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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF CO-OPERATIVE GOVERNANCE****GENERAL NOTICE 1915 OF 2023****INTERGOVERNMENTAL MONITORING,  
SUPPORT AND INTERVENTIONS BILL, 2023**

The Department of Cooperative Governance invites public comments on the draft Intergovernmental Monitoring, Support and Interventions Bill, 2023.

**Members of the public are invited to submit written comments before 26 August 2023, to the following address:**

By post to:

Director-General  
**For the attention: Mr Wayne McComans**  
Department of Cooperative Governance  
Private Bag X804  
**PRETORIA**  
0001

By e-mail to:

[IMSIBill@cogta.gov.za](mailto:IMSIBill@cogta.gov.za)

A copy of the Bill can be found on the website of the Department of Cooperative Governance at: [www.cogta.gov.za](http://www.cogta.gov.za) and may also be obtained from the Government Printers.

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

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**INTERGOVERNMENTAL MONITORING,  
SUPPORT AND INTERVENTIONS BILL, 2023**

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 48932 of 10 July 2023)

(The English text is the official text of the Bill)

**(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)**

**[B – 2023]**

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## ACT

To regulate the implementation of, and the processes provided for in section 100 and section 139 of the Constitution; to provide for targeted support to provinces and municipalities in need of assistance; to provide for the monitoring of provinces and municipalities as to the fulfilment of their executive obligations in terms of the Constitution or legislation; to provide alternative steps to interventions to induce compliance by provinces or municipalities with their executive obligations; to provide for the deployment of administrators by the intervening national executive or provincial executive; and to provide for matters connected therewith.

## PREAMBLE

**WHEREAS** the Constitution establishes a system of co-operative government in the Republic, constituted as national, provincial and local spheres of government;

**AND WHEREAS** each sphere of government and all organs of state within each sphere must respect the constitutional status, institutions, powers and functions of government in the other spheres;

**AND WHEREAS** each sphere of government and all organs of state within each sphere must exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere;

**AND WHEREAS** section 100 of the Constitution provides for the national executive to intervene in a province that cannot or does not fulfil its executive obligations in terms of the Constitution or legislation, and whereas section 139 of the Constitution provides for the provincial executive to intervene in a municipality that cannot or does not fulfil its executive obligations in terms of the Constitution or legislation, or its obligations in relation to approving a budget or revenue-raising measures necessary to give effect to the budget , or due to a crisis in its financial affairs, is in serious or persistent material

breach of its obligations to provide basic services, or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments;

**AND WHEREAS** there is a need for national legislation to regulate, in the case of provinces, the processes for interventions in terms of section 100 of the Constitution, and in the case of municipalities, the implementation and processes for all types of interventions in terms of section 139 of the Constitution;

**AND WHEREAS** Chapter 13 of the Municipal Finance Management Act regulates the implementation and processes of section 139 of the Constitution in relation to interventions arising from causes of a financial nature;

**AND WHEREAS** the Public Finance Management Act and the Municipal Finance Management Act provides measures to ensure proper financial management of public sector resources, and empower the national and provincial treasuries to enforce those measures in terms of section 216(1) of the Constitution, including to stop transfer of funds to address serious or persistent material breach of those measures;

**AND WHEREAS** section 125(3) of the Constitution requires the national government, by legislative or other measures, to assist provinces to develop the administrative capacity required for the effective exercise of their powers, and performance of their functions, and whereas section 154(1) of the Constitution requires the national government and the provincial governments, by legislative or other measures, to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers, and to perform their functions;

**AND WHEREAS** interventions invoked in terms of sections 100 and 139 of the Constitution are extraordinary measures applied in extraordinary circumstances in the provinces and municipalities;

**AND WHEREAS** all spheres of government and all organs of state within each sphere, must secure the well-being of the people of the Republic; provide effective, transparent, accountable and coherent government for the Republic as a whole; be loyal to the

Constitution, the Republic and its people; respect the constitutional status, institutions, powers and functions of government in the other spheres; not assume any power or function except those conferred on them in terms of the Constitution; exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and co-operate with one another in mutual trust and good faith;

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows—

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### **Part 3**

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53. Contents of directives
54. Compulsory effect of directives and consequences of non-compliance

### **Part 4**

#### ***Assumption of responsibility for executive obligation — section 50(2)(c) intervention step***

55. Deployment of administrator to fulfil assumed obligations on behalf of provincial executive
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## CHAPTER 1 INTERPRETATION AND APPLICATION OF ACT

