

**EVALUATION TOOL: CHECKLIST OF PPAJA FEATURES AND CONDITIONS RELEVANT TO  
JUST ADMINISTRATIVE ACTION**

**STEP 1: LEGAL AND INSTITUTIONAL FRAMEWORK: EMPOWERING PROVISION**

1.	<b>Legislation</b>		
1.1.	Under what legislation is the administrator empowered to act?		
1.2.	What are the procedures or conditions or relevant factors prescribed by the empowering legislation, for taking the administrative action?		
1.3.	Is the purpose of the empowering provision ascertainable from the provision?		
	YES	NO	
1.4.	If so, what is that purpose?		
1.5.	What information does the legislation require to be before the administrator prior to the decision being taken?		
1.6.	Does the empowering legislation make provision for prior notice of the proposed administrative action and for an opportunity to make representations?		
	YES	NO	
1.7.	Does the empowering legislation make provision for an internal appeal process?		
	YES	NO	
1.8.	If yes, does the empowering legislation make provision for notification of the right of review or appeal?		
	YES	NO	
1.9.	Does the empowering legislation make provision for a right to request/obtain reasons for the decision?		
	YES	NO	

**STEP 2 INSTITUTIONAL FRAMEWORK – INTERNAL RESOURCES**

2.	<b>Departmental measures</b>		
2.1.	Are there any other sources of power, including non-legislative sources such as departmental delegations, rules, manuals and guidelines, which regulate the manner in which an administrative action must or should be taken, and if yes, what is the nature of such measures?		
	YES	NO	IF YES:
2.2.	Are there any internal departmental processes to assist administrators in identifying relevant		

	factors to take into account in taking administrative action and if so, what is the nature of those processes?		
	YES	NO	IF YES:
2.3.	Are there any departmental systems or processes to prevent fraud or dishonesty (in the sense of a conscious or knowing use of power for ends that are prohibited by law) in decision-making and if so, what is the nature of those systems or processes?		
	YES	NO	IF YES:
2.4.	Are there any departmental measures in place to ensure that decisions are taken promptly without causing an unreasonable delay to the party affected by such decision? If so, what is the nature of those measures?		
	YES	NO	IF YES:
2.5.	Does the department require any particular information not referred to in the empowering legislation to be before the administrator prior to the decision being taken? If so, what kind of information is so required?		
	YES	NO	IF YES:
2.6.	<p>Does the entitlement</p> <ul style="list-style-type: none"> <li>• to prior notice of the proposed administrative action</li> <li>• to make representations</li> <li>• to consider whether to give the affected person a right to legal assistance, present and dispute arguments and/or appear in person</li> <li>• to be notified of the right of review or appeal</li> <li>• to request/obtain reasons</li> </ul> <p>arise from some source other than legislation (eg departmental application of PAJA, or internal guidelines or manual)? If so, what is that source?</p>		
	YES	NO	IF YES:
3.	<b>Delegation</b>		
3.1.	Is delegation expressly permitted by the empowering legislation, and if so under what provision and what are the requirements?		
3.2.	If yes, how did the delegation take place - in writing, verbally, impliedly?		
	IN WRITING	VERBALLY	IMPLIEDLY
3.3.	Has the power been further delegated to sub-delegates? If so to whom?		
	YES	NO	IF YES:

**Step 3: CORE QUESTIONS RELATING TO PAJA COMPLIANCE**

**Lawfulness**

No.	Question	PAJA Compliance	
4.	<u>Lack of authority - Administrator who took the decision was not authorised to do so by the empowering provision - section 6(2)(a)(i)</u>		
4.1.	Who took the decision? (Designation and qualifications, not name.)		
4.2.	Was the person who took the decision authorised to do so by the empowering provision?	YES	NO
5.	<u>Manner of exercise of administrative action: unauthorised purpose/reason – section 6(2)(e)(i)</u> When the administrator took the administrative action, was the reason authorised by the empowering provision? If not, what are the defects?	YES	NO
	IF NOT:		
6.	<u>Failure to take a decision – section 6(2)(g) and sections 6(3)(a) and (b)</u> Was the decision taken within the prescribed time-period? If not, why not?	YES	NO
	IF NOT:		

**Procedural fairness**

7.	<u>Procedural fairness: adequate notice – section 3(2)(b)(i)</u>		
7.1.	Was prior notice given of the nature and the purpose of the proposed administrative action?	YES	NO
7.2.	If not, does such non-compliance constitute a reasonable and justifiable departure from the requirement? (i.e. the urgency of taking the administrative action.)	YES	NO
	IF YES, what are the reasons?		
8.	<u>Procedural fairness: reasonable opportunity to make representations – section 3(2)(b)(ii)</u>		
8.1.	Was the person affected given an opportunity to make representations?	YES	NO
8.2.	IF YES:		
	(a) – how was the opportunity made known to the person affected?		
	(b) – what preparation time was given?		
	(c) – what is the scope and content of the opportunity given?		
	(d) – was the opportunity given, reasonable in the circumstances? If not, what are the defects?	YES	NO
	(e) – did the person affected make use of the opportunity?		
	YES	NO	

