally available. Such deposit and availability must be publicly announced. The provincial council debates the annual accounts and the annual report no sooner than two weeks after the public announcement.

### **Section 202**

1. The provincial council adopts the annual accounts and the annual report in the year following the budget year. The annual accounts include all the province's revenue and expenditure.
2. If the provincial council is of the opinion that items of revenue or expenditure or balance sheet changes that have not come about in a regular manner prevent the adoption of the annual accounts, it must immediately bring this to the attention of the provincial executive and state its reservations.
3. Within two months of receipt of the opinion referred to subsection 2, the provincial executive must send the provincial council a draft indemnity resolution, together with a response to the reservations expressed by the provincial council.
4. If the provincial executive has put forward a draft indemnity resolution, the provincial council may not adopt the annual accounts until it has reached a decision on the draft.

### **Section 203**

With the exception of irregularities that emerge later in legal proceedings, the adoption of the annual accounts discharges the members of the provincial executive from liability for their financial management as accounted for in the annual accounts.

### **Section 204**

The provincial executive must send the adopted annual accounts and the annual report, together with the documents referred to in section 201, to Our Minister within two weeks of their adoption but in any event before 15 July of the year following the budget year. If applicable, the provincial executive must also send the provincial council's decision on a draft indemnity resolution, together with the provincial executive's response as referred to in section 202, subsection 3.

### **Section 205**

If the provincial council fails to adopt the annual accounts or an indemnity resolution or fails to do so properly, the provincial executive must send the annual accounts, together with the other documents referred to in section 201 or, as the case may be, the indemnity resolution to Our Minister for adoption.

## **Section 206 [Repealed on 12 March 2003]**

### **§ 3. Approval of the budget**

#### **Section 207**

1. The budget referred to in section 193 for the next budget year and the budget amendments relating to it require the approval of Our Minister, if, in his opinion, the budget is balanced in neither structural nor real terms and there seems little prospect from the multi-year estimates referred to in section 194 that a budget balanced in structural or real terms will be achievable in the next few years. Our Minister gives notice to the provincial authority accordingly before the start of the budget year.

2. Our Minister may decide that the budget referred to in section 193 for the next budget year and the budget amendments relating to it require his approval if:

(a) the budget referred to in section 193 was not submitted in time to Our Minister in accordance with the provisions of section 195, or

(b) the annual accounts referred to in section 202, subsection 1 for the last year but one prior to the budget year were not submitted in time to Our Minister in accordance with the provisions of section 204, subsection 1.

3. Our Minister must notify the provincial authority of a decision as referred to in subsection 2 before the start of the budget year.

4. The budget does not require approval if Our Minister does not give notice as referred to in subsection 1 or notify a decision as referred to in subsection 2 within the time limits referred to in subsections 1 and 3 respectively.

5. Our Minister may revoke the decision referred to in subsection 1 during the current budget year.

## **Section 208 [Repealed on 1 January 1994]**

#### **Section 209**

At the start of the budget year concerned, Our Minister publishes in the Government Gazette the names of the provinces whose budgets and budget amendments require his approval.

### **Section 210**

Approval may be withheld only on account of a conflict with the law or with the public financial interest.

### **Section 211**

1. If the budget has not yet been approved on the day on which a decision to amend it is submitted to Our Minister, the time limit referred to in section 10:31, subsection 1 of the General Administrative Law Act will start on the day on which the budget is approved.

2. Our Minister may direct in his decision on approval of the budget that certain kinds of amendment specified by him do not require his approval.

### **Section 212**

1. If the budget or a decision to amend it has not been approved, the provincial authority requires the consent of Our Minister before incurring liabilities.

2. An application by the provincial authority for consent under subsection 1 may be refused by Our Minister only on account of a conflict with the law or with the public financial interest.

3. Our Minister must decide on the application referred to in subsection 2 within two months of its dispatch. Consent is deemed to have been granted if no decision has been sent to the provincial authority within this time limit.

4. Our Minister may attach conditions to his consent.

5. Our Minister may decide for what items and up to what amounts the provincial authority does not require the consent referred to in subsection 1.

### **Section 213**

1. If the provincial council so decides, a liability may be incurred before the relevant budget or budget amendment has been approved in cases of urgency. The decision is sent to Our

Minister forthwith. If the liability incurred has been estimated in a budget amendment which has not yet been submitted for approval, this budget amendment will be sent together with the decision.