### Definitions

1. (1) In this Act, unless the context indicates otherwise —
- “accounting authority”**, in relation to a provincial public entity, means an accounting authority as defined in section 1 of the Public Finance Management Act;
- “accounting officer”**, in relation to—
- (a) a provincial department or provincial public entity, means an accounting officer as defined in section 1 of the Public Finance Management Act; or
  - (b) a municipality or a municipal entity, means an accounting officer as defined in section 1 of the Municipal Finance Management Act;
- “administrator”**, means a deployed person, or a team of officials, or institutions in public or private sector, with specialised expertise as maybe required during the intervention in the province or municipality, and in relation to—
- (a) a province, means a person deployed as an administrator in terms of section 18(1)(a) who acts on behalf of the province or provincial department;
  - (b) a municipality, means a person deployed as an administrator for purposes of a section 49(2)(c), (d), (e), or (f) intervention step;
- “adverse situation”**, in relation to –
- (a) a province, means adverse circumstances that are likely to have been caused by a failure of the province to comply with an executive obligation; and
  - (b) a municipality, means adverse circumstances that are likely to have been caused by a failure of the municipality to comply with an executive obligation;
- “assign”** means transfer of power or function contained in an Act of Parliament or a provincial Act, from one organ of state, to another, or to a deployee, by agreement and in writing;
- “Constitution”** means the Constitution of the Republic of South Africa Act, 1996, as amended;

**“delegate”** means confer of exercise of any power or performance of any function for the national or provincial executive;

**“deployee”** in relation to—

- (a) a province, means a person, other than an official, appointed as a representative on behalf of the national executive into the affairs of a province, provincial department or provincial entity that is subject to an intervention in terms of section 100 of the Constitution; and
- (b) a municipality, means a person, other than an official, appointed as a representative on behalf of the provincial executive into the affairs of the municipality or municipal entity that is subject to an intervention in terms of section 139 of the Constitution;

**“directive”** means a directive issued by—

- (a) the national executive in terms of section 12(2)(b) intervention step; or
- (b) a provincial executive in terms of section 49(2)(b) intervention step;

**“discretionary financial intervention”** means an intervention in terms of section 139(1) of the Constitution in a municipality contemplated in section 137 of the Municipal Finance Management Act;

**“executive obligation”**, in relation to —

- (a) a province, means a non-discretionary instruction in law to the province to exercise a function when a specific set of facts occur in terms of the provisions of the Constitution or legislation, excluding an obligation to approve a provincial budget or to pass provincial legislation; or
- (b) a municipality, means a non-discretionary instruction in law to the municipality and the municipal council to exercise a function when a specific set of facts occur in terms of the provisions of the Constitution or legislation, including adjustment budget, but excluding an obligation to—
  - (i) approve a municipal budget;
  - (ii) pass revenue raising measures;
  - (iii) pass a by-law; or
  - (iv) raise loans

**“impending”**, in relation to a failure to fulfil an obligation, means that a failure to fulfil the obligation is likely to occur if preventative steps to avert the failure are not taken;

**“Intergovernmental Relations Framework Act”** means Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);

**“Intervening Minister”** means a national executive member responsible for the same or similar portfolio to that of the MEC in a province who intervenes in terms of section 100 of the Constitution;

**“intervention step”**—

- (a) in relation to a province, means an intervention step referred to in section 12(2)(a), (b) or (c); or
- (b) in relation to a municipality, means an intervention step referred to in section 49(2)(a), (b), (c), (d), (e) or (f);

**“MEC”** means a member of executive council in a province;

**“Minister”** means a national executive member responsible for cooperative governance;

**“Municipal Finance Management Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**“municipality”** means—

- (a) an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- (d) has a separate legal personality which excludes liability on the part of its community for the actions of the municipality;
- (b) consists of—
  - (i) the political structures and administration of the municipality; and
  - (ii) the community of the municipality;
- (c) functions in its area in terms of the political, statutory and other relationships between its political structures, political office bearers and administration and its community; and
- (d) has a separate legal personality which excludes liability on the part of its community for the actions of the municipality;

**“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), as amended;

**"Municipal Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as amended;

**"national coordinating committee"** means committee established in terms of 3(2) of the Act for purposes of a section 12(1) intervention step;

**"national executive"** means Cabinet consisting of the President as head, a Deputy President and Ministers;

**"national executive member"** means national executive member responsible for the portfolio in terms of which that executive obligation resides or responsible for the concurrent functional area as that of a provincial executive member and act on behalf of and as delegated by the national executive;

**"province"** means a provincial administration described and listed in section 103 of the Constitution and includes—

- (a) a provincial department;
- (b) a government component listed in Schedules 2 or 3B of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and
- (c) a provincial public entity listed in Schedule 3C or 3D of the Public Finance Management Act;