8.3.	If not, does such non-compliance constitute a reasonable and justifiable departure from the requirement? (i.e. the urgency of taking the administrative action.)	YES	NO
	IF YES, what are the reasons:		
9.	<u>Procedural fairness: consideration of additional protections – section 3(3)</u>		
9.1.	Did the administrator give the affected person an opportunity to: <ul style="list-style-type: none"> <li>• Obtain assistance and, in serious or complex cases, legal representation?</li> <li>• Present and dispute information and arguments?</li> <li>• Appear in person?</li> </ul>		
	YES	NO	
9.2.	IF YES:		
	- how much notice was given?		
10.	<u>Procedural fairness: clear statement of the administrative action – section 3(2)(b)(iii)</u>		
10.1.	Was the person affected notified of the decision?	YES	NO
10.2.	IF YES:		
	(a) - how was the decision made known to the person affected?		
	VERBALLY	IN WRITING	OTHER
	(b) - was the notification a "clear statement" of the decision? If not, what are the defects?	YES	NO
	IF NOT:		
11.	<u>Procedural fairness: adequate notice of a right of review or (internal) appeal – section 3(2)(b)(iv)</u>		
11.1.	Was the person affected notified of his or her right of review or appeal?	YES	NO
11.2.	IF YES:		
	(c) - does the notification <ul style="list-style-type: none"> <li>• Stipulate the period within which proceedings must be instituted?</li> <li>• Does the notification state the name and address of the person with whom proceedings must be instituted?</li> <li>• Does the notification set out any other formal requirements in respect of the proceedings?</li> <li>• Does the notification set out any other formal requirements in respect of the proceedings?</li> <li>• How much notice was given?</li> </ul> If not, what are the defects?	YES	NO

<b>PART 4: THE RIGHT TO REQUEST REASONS</b>				
12.	<u>Procedural fairness: adequate notice of a right to request reasons – section 3(2)(b)(v)</u>			
12.1.	Were reasons given automatically when the decision was notified to the person affected?			
	YES	NO		
12.2.	If not, was the person affected notified of his or her right to request written reasons?	YES	NO	
12.3.	IF YES:			
	(a) – was the notification made at the same time as notification of the decision itself?	YES	NO	
	(b) – how was the right to request reasons made known to the person affected?			
	VERBALLY	IN WRITING	OTHER	
	(c) – does the notification stipulate the period within which reasons must be requested?	YES	NO	
	(d) – does the notification state that a request for reasons must:			
	<ul style="list-style-type: none"> <li>• be in writing?</li> <li>• be addressed to the administrator concerned?</li> <li>• be sent to the administrator by post, fax, e-mail or delivered by hand?</li> <li>• indicate the decision that affected the person's rights?</li> <li>• indicate which rights were materially and adversely affected by the decision?</li> <li>• state the full name and postal and, if available, e-mail address of the requester?</li> <li>• any telephone and fax numbers where the person may be contacted?</li> <li>• does the notification state that assistance will be given to persons who cannot write or otherwise need assistance?</li> <li>• does the notification give the name and address of the administrator to whom requests for reasons must be addressed?</li> </ul>			
	(e) – how much notice was given?			
	(f) – was the notification adequate in the circumstances? If not, what are the defects	YES	NO	
12.4.	Was a request for reasons made?			
	YES	NO		
<b>REASONS (if reasons are provided)</b>				
13.	<u>Rationality review – section 6(2)(f)(ii)</u>			
13.1.	Is the purpose of the applied provision mentioned in the reasons?	YES	NO	

13.2.	Is the connection between the decision taken by the administrator and the purpose of the empowering provision explained?	YES	NO
13.3.	Is the connection between the information before the administrator and the decision taken elaborated in the decision?	YES	NO

### STEP 5: SUPPLEMENTARY QUESTIONS RELATING TO PAJA COMPLIANCE

#### Lawfulness

No.	Question	PAJA compliance	
		YES	NO
14.	<u>Non-compliance with a mandatory and material procedure or condition prescribed by an empowering provision – section 6(2)(b)</u> (Mandatory provisions are usually signalled by the use of peremptory language such as “shall” and “must”.) Did the administrator follow all the mandatory and material procedures or conditions required by law? If not, what are the defects?	YES	NO
	IF NOT:		
15.	<u>Error of law: administrative action materially influenced by an error of law – section 6(2)(d)</u> Does the decision meet the legal requirements of the provision (as refined by court decisions, departmental guidelines or instructions to officials arising from appeals)? If not, what are the errors of law?	YES	NO
	IF NOT:		
16.	<u>Manner of exercise of administrative action: irrelevant considerations taken into account and relevant considerations not considered – section 6(2)(e)(iii)</u>		
16.1.	Did the administrator take into account all relevant factors and did he or she ignore irrelevant factors? (This would include attaching appropriate weight to such factors.) If not, what are the defects?	YES	NO
	IF NOT:		
17.	<u>Otherwise unconstitutional or unlawful action – section 6(2)(i)</u>		
17.1.	Where fundamental rights are limited by the decision, is the implied requirement of proportionality achieved? In this regard, consider whether the decision:		
	(a) - is capable of achieving its purported objective?	YES	NO
	(b) - is the least harmful means of achieving the objective?	YES	NO
	(c) - does not constitute an excessive burden on the individual?	YES	NO
17.2.	If the decision is not proportionate, what are the defects?		