2. The provincial council votes by roll call on the subject of the decision referred to in subsection 1.

#### **Section 214**

1. If the provincial council has applied section 213 and Our Minister withholds his approval of the budget or budget amendment concerned, he may, within a month of his decision becoming final and unappealable, hold each of the provincial council members who voted for the decision referred to in section 213 personally and equally liable to the province for the expenditure incurred.

2. The decision to hold provincial council members liable does not take effect until the time limit for applying for review has expired or, if an application has been lodged for review, until the application has been decided upon.

3. Our Minister may, if necessary, institute a legal action on behalf and at the expense of the province in order to obtain payment of moneys owed by virtue of the decision to hold provincial council members liable.

#### **Section 215**

If the budget of a province requires approval pursuant to section 207, subsection 1 or 2, Our Minister may direct that designated decisions of the provincial authority which have or may have financial consequences for the province must be sent by the provincial executive to Our Minister within two weeks.

### **Chapter XIV. Accounting and auditing**

#### **Section 216**

1. The provincial council must lay down in an ordinance the basic principles of financial policy, financial management and the structure of the financial organisation. The ordinance must guarantee that the requirements of regularity, accounting and control are fulfilled.

2. The ordinance must in any event contain:

- (a) rules for the valuation and depreciation of assets;
- (b) principles for calculating the prices and the rates for duties charged by the provincial authority as referred to in section 225;
- (c) rules concerning the general objectives and the applicable guidelines and limits of the financing function.

### **Section 217**

1. The provincial council adopts rules by ordinance for auditing its financial management and the structure of its financial organisation. This ordinance guarantees that the regularity of financial management and the structure of the financial organisation are verified.

2. The provincial council designates one or more auditors as referred to in article 393, paragraph 1 of Book 2 of the Civil Code, who are charged with auditing the annual accounts referred to in section 201 and issuing an auditor's report and a report of findings.

3. The auditor's report must indicate on the basis of the audit whether:

- (a) the annual accounts give a true and fair view both of revenue and expenditure and of the amount and composition of the assets and liabilities;
- (b) both revenue and expenditure and the balance sheet changes have been effected in a regular manner;
- (c) the annual accounts have been compiled in accordance with rules to be laid down by or pursuant to order in council as referred to in section 190, and
- (d) the annual report is compatible with the annual accounts.

4. The report of findings must in any event contain findings on:

- (a) whether the structure of financial management and of the financial organisation allow true and regular accounting; and

(b) irregularities in the annual accounts.

5. The auditor must send the auditor's report and the report of findings to the provincial council and a copy to the provincial executive.

6. Further rules may be laid down by order in council concerning the scope of the audit referred to in subsection 2 and the related reports.

7. Auditors as referred to in subsection 2 may be appointed to a position in the employ of the province and are in that case appointed, suspended and dismissed by the provincial council.

8. If, pursuant to subsection 2, the provincial council has designated auditors who have been appointed to a position in the employ of the province:

(a) the provisions laid down by or pursuant to sections 25, 25a and 27 of the Audit Firms (Supervision) Act apply *mutatis mutandis* to these auditors;

(b) the provisions laid down by or pursuant to sections 14, 18, 19, 20 and 21 of the Audit Firms (Supervision) Act apply *mutatis mutandis* to the province; and

(c) the provisions laid down by or pursuant to sections 15 and 16 of the Audit Firms (Supervision) Act apply *mutatis mutandis* to the persons in charge of the department of the province in which the auditors referred to in the opening words are employed.

9. If a province is designated as a public interest entity as referred to in section 1, subsection 1 (l) of the Audit Firms (Supervision) Act, sections 22 to 24 of that Act apply *mutatis mutandis* to that province.

### **Section 217a**

1. The provincial executive must carry out periodic audits of the efficiency and effectiveness of its management of affairs. The provincial council lays down rules about this in an ordinance.

2. The provincial executive reports in writing to the provincial council on the results of the periodic audits.

3. The audit office must be given timely notice by the provincial executive of the audits carried out by it and must be sent a copy of the report referred to in subsection 2.

### **Section 218**

The provincial executive must send Our Minister the ordinances referred to in sections 216, 217 and 217a within two weeks of their adoption by the provincial council.

### **Section 219**

Our Minister may institute an inquiry into the financial management and structure of the financial organisation referred to in section 216, subsection 1.