**"provincial coordinating committee"** means committee established in terms of 3(2) of the Act constituted of MECs responsible for local government and for finance, and may include any other MEC that be appointed by the Premier for purposes of 49(2)(c) and (d) intervention steps;

**"provincial department"** means—

- (a) a provincial administration listed in Schedule 1 of the Public Service Act, 1994 (Act No 30 of 1994); or
- (b) a department within a provincial administration and listed in schedule 2 of that Act;

**"provincial executive"** means the executive council consisting of the Premier as head, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature;

**"official"**, in relation to—

- (a) a province, means—
  - (i) an employee of a province or provincial department, or provincial entity;

- (ii) a person seconded to a province or provincial entity to work as a member of staff of the province, provincial department or provincial entity; or
- (b) in relation to a municipality, means—
  - (i) an employee of a municipality or municipal entity;
  - (ii) a person seconded to a municipality or municipal entity to work as a member of staff of the municipality or municipal entity; or
  - (iii) a person contracted by the municipality or municipal entity to work as a member of staff of the municipality or municipal entity otherwise than as an employee;

**“organ of state”** means an organ of state as defined in section 239 of the Constitution;

**"prescribe"** means prescribe by regulation in terms of section 97;

**"province"**, as an institutional concept, includes any of the following institutions of a relevant province—

- (a) a provincial department;
- (b) a government component listed in Schedules 2 or 3B of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and
- (c) a provincial public entity listed in Schedule 3C or 3D of the Public Finance Management Act;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"regulatory measures"** means measures issued by—

- (a) the national executive in relation to a province when imposing a section 12(2)(a) intervention step; or
- (b) the provincial executive in relation to a municipality when imposing a section 49(2)(a) intervention step;

**“sectoral legislation”** means legislation on a concurrent functional area for which—

- (a) a specific national executive member is responsible for nationally; or
- (b) a specific MEC is responsible for in a province;

**“support”**—

- (a) in relation to a province, means support provided in terms of section 8; or



(b) in relation to a municipality, means support provided in terms of section 44; **"this Act"** includes any regulations made in terms of section 97.

(2) In this Act, a word or expression which is a derivative or other grammatical form of a word or expression defined in this Act, has a corresponding meaning unless the context indicates that another meaning is intended.

### **Purpose and application of Act**

2. (1) The purpose of this Act is—

- (a) to monitor —
  - (i) whether provinces and municipalities fulfil their constitutional and statutory obligations; and
  - (ii) provide targeted support to provinces and municipalities to enable them to fulfil their constitutional and statutory obligations; and
- (b) to legislate—
  - (i) the processes established by section 100(1) and (2) of the Constitution; and
  - (ii) the implementation of section 139 of the Constitution, including the processes established by that section, subject to subsection (2).

(2) The provisions of this Act apply to discretionary interventions in terms of section 139(1) of the Constitution, discretionary financial interventions, and interventions in terms of section 139(4) and (5) of the Constitution only to the extent that those provisions are consistent with Chapter 13 of the Municipal Finance Management Act.

### **Exercise of powers, duties and functions assigned to national executive**

3. (1) The President together with other members of the national executive must exercise powers, duties and functions in terms of this Act, subject to subsection (3);

(2) The national coordinating committee is established as a standing committee coordinating the intervention and is constituted of the Minister and national

executive members responsible for finance, and for public service and administration, and any other national executive member as necessary, and may be appointed by the President as necessary in terms of this section for purposes of a section 12(1) intervention step;

(3) The President may delegate to the national coordinating committee, and another national executive member acting jointly, any of the powers, duties or functions assigned to the national executive in terms of a provision of this Act, including the power to implement an intervention in terms of section 100 of the Constitution in a province.

(4) A delegation in terms of subsection (2)—

- (a) must be in writing;
- (b) is subject to such limitations and conditions as the President may determine; and
- (c) does not divest the national executive of the responsibility concerning the exercise of the delegated power, duty or function.

(5) The President may, at any time, alter or repeal any decision taken as a result of a delegation in terms of this section, but no such alteration or repeal may detract from any rights that have accrued as a result of the decision.

#### **Exercise of powers, duties and functions assigned to provincial executive**

4. (1) The Premier exercises, in relation to that province, the powers, duties and functions assigned in terms of this Act to the provincial executive, except where provided otherwise in terms of subsection (2).

(2) The Premier of a province may delegate to—

- (a) the MEC responsible for local government, any of the powers, duties or functions assigned to the provincial executive in terms of a provision of this Act, including the power to impose a section 49(2)(a), (b), (c), (e) or (f);
- (b) the MEC responsible for finance, any of the powers, duties or functions assigned to the provincial executive in terms of a provision of this Act, including the power to impose a section 139(4) or (5) of the Constitution; or

- (c) the provincial coordinating committee, and another MEC acting jointly, appointed by the Premier as necessary, any of the powers, duties or functions assigned to the provincial executive in terms of a provision of this Act, including the power to implement a section 139(4) or (5) of the Constitution, or a section 49(2)(a), (b), (c) or (d) intervention step.

(3) A delegation in terms of subsection (2)—

- (a) must be in writing;
- (b) is subject to such limitations and conditions as the Premier may determine;
- (c) does not divest the provincial executive of the responsibility concerning the exercise of the delegated power, duty or function; and
- (d) may at any time be amended or repealed by the Premier.

(4) The Premier may at any time, alter or repeal any decision taken in consequence of a delegation in terms of this section, but no such alteration or repeal may detract from any rights that have accrued as a result of the decision.

## **CHAPTER 2 MONITORING AND SUPPORT OF PROVINCES**

### **Part 1 Fulfilment of provincial executive obligations**

#### **Primary responsibility**

5. (1) The primary responsibility for ensuring that a province fulfils its obligations in terms of the Constitution and legislation lies with the province itself.

(2) If a province—

- (a) encounter signs of a possible or impending non-fulfilment of an executive obligation; or
- (b) has failed to fulfil an executive obligation, it must immediately take remedial steps to avert non-fulfilment of the obligation, or to ensure sustained future fulfilment of the obligation.

(3) A province must have an early warning monitoring and reporting system to alert itself and the national government of any possible or impending non-fulfilment of an executive obligation, subject to section 17(4)(e) of the Public Administration Management Act, 2014 (Act 11 of 2014).

### **National monitoring**

6. The Minister of public service and administration, through the Office of Standards and Compliance established in terms of section 17(1) of the Public Administration Management Act, 2014 (Act 11 of 2014), establish a monitoring system to monitor compliance by provinces with their executive obligations, that includes—

- (a) mechanisms and procedures in national departments and other national organs of state for—
  - (i) the identification of any early signs that a province might not be able to fulfil an executive obligation; and
  - (ii) reporting to the national coordinating committee and other relevant national executive members—
    - (aa) any early signs of a possible non-fulfilment by a province of an executive obligation;
    - (bb) any impending non-fulfilment by a province of an executive obligation; and
    - (cc) any actual failure by a province to fulfil an executive obligation; and
- (b) the roles and responsibilities of national executive members, national departments, other organs of state and officials in implementing the monitoring system.

## **Part 2**

### **Targeted national support for provinces in need**

#### **Identification of provinces in need of targeted support**

7. (1) Any province that is in need of support additional to the support it receives from the national executive to exercise its powers, duties and functions, may

submit a motivated written request for such additional support to the appropriate national department, or otherwise to the national executive member.

(2) On receipt of the request, the relevant department or the national executive member—

- (a) must analyse the need of the province for such additional support; and
- (b) may approve the request for support from the province.

(3) If a province is identified for targeted support, the relevant national executive member must—

- (a) after consultation with the province, prepare a detailed support initiative stating—
  - (i) the critical functional areas for which support is needed;
  - (ii) the reasons why the support is needed;
  - (iii) the kind and extent of the support needed;
  - (iv) the conditions on which the support is to be provided;
  - (v) composition of the support team; and
  - (v) the actions that must be taken to give effect to the support initiative;
- (b) assign roles and responsibilities for the implementation of the support initiative;
- (c) submit a copy of the support initiative to the province; and
- (d) regularly monitor implementation and outcomes of the support initiative.

### **Kinds of national support**

8. The targeted support the relevant national executive member may provide to a province identified for support in terms of section 7 include but not limited to—

- (a) provision of professional, technical or administrative guidance and advice;
- (b) the temporary secondment of key professional, technical or administrative personnel;
- (c) assistance in managing, operating or maintaining—
  - (i) administrative, personnel or financial systems;
  - (ii) operational systems, supply chain processes, performance monitoring and reporting processes; or
  - (iii) infrastructure, equipment or other assets;

- (d) access to technical equipment and facilities;
- (e) the training of, and transfer of skills to, staff;
- (f) assistance in guiding decision-making;
- (g) financial; and
- (h) the sharing of information.