## **Chapter XV. Provincial taxes**

### **§ 1. General provisions**

#### **Section 220**

Decisions by the provincial council to introduce, amend or abolish a provincial tax are made by adopting a tax ordinance.

#### **Section 220a**

A tax ordinance specifies, where appropriate, the taxpayer, the subject of the tax, the taxable event, the taxable amount, the rate of tax, the dates of entry into force and termination of the levy, and any other matters relevant to the levy and its collection.

#### **Section 221**

1. Save for the provincial taxes levied pursuant to Acts of Parliament other than the present Act, no taxes other than those referred to in division 2 of this chapter may be levied.
2. Save for the provisions of Acts of Parliament other than the present Act and of division 2 of this chapter, provincial taxes may be levied on the basis of the taxable amounts specified in the tax ordinance, provided always that the amount of a provincial tax may not be made dependent on income, profit or wealth.

## § 2. Special provisions on certain taxes

### Section 222

1. Provincial surcharges may be levied on the principal of the motor vehicle tax paid by the holders of motorcars and motorcycles, as referred to in section 2 (b) and (d) and section 3 of the Motor Vehicle Tax Act 1994, who reside or are established in the province and by those in whose name a registration mark as referred to in section 62 of that Act is registered.
2. The maximum amount of the surcharge for tax periods commencing after 31 December 2011 is 109.1.
3. Calculation of the amount payable in surcharges is based on the rate set in the Motor Vehicle Tax Act 1994 as applicable on 1 April 1995, provided always that:
  - a. with respect to motorcycles, the rate is multiplied by the rate applicable on 1 April 2007 divided by the rate applicable on 31 March 2007;
  - b. with respect to motor vehicles as referred to in section 30, subsection 1 (b), (c) and (f) and section 23a, subsection 1 of the Motor Vehicle Tax Act 1994, the rate is divided by 4;
  - c. with respect to motor vehicles as referred to in section 23a, subsection 2 of the Motor Vehicle Act 1994, the rate is divided by 2; and
  - d. with respect to motor vehicles as referred to in section 23b of the Motor Vehicle Tax Act 1994, the rate is zero;
  - e. the increase in the tax referred to in section 23, subsection 2 of the Act is disregarded;
  - f. if, without application of section 84a, subsection 2 of the Motor Vehicle Tax Act 1994, the principal and the provincial surcharges together exceed the maximum referred to in that article, provincial surcharges are calculated by deducting the principal from the maximum, whereby the proportion of the principal may not exceed the aforementioned maximum.

4. With effect from 1 January 2013, the amount of the surcharge referred to in subsection 2 will be replaced at the beginning of the calendar year with another amount to be set by order of Our Minister of Finance. This amount will be calculated by multiplying the amount to be replaced by the adjustment factor referred to in section 10.2 of the Income Tax Act 2001, and rounding the result up or down to one decimal place if it has two or more decimal places. If the amount of the surcharge had been rounded up or down in the previous year, the adjustment factor will be applied to the amount before it was rounded up or down in the previous year.
5. The amount of the surcharge is the same for all motor vehicles referred to in subsection 1.
6. Our Minister of Finance provides the provincial authorities with a statement before 1 September of each year of the motor vehicles referred to in subsection 1, broken down by type, weight classification and number. The statement will be prepared as at 1 July of the current year.

#### **Article 222a**

1. Decisions to introduce, amend or abolish provincial surcharges on the principal of the motor vehicle tax take effect on 1 January of any year. Our Minister of Finance will be informed of such a decision by means of a copy of the decision before 1 December of the previous year.
2. A decision referred to in subsection 1 has no consequences for the surcharges payable in respect of a period before the date the decision takes effect.
3. Where an additional tax assessment is raised, the surcharges will be calculated in accordance with the highest amount applicable in any province on the day on which the facts referred to in sections 33, 34, 35, 36, 69 and 76 of the Motor Vehicle Tax Act 1994 were established.
4. Motor vehicle holders who do not reside or are not established in the Netherlands but are subject to the levying of motor vehicle tax are deemed, for the levying of surcharges, to reside or be established in the province that levies the highest

surcharge. In special cases, Our Minister of Finance, in agreement with Our Minister, may also designate a province where other holders of motor vehicles are to be deemed to reside or be established.

5. The revenue raised from the surcharges levied in accordance with subsections 3 and 4 are allocated to the provinces in proportion to their share in the total revenue raised from the surcharges levied for the benefit of the provinces.
6. A change in a motor vehicle holder's place of residence or establishment during a period in which motor vehicle tax is due is no cause for another province to levy surcharges on the proportion of the period that has not yet elapsed or for a refund of the surcharges already levied.