**National support for provinces facing possible, impending or actual non-fulfilment of executive obligation**

9. (1) The national executive member responsible for the portfolio in terms of which that executive obligation resides, must, if the national executive member is alerted by the monitoring system referred to in section 6 or any other indicator, to a possible, impending or actual failure by a province to fulfil any of its executive obligations—

- (a) establish—
  - (i) the extent, seriousness and cause of the possible, impending or actual failure; and
  - (ii) whether the province is considering or has taken any remedial steps to prevent a possible or impending failure from occurring, or to deal with the consequences of an actual failure;
- (b) in writing, inform the President and the national coordinating committee of the situation; and
- (c) regularly monitor the situation.

(2) The national executive member referred to in subsection (1), acting in consultation with the national coordinating committee, must, if remedial steps proposed or taken by the province to deal with the situation are ineffective, or are likely to be ineffective, or if the province has not proposed or taken any remedial steps to deal with the situation—

- (a) determine whether the province has the skills, resources and capacity to take remedial steps to avert non-fulfilment of the obligation, or to deal with the consequences should non-fulfilment occur, or if non-fulfilment has already occurred, to ensure a turnaround and sustained future fulfilment of the obligation;
- (b) if the province does not have the required skills, resources or capacity—

- (i) determine whether national support is needed to enable the province to take those remedial steps, or to deal with those consequences, or to ensure sustained future fulfilment of the obligation; and
- (ii) if so, determine the kind and extent of national support needed;
- (c) consider whether the situation warrants or may ultimately warrant an intervention; and
- (d) prepare a report on the matter and submit the report to national executive.

(3) If any proposed national support is approved by the national executive, the national executive member referred to in subsection (1), acting in consultation with the national coordinating committee, must prepare and implement a support initiative in terms of section 7(3) within 30 days after the national support has been approved.

### **CHAPTER 3 NATIONAL INTERVENTIONS IN PROVINCES**

#### **Part 1 Decision-making processes**

##### **Determining whether intervention is appropriate**

**10.** (1) If a province or a provincial department cannot, or does not, or does not adequately fulfil an executive obligation in terms of the Constitution or legislation, the relevant national executive member must determine whether an intervention is appropriate;

(2) The national executive member, before submitting an intervention proposal to the national executive to intervening in terms of section 100 of the Constitution, must—

- (a) determine whether that situation in the province is in fact caused by non-fulfilment of an executive obligation by the province;

- (b) if so, satisfy itself that the relevant obligation is an executive obligation in terms of the Constitution or legislation as contemplated in section 100(1) of the Constitution;
- (c) if it is so satisfied, identify the executive obligation with reference to the constitutional provision or legislation in which it is contained;
- (d) determine the cause of the failure to fulfil the executive obligation by the province, and the extent to which the obligation is not fulfilled;
- (e) consider whether an intervention in the province in terms of section 100 of the Constitution is the appropriate mechanism in the circumstances to deal with the non-fulfilment of the obligation by the province, or whether section 11 of the Act should first be applied; and
- (f) if it considers an intervention in terms of section 100 of the Constitution to be appropriate, determine the intervention step or combination of intervention steps to be implemented.

(3) (a) If minimum national norms and standards have been prescribed for an executive obligation which a province is in terms of the Constitution or legislation required to fulfil, that obligation must, for purposes of this Act, be regarded as not having been fulfilled if the province has not complied with those minimum national norms and standards.

(b) A decision by the national executive as to whether an executive obligation referred to in subparagraph (a) has been fulfilled, must be taken in consultation with the national executive member responsible for the portfolio in terms of which that executive obligation resides.

#### **Alternative steps to induce compliance by province with executive obligations**

**11.** (1) The national executive may, instead of intervening in terms of section 100(1) of the Constitution, take any other step to induce compliance by the province with the obligation, if the conditions for a national intervention in a province are met, including—

- (a) utilising the forums, mechanisms and procedures established by the Intergovernmental Relations Framework Act;



- (b) invoking any legislation regulating provinces and the exercise of their powers, duties and functions, including the Public Finance Management Act; or
- (c) providing targeted support to the province in terms of Part 2 of Chapter 2.

(2) Subsection (1) is not a prerequisite for an intervention in terms of section 100 of the Constitution, and the national executive may, subject to subsection (3), summarily intervene if it so decides, provided that the conditions for a national intervention in terms of section 100(1) of the Constitution are met.

(3) If the obligation which the province failed to fulfil is a measure referred to in section 216(2) of the Constitution, compliance with the measure may be enforced by the National Treasury either by—

- (a) taking steps in terms of that section; or
- (b) considering submitting to the national executive an intervention proposal in the affairs of the province or provincial department in terms of section 100 of the Constitution.