#### **Article 222b [Repealed on 1 July 1997]**

#### **Article 222c**

An encroachment licence fee may be levied on objects on, under or above provincial land intended for public services.

#### **Article 223**

1. Duties may be levied in respect of:
  - a. the use, in accordance with the permitted use, of provincial possessions designated for public services or of works or installations that are managed or maintained by the province and designated for public services;
  - b. the enjoyment of services provided by or on behalf of the provincial authority.
2. For the purposes of this Chapter, the duties referred to in subsection 1 are designated as provincial taxes.

#### **Section 224**

The duties referred to in section 223, subsection 1 may be levied by the province

which permits the use of the possessions, works or installations or provides the services, regardless of whether the taxable event occurs inside or outside the boundaries of the province.

### **Section 225**

1. The rates set in ordinances that provide for the levying of duties as referred to in section 223, subsection 1 are set in such a way that the estimated revenue from the duties does not exceed the estimated expenditure.

2. The expenditure referred to in subsection 1 includes:

- (a) contributions to special-purpose reserves and provisions for the replacement as necessary of the assets concerned;
- (b) the turnover tax which, pursuant to the VAT Compensation Fund Act, confers entitlement to a contribution from the compensation fund.

### **Section 226**

Further rules may be laid down by or pursuant to order in council concerning the taxes referred to in this division.

## **§ 3. Levying and collection**

### **Section 227**

In this division:

- (a) 'States Taxes Act' means the State Taxes Act;
- (b) 'levying in another way' means levying other than by imposition of a tax assessment or payment on submission of a tax return.

### **Section 227a**

1. Without prejudice to the other provisions of this division, provincial taxes other than those referred to in section 222 are to be levied and collected in accordance with the State Taxes

Act, the Collection of State Taxes Act 1990 and the Tax Collection (Costs) Act as if they were state taxes.

2. Without prejudice to the other provisions of this division, the powers and duties of the following officials referred to in the State Taxes Act, the Collection of State Taxes Act 1990 and the Tax Collection (Costs) Act are vested, in relation to provincial taxes, in the bodies or officials listed after the colon:

- (a) Our Minister of Finance, the governing board of the state tax authorities and the director: the provincial executive;
- (b) the inspector: the public servant charged with levying provincial taxes;
- (c) the collector or a person competent to collect state taxes: the public servant charged with collecting provincial taxes;
- (d) the officials of the Tax and Customs Administration: the public servants charged with levying or collecting provincial taxes;
- (e) the tax bailiff: the public servant designated for this purpose;
- (f) the House of Representatives of the States General: the provincial council.

3. Without prejudice to the other provisions of this division, the words 'order in council' and 'ministerial order' in the State Taxes Act and the Collection of State Taxes Act 1990 should be read in relation to provincial taxes as meaning 'order or decision of the provincial executive'.

4. The words 'the State' in section 24 of the Collection of State Taxes Act 1990 should be read in relation to provincial taxes as meaning 'the province'.

#### **Section 227b**

1. The provincial executive may direct that a different public servant will act instead of the public servant referred to in section 227a, subsection 2 (c) for the purpose of dispatching or issuing assessment notices pursuant to section 8, subsection 1 of the Collection of State Taxes Act 1990.

2. The provincial executives of two or more provinces may direct in relation to one or more provincial taxes that public servants of one of these provinces are to be designated as:

- (a) the public servant of those provinces, as referred to in section 227a, subsection 2 (b), designated as responsible for implementing any statutory provision concerning the levying of provincial taxes;
- (b) the public servant of those provinces, as referred to in section 227a, subsection 2 (c), designated as responsible for implementing any statutory provision concerning the collection of provincial taxes;
- (c) the public servants of those provinces, as referred to in section 227a, subsection 2 (d), designated as responsible for implementing any statutory provision concerning the levying or collection of provincial taxes;
- (d) the public servant of those provinces, as referred to in section 227a, subsection 2 (e), designated as responsible for implementing any statutory provision concerning the collection of provincial taxes.

3. Subsection 1 applies *mutatis mutandis* to the provincial executive of a province whose public servant is designated as responsible for collecting provincial taxes pursuant to subsection 2 (b).

4. If a joint arrangement has been made for the levying or collection of provincial taxes and a public body has been established under that arrangement, provision may be made by or pursuant to that arrangement for a public servant of that public body to be designated as:

- (a) the public servant of the province, as referred to in section 227a, subsection 2 (b) responsible for implementing any statutory provision concerning the levying of provincial taxes;
- (b) the public servant of the province, as referred to in section 227a, subsection 2 (c) responsible for implementing any statutory provision concerning the collection of provincial taxes;

- (c) the public servants of the province, as referred to in section 227a, subsection 2 (d) responsible for implementing any statutory provision concerning the levying or collection of provincial taxes;
- (d) the public servant of the province, as referred to in section 227a, subsection 2 (e) responsible for implementing any statutory provision concerning the collection of provincial taxes.

5. Subsection 1 applies *mutatis mutandis* to the executive board of the public body whose public servant is designated pursuant to subsection 4 (b).

### **Section 227c**

Provincial taxes may be levied by assessment, self-assessment involving payment on submission of the tax return, or in another way, but not by means of remittance by a withholding agent on submission of the tax return.

### **Section 227d**

1. If provincial taxes are levied in another way, the tax ordinance provides how they are to be levied and how the taxpayer is to be notified of his tax liability. The tax ordinance may also provide that the provincial executive is to lay down further rules on the implementation of these matters.

2. For the purposes of the State Taxes Act and the Collection of State Taxes Act 1990, taxes levied in another way are treated as taxes levied by assessment, provided always that:

- (a) assessment, provisional assessment and additional assessment should be read as meaning the amount claimed, the provisional amount claimed and the additional amount claimed respectively;
- (b) the assessment notice is taken to mean the notification of the amount referred to at (a);
- (c) the date of the assessment notice is taken to mean the date of the written notification of the amount referred to at (a) or, in the absence of a written notification, the date on which the amount is communicated to the taxpayer in another way.

## **Section 228**

Section 2, subsection 4, sections 3, 37, 38, 39, 47a, 48, 52, 53, 54, 55, 62, 71, 76, 80, subsections 2, 3 and 4, and sections 82, 84, 86, 87 and 90 to 95 of the State Taxes Act do not apply to the levying of provincial taxes. In addition, sections 5, 6 to 9, 11, subsection 2 and section 12 of that Act do not apply to provincial taxes which are levied in another way.

## **Section 228a**

1. The invitation to file a tax return as referred to in section 6 of the State Taxes Act is given by issuing a tax return form.
2. Filing a tax return as referred to in section 8 of the State Taxes Act is effected by submitting or sending the tax return form together with the requested documentation.
3. Notwithstanding the previous subsections, the public servant referred to in section 227a, subsection 2 (b) may require that an obligation to file a tax return or submit an application for the issue of a tax return form is fulfilled by making a tax return orally. In this connection:
  - (a) the documents requested by the public servant referred to in section 227a, subsection 2 (b) are to be lodged;
  - (b) the public servant referred to in section 227a, subsection 2 (b) may require that a written record of a tax return made orally be signed by the declarant, failing which the tax return will be deemed not to have been filed.
4. If subsection 3 is applicable, the public servant referred to in section 227a, subsection 2 (b) may substitute shorter periods of time for the periods referred to in section 9, subsection 1 and subsection 3, first sentence, section 10, subsection 2, and section 19, subsections 1, 3 and 4 of the State Taxes Act or for the shorter period referred to in section 228b, subsections 1 or 2, and section 12 of the State Taxes Act does not apply.
5. The tax ordinance may derogate from subsections 1 and 2.

## **Section 228b**

1. In the case of provincial taxes levied by assessment, a shorter period may be substituted in the tax ordinance for the period of at least one month referred to in section 9, subsections 1 and 3 of the State Taxes Act.

2. In the case of provincial taxes levied by self-assessment involving payment upon submission of the tax return, a shorter period may be substituted in the tax ordinance for the period of one month referred to in section 10, subsection 2 and section 19, subsections 1, 3 and 4 of the State Taxes Act.

### **Section 228c**

1. The public servant referred to in section 227a, subsection 2 (b) may combine in one tax assessment notice for the same taxpayer tax assessments of the same type that may relate to different taxes.