### **Intervention steps**

**12.** (1) The relevant national executive member must determine an appropriate intervention step or a combination of intervention steps to ensure fulfilment of the obligation if the conditions for an intervention in terms of section 100 of the Constitution in a province are met, and the national executive member decides to intervene in the province in terms of that section.

(2) The intervention steps the national executive may take in terms of section 100 of the Constitution includes the following:

- (a) the implementation of measures aimed at regulating decisions of a province relating to the executive obligation which the province failed to fulfil; or
- (b) the issuing of a directive as contemplated in section 100(1)(a) of the Constitution; and
- (c) the assumption of responsibility for the executive obligation which the province failed to fulfil as contemplated in section 100(1)(b) of the Constitution.

(3) A province must comply with a directive referred to in subsection (2)(b);

(4) If the province fails to fulfil the obligation placed on it in terms of subsection (2)(b), the national executive may, in terms of section 100 of the Constitution, take any steps available to it to ensure compliance with the directive, including by assuming responsibility for compliance with the directive in terms of section 100(1)(b) of the Constitution.

(5) The national executive may not implement an intervention step referred to in subsection (2)(c) unless that intervention step is preceded by a directive in terms of subsection (2)(b).

#### **Determination of appropriate intervention step**

**13.** To determine whether a specific intervention step considered by the national executive in terms of section 12 will, in the circumstances of the case, be appropriate, as contemplated in section 100(1) of the Constitution, the national executive member must—

- (a) consider—
- (i) the nature of the obligation which the province failed to fulfil, and the extent to which it failed to fulfil the obligation;
  - (ii) the cause of failure to fulfil the obligation by the province, and the extent to which the obligation is not fulfilled;
  - (iii) the consequences of the failure to fulfil the obligation for the people of the province;
  - (iv) the urgency of correcting the failure to fulfil the obligation by the province;
  - (v) the capacity of the province to correct the failure and fulfil the obligation;
  - (vi) any previous interventions in the province;
  - (vii) the interests of the province with due regard to the principles of co-operative government; and
- (b) consider whether any proposed intervention step will ensure fulfilment of the obligation.

## Part 2

### Regulatory measures — section 12(2)(a) intervention step

#### Nature of measures that may be implemented

14. The relevant national executive member may implement measures in terms of section 12(2)(a) intervention step, including:
- (a) designating a national department or national public entity, or an adviser with appropriate specialist knowledge, to act as a consultative mechanism for the province, and whom the province must consult before taking any decision in connection with the executive obligation which the province failed to fulfil;
  - (b) requiring the concurrence of the national executive member before any such decision by the province may be implemented;
  - (c) imposing conditions on the exercise by the province of a power in terms of which any such decision is taken; or
  - (d) any other additional reasonable measures that may be taken.

#### Consequences of non-compliance with measures

15. A decision taken or implemented by a province in contravention of section 14 of the Act is an unauthorised decision, and expenditure incurred as a result of such decision is subject to the Public Finance Management Act.

## Part 3

### Issuing of directives— section 12(2)(b) intervention step

#### Contents of directives

16. (1) If the national executive implements a section 12(2)(b) intervention step, the directive referred to in that section must –
- (a) describe the extent of the failure to fulfil the executive obligation by the province which gave rise to the intervention; and
  - (b) state the steps which the province is required to take to ensure fulfilment of that obligation, and any timeframes within which those steps must be taken.

(2) Steps referred to in subsection (1)(b) may include requirement that the province—

- (a) direct the suspension of an official from office, in cases where the continued presence of the official in the relevant provincial department or provincial entity threatens to prevent, delay or ultimately undermine the success of the intervention;
- (b) initiate or institute disciplinary proceedings against that official in terms of any legislation subject to which that official holds office; and
- (c) designate another person to be responsible for exercising the powers, duties and functions of the suspended official.

(3) For purposes of this section, official excludes the Premier or an MEC.

#### **Compulsory effect of directives and consequences of non-compliance**

**17.** (1) A province must comply with a directive referred to in section 16.

(2) If the province fails to comply with the directive in terms of subsection (1), the national executive may, in terms of section 100 of the Constitution, take any steps available to it to ensure compliance with the directive, including by assuming responsibility for compliance with the directive in terms of section 100(1)(b) of the Constitution.