2. Subsection 1 applies *mutatis mutandis* if the taxes are levied in another way.

### **Section 228d [Repealed on 23 February 2011]**

### **Section 229**

1. A person who, pursuant to a tax ordinance, is eligible for full or partial exemption, reduction, relief or rebate may apply to the public servant referred to in section 227a, subsection 2 (b) for an exemption, reduction, relief or rebate within six weeks of the occurrence of the circumstance giving rise to that eligibility or, if the tax concerned is levied by assessment and at that time no assessment notice has yet been issued or dispatched, within six weeks of the date of the assessment notice.

2. Subsection 1 applies *mutatis mutandis* if the tax is levied in another way.

3. The public servant referred to in section 227a, subsection 2 (b) must decide on the application by individual decision against which an objection may be lodged.

### **Section 229a**

Exemption from provincial taxes is granted where required by international law or where, in the opinion of Our Minister and Our Minister of Finance, required by international custom. Our said Ministers may together lay down further rules on this subject.

#### **Section 229b**

Besides a reduction, relief or rebate provided for in the tax ordinance, the public servant referred to in section 227a, subsection 2 (b) may, *ex proprio motu*, grant an exemption provided for in the tax ordinance.

#### **Section 229c [Repealed on 1 January 1998]**

#### **Section 229d [Repealed on 1 January 1998]**

#### **Section 230**

1. Rules concerning provincial taxes may be laid down by order in council:

- (a) declaring sections 48, 52, 53, subsections 1 and 4, 54 or 55 of the States Taxes Act and sections 59 or 62 of the Collection of State Taxes Act 1990 wholly or partly applicable, or
- (b) corresponding to the rules in the sections referred to at (a).

2. The rules referred to in subsection 1 should in any event identify the person subject to the obligation and the tax to which the obligation applies. Moreover, depending on the nature of the obligation, the rules should describe the nature of the data and information to be furnished and the nature of the information that should appear from records or the purpose for which information carriers are to be made available for consultation.

#### **Section 231 [Repealed on 1 September 1999]**

#### **Section 232**

Sections 5, 20, 21, 59, 62 and 69 of the Collection of State Taxes Act 1990 do not apply to the collection of provincial taxes. Moreover, section 8, subsection 1 of that Act does not apply to the collection of provincial taxes levied in another way.

#### **Section 232a**

1. The tax ordinance may contain regulations that derogate from section 9 of the Collection of State Taxes Act 1990.
2. The tax ordinance may provide that payment of the amount owed must be made at the same time and in the same way as payment of another claim to the creditor of such claim.

### **Section 232aa**

The rules laid down by Our Minister of Finance pursuant to section 19, subsection 10 of the Collection of State Taxes Act 1990 apply *mutatis mutandis* to the making of a claim as referred to in subsection 4 of that section.

### **Section 232b**

Amounts of provincial taxes payable to and receivable from a tax debtor under section 24 of the Collection of State Taxes Act 1990 may also be netted if the time limit specified in section 9 of the Collection of State Taxes Act 1990 or the time limit specified pursuant to section 232a, subsection 1 has not yet expired.

### **Section 232c**

1. If two or more persons are liable to tax in respect of the same subject or the same taxable event, the assessment notice may be issued in the name of one of them.
2. If the tax liability referred to in subsection 1 results from the enjoyment of immovable property by virtue of ownership, possession or a limited right and the assessment notice has been issued in the name of one of the persons liable to tax, the public servant charged with the collection of provincial taxes may recover the tax shown in the tax assessment in respect of the entire immovable property from the person in whose name the assessment notice has been issued, without taking into account the rights of the other persons liable to tax.
3. A tax debtor who has paid the tax assessment may recover whatever amount he has paid in excess of his tax liability from the other persons liable to tax in proportion to each person's tax liability.

4. A taxpayer whose name is not stated on an assessment notice issued pursuant to subsection 1 may join in an application to the district court for judicial review of the assessment. Section 26a, subsection 3 of the States Taxes Act applies *mutatis mutandis*.

5. Derogation from subsection 3 is possible by agreement.

### **Section 232d**

For the purposes of section 66 of the Collection of State Taxes Act 1990, sections 76, 80 (2), (3) and (4), 82, 84, 86 and 87 of the States Taxes Act do not apply in relation to provincial taxes.

### **Section 232e**

1. The remission referred to in section 26 of the Collection of State Taxes Act 1990 is granted in the case of provincial taxes by the public servant referred to in section 227a, subsection 2 (c).

2. The rules laid down by Our Minister of Finance by ministerial order pursuant to section 26 of the Collection of State Taxes Act 1990 apply to the granting of full or partial remission.

3. Notwithstanding the rules referred to in subsection 2, the provincial council may decide that no remission whatever or only partial remission is to be granted.

4. Subject to the rules laid down by Our Minister, in agreement with Our Minister of Finance, the provincial council may lay down different rules concerning the manner in which account is taken of living costs and financial position, thereby allowing a greater degree of remission.

5. The provincial executive may declare tax to be wholly or partly uncollectable. A decision to this effect relieves the public servant responsible for the collection of provincial taxes from the obligation to make further collection attempts.

### **Section 232f**

If a bailiff's notice or instrument of prosecution has to be served or a distress warrant enforced in connection with a provincial tax in one of the public bodies Bonaire, St Eustatius or Saba, or in a province other than the one to which the tax is owed, the tax bailiff acting for

the province or public body where service or enforcement must take place is, like the tax bailiff acting for the creditor province, empowered and, on request, obliged to take such action.

### **Section 232g**

1. The Tax and Customs Administration is charged with levying and collecting the surcharges referred to in section 222.
2. The surcharges are levied and collected as motor vehicle tax.
3. The revenue is distributed to the provinces in accordance with rules to be laid down by Our Minister of Finance.
4. The costs associated with levying and collection are for the account of the provinces. These costs are calculated in accordance with rules to be laid down by Our Minister of Finance.

### **Section 232h**

Further rules may be laid down by or pursuant to order in council concerning provincial taxes to supplement the subjects regulated in this division.

### **Chapter XVI [Repealed on 1 January 1998]**

#### **Section 233 [Repealed on 1 January 1998]**

#### **Section 234 [Repealed on 1 January 1998]**

#### **Section 235 [Repealed on 1 January 1998]**

#### **Section 236 [Repealed on 1 January 1998]**

#### **Section 237 [Repealed on 1 January 1998]**

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**Section 247 [Repealed on 1 January 1998]**

**Section 248 [Repealed on 1 January 1998]**

**Section 249 [Repealed on 1 January 1998]**

**Section 250 [Repealed on 1 January 1998]**

**Section 251 [Repealed on 1 January 1998]**

**Section 252 [Repealed on 1 January 1998]**

## **Title V. Supplementary provisions on supervision of the provincial authority**

### **Chapter XVII. Approval**

#### **Section 253**

1. Decisions or orders of provincial authorities may be made subject to approval only in the cases specified by Act of Parliament.

2. Section 259 and part 10.2.1 of the General Administrative Law Act apply *mutatis mutandis* to decisions other than written decisions.

**Section 254 [Repealed on 1 January 1998]**

**Section 255 [Repealed on 1 January 1998]**

**Section 255a [Repealed on 1 January 1998]**

**Section 255b [Repealed on 1 January 1998]**

**Section 255c [Repealed on 1 January 1998]**

**Section 256 [Repealed on 1 January 1998]**

**Section 257 [Repealed on 1 January 1998]**

**Section 258 [Repealed on 1 January 1994]**

**Section 259**

1. A decision that is subject to approval by royal decree is sent to Our Minister concerned.
2. A recommendation to withhold approval is made by or jointly by Our Minister.
3. Section 27d of the Council of State Act applies *mutatis mutandis*.

**Section 260 [Repealed on 1 January 1998]**

**Chapter XVIII. Suspension and annulment**

**Section 261**

1. A written or non-written decision of the provincial authority which is intended to have any legal consequence may be annulled by royal decree.
2. Sections 266 to 274a and parts 10.2.2 and 10.2.3 of the General Administrative Law Act apply *mutatis mutandis* to the annulment of a non-written decision intended to have any legal consequence.

**Section 262 [Repealed on 1 January 1998]**

**Section 263 [Repealed on 1 January 1998]**

## **Section 264 [Repealed on 1 January 1998]**

## **Section 265 [Repealed on 1 January 1998]**

## **Section 266**

1. If the King's Commissioner considers that a decision should be annulled, he must give notice of this to Our Minister concerned within two days of the date on which it has come to his attention. He must give notice at the same time to the organ which took the decision and, if necessary, to the organ responsible for implementing the decision.

2. A decision in respect of which subsection 1 has been applied is not to be implemented or further implemented until notice has been received from Our Minister concerned that there is no reason for its suspension or annulment. The decision must be implemented if it has not been suspended or annulled within four weeks of the date of the King's Commissioner's notice.