### **Part 4**

#### **Assumption of responsibility for executive obligation— section 12(2)(c) intervention step**

#### **Deployment of administrator or national organ of state to fulfil assumed obligation on behalf of national executive**

**18.** (1) If the national executive implements a section 12(2)(c) intervention step, it may—

- (a) deploy an official of a national department or national public entity, or a person in private sector, as administrator, to fulfil the assumed obligation or specific aspects of the assumed obligation on behalf of the national executive; or

(b) appoint a national department or national public entity to fulfil the assumed obligation or specific aspects of the assumed obligation on behalf of the national executive.

(2) (a) A person deployed in terms of subsection (1)(a) as administrator, holds office and must exercise the powers, duties and functions of office in terms of Chapter 6.

(b) The mandate of an administrator is confined to exercising the powers, duties and functions of the province necessary for fulfilling the assumed obligation, or the relevant specific aspects of the assumed obligation on behalf of the national executive, except those powers, duties and functions excluded from the mandate of administrator in terms of section 90.

(c) Any decision by the national coordinating committee to appoint an administrator in terms of subsection (1)(a) must be taken after consultation with national executive member responsible for the concurrent functional area in which the assumed obligation falls.

(3) (a) A national department or national public entity deployed in terms of subsection (1)(b), must exercise the powers, duties and functions of the province necessary for fulfilling the assumed obligation, or the relevant specific aspects of the assumed obligation on behalf of the national executive.

(b) A national department or national public entity referred to in paragraph (a), must designate an official of the department or entity to be responsible for implementing paragraph (a).

(4) (a) the national executive member responsible for the concurrent functional area as that of a provincial executive member, assumes the powers of that provincial executive member in respect of the status and standing in the provincial executive council;

(b) the national executive member may delegate powers in paragraph (a) to the deputy minister of that portfolio, or to an administrator;

(c) the affected provincial executive member in terms of paragraph (a) may attend the meetings of the provincial executive council, but may not vote.

### **Effect of assumption of responsibility for executive obligation on province**

**19.** (1) If the national executive assumes responsibility for an executive obligation of a province in terms of a section 12(2)(c) intervention step—

- (a) the intervening national executive member, or the administrator or national department or public entity deployed with fulfilling the obligation, may exercise any of the powers, duties and functions assigned to an official of the province, but only to the extent that the exercise of those powers, duties and functions are necessary to –
  - (i) fulfil the assumed obligation; and
  - (ii) comply with section 100(1)(b)(i) to (iv) of the Constitution;
- (b) the right of that official or provincial executive member in the province, to continue exercising those powers, duties and functions, to the extent that those powers, duties and functions are exercised by the relevant national executive member, an administrator or a national department or public entity in terms of paragraph (a), is suspended until the section 12(2)(c) intervention step ends;
- (c) the assumption of responsibility does not affect the right to administer the affairs of the province by the province other than the obligation for which the national executive has assumed responsibility; and
- (d) the province remains responsible for budgeting for and funding the fulfilment of the obligation.

(2) The relevant national executive member may recover from the province any necessary and reasonable expenses incurred in assuming responsibility for the fulfilment of section 12(2)(c) intervention step.

### **Resumption of responsibility by province when assumption of obligation ends**

**20.** The province or the provincial department or the provincial entity resumes responsibility for the executive obligation if a section 12(2)(c) intervention step ends.

## Part 5

### Suspension of an official in province — section 12(2)(c) intervention step

#### Suspension of an official in province

21. (1) The national executive, through the relevant national executive member, may suspend an official from office, including the head of department of a province, provincial department or provincial public entity in cases where the continued presence of the official in the relevant province, provincial department or provincial entity threatens to prevent, delay or ultimately undermine the success of the intervention;

(2) If the national executive through the relevant national executive member suspends an official of a province, it may initiate or institute disciplinary proceedings against that official in terms of any legislation subject to which that official holds office, or where appropriate, direct the province or the administrator to initiate or institute such disciplinary proceedings.

(3) The national executive may delegate to the Minister or administrator the powers and functions in terms of subsection (1) and (2).

#### Continuation of functions of suspended official

22. (1) If the national executive suspends an official of a provincial department or provincial public entity, it may –

- (a) designate another person or another official of the province or provincial public entity to be responsible for exercising the powers, duties or functions of the suspended official during his or her suspension; or
- (b) in the case of the suspension of an official, deploy an official of a national department, national public entity or another provincial employee in the province, or a person in private sector, as administrator to exercise the powers, duties and functions of the suspended official.

(2) A person deployed in terms of subsection (1)(b) as administrator holds office and must exercise the functions of office in terms of Chapter 6.

(3) (a) The mandate of an administrator deployed in terms of subsection (1)(b) is confined to exercising the powers, duties and functions of the suspended official, except those powers, duties and functions excluded from the mandate of the administrator in terms of section 90.