## **Section 267**

1. A recommendation for suspension is made by Our Minister concerned.

2. Our Minister concerned must consult with Our Minister about the recommendation, unless suspension should occur without delay. Reasons for the absence of consultation should be given in the recommendation.

## **Section 268**

A provision may be made in the royal decree for the duration of the suspension.

## **Section 269 [Repealed on 1 January 1998]**

## **Section 270**

If a published decision is not annulled within the period for which it has been suspended, this is publicly announced by the provincial authority.

## **Section 271**

1. A recommendation for annulment is made by or jointly by Our Minister concerned.
2. Section 17, subsection 3 of the Council of State Act does not apply.

### **Section 271a**

1. Provision may be made in the royal decree for the period between its entry into force and the date of entry into force of the decision made pursuant to section 274.
2. If, in view of the royal decree, the provincial authority does not have policymaking discretion when applying section 274, the royal decree may provide that it will take the place of the annulled decision.
3. The royal decree may provide that no new decision will be made to replace the annulled decision.
4. The royal decree may include a direction to the provincial authority about the implementation of the royal decree. Sections 121 to 121f apply *mutatis mutandis* in the event of non-compliance with the direction.
5. If the royal decree relates to the annulment of a generally binding regulation or other order of general scope, it may provide that the annulment also relates to decisions made pursuant to or in implementation of the generally binding regulation or other order of general scope.

### **Section 272**

A royal decree to suspend or annul an order or decision or to terminate or extend a suspension must be published in the Bulletin of Acts and Decrees.

### **Section 273 [Repealed on 1 January 1998]**

### **Section 274**

1. The provincial authority must make a fresh decision on the subject of the annulled decision, taking into account the royal decree, unless section 271a, subsection 2 or 3 has been applied in the royal decree.

2. The royal decree may set a time limit within which subsection 1 must be applied. Sections 121 to 121f apply *mutatis mutandis* if subsection 1 has not been applied within that time limit.

#### **Section 274a**

Notwithstanding section 8:4, subsection 1 (d) of the General Administrative Law Act, an interested party may apply for judicial review of a royal decree as referred to in section 261, subsection 1 or of an annulment decision as referred to in section 83, subsection 2.

#### **Title VI**

**Section 275 [Repealed on 21 February 2001]**

**Section 276 [Repealed on 21 February 2001]**

**Section 277 [Repealed on 21 February 2001]**

**Section 278 [Repealed on 21 February 2001]**

**Section 279 [Repealed on 21 February 2001]**

#### **Title VII. Transitional and concluding provisions**

**Section 280 [Repealed on 15 April 2009]**

#### **Section 281**

1. The repeal of the old Provinces Act does not affect the validity of orders or decisions in effect on the day before the entry into force of the present Act.

2. Orders as referred to in subsection 1 which contain generally binding regulations whose substance conflicts with the present Act must either be brought into line with the present Act or revoked within two years of the date of the entry into force of the present Act. Orders or parts thereof which have not been brought into line with the present Act by the expiry of the time limit referred to in the previous sentence or have been revoked are deemed to have ceased to have effect by operation of law.

#### **Section 282**

Section 43, subsections 6 to 9 and section 65, subsections 6 to 8 do not apply to members of a provincial executive or the King's Commissioner respectively who are in office when these provisions take effect, for as long as they hold office without interruption in the same province.

**Section 283 [Repealed on 15 April 2009]**

**Section 284 [Repealed on 15 April 2009]**

**Section 285 [Repealed on 15 April 2009]**

**Section 286 [Repealed on 15 April 2009]**

**Section 287 [Repealed on 15 April 2009]**

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**Section 293 [Repealed on 15 April 2009]**

**Section 294 [Repealed on 15 April 2009]**

**Section 295 [Repealed on 15 April 2009]**

**Section 296 [Repealed on 15 April 2009]**

**Section 297**

This Act may be cited as the Provinces Act.

**Section 298 [Repealed on 1 January 1994]**

**Section 299 [Repealed on 1 January 1994]**

**Section 300 [Repealed on 1 January 1994]**

**Section 300a [Repealed on 1 January 1994]**

**Section 301 [Repealed on 1 January 1994]**

**Section 302 [Repealed on 1 January 1994]**

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern diligently implement it.

Done at The Hague, 10 September 1992

Beatrix

D.I.W. de Graaff-Nauta  
State Secretary for the Interior

C.I. Dales  
Minister of the Interior

Published on the twenty-second of October 1992

E.M.H. Hirsch Ballin  
Minister of Justice

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