(b) Any powers, duties and functions of the suspended official excluded from the mandate, vest in the national executive member who may delegate any of those powers, duties and functions to any official of the province.

#### **Effect of suspension of an official in province**

**23.** If an official of a provincial department or provincial public entity is suspended in terms of a section 12(2)(c) intervention step—

- (a) the affected provincial department must provide such staff and other resources, and render such other assistance as may be necessary, and, within its means, approved budget, to enable any person deployed as administrator to exercise the powers, duties and functions of the suspended official effectively; and
- (b) the province remains responsible for funding the exercise by the administrator of the powers, duties and functions of the suspended official.

### **Part 6**

#### **Provisions to facilitate achievement of intervention objective**

##### **Provincial assistance in intervention**

**24.** If the national executive intervenes in a province in terms of section 100 of the Constitution, the province –

- (a) must assist the national executive member to achieve the objectives of the intervention, and to bring the intervention to a successful conclusion as speedily as possible;
- (b) must take all reasonable steps to prevent its officials from interfering with, hindering or obstructing implementation of the intervention;
- (c) in the case of a section 12(2)(c) Intervention step—
  - (i) may not withdraw any of its staff, funds or other resources allocated by it for the fulfilment of the relevant executive obligation; and
  - (ii) must provide such additional staff, funds and other resources, and render such other assistance, within its means and approved budget, to facilitate



- fulfilment of the obligation in terms of the reasonable requirements of the national executive, or persons acting on its behalf;
- (iii) any of its staff member must give effect to the directives and instructions of the administrator to the extent necessary to fulfil the neglected obligation and ensure future performance; and
  - (iv) reprioritise the budget of the provincial department or provincial entity subject to an intervention to give effect to the priorities of the intervention, subject to the approval of the national coordinating committee.

### **Undue interference in intervention**

**25.** (1) If the continued presence of an official in the relevant provincial department or provincial entity, threatens to prevent, delay or ultimately undermine the success of the intervention, the national executive member, on behalf of the national executive, may direct the provincial executive to—

- (a) suspend that official from office;
- (b) initiate or institute disciplinary proceedings against that official in terms of any legislation subject to which that official holds office; and
- (c) designate another person to be responsible for exercising the powers, duties and functions of the suspended official.

(2) Compliance with a directive in terms of subsection (1) is obligatory, and if the provincial executive fails to comply with a directive issued to it, the national executive member may take any steps available to it to ensure compliance with the directive, including assuming responsibility for the obligation in terms of section 100(1)(b) of the Constitution.

(3) For purposes of this section official excludes provincial executive members of a province.

### **Financial accountability and responsibilities of accounting officers and accounting authorities during intervention**

**26.** (1) The accounting officer of a provincial department, provincial public entity, or the accounting authority of a provincial public entity affected by an intervention in a province in terms of section 100 of the Constitution –

- (a) continues, during the intervention, to be responsible in that capacity for complying with the Public Finance Management Act; and
- (b) must manage the responsibilities of accounting officer or accounting authority in terms of that Act with due regard to the requirements needed for achieving the objectives of the intervention.

(2) If another person is designated in terms of section 27(1)(a) or (b) to act as accounting officer of a provincial department or provincial public entity, or as accounting authority of a provincial public entity during an intervention in a province, that other person must comply with subsection (1).

#### **Designation of person to replace accounting officer or accounting authority during intervention**

**27.** (1) The National Treasury may, for purposes of the Public Finance Management Act, designate a person determined by it during an intervention if the national executive intervenes in a province in terms of section 100 of the Constitution as—

- (a) the accounting officer of a provincial department or provincial public entity; or
- (b) the accounting authority of a provincial public entity in the province.

(2) The National Treasury may designate a person in terms of—

- (a) subsection (1)(a) as accounting officer of a provincial department or provincial public entity only in instances where—
  - (i) a person who is the accounting officer of that department or provincial public entity has been suspended either in terms of a section 12(2)(b) intervention step or in terms of section 21 or 25; or
  - (ii) the national executive has assumed in terms of a section 12(2)(c) intervention step an executive obligation of the province that embraces the whole or a material part of the functional area of that department or trading entity; or

- (b) subsection (1)(a) or (b) as accounting authority of a provincial public entity only in instances where—
- (i) a person who is the accounting authority of that public entity has been suspended either in terms of a section 12(2)(b) intervention step, or in terms of section 21 or 25; or
  - (ii) the national executive has assumed, in terms of a section 12(2)(c) intervention step, an executive obligation of the province that embraces the whole, or a material part of the functional area of that provincial public entity.

(3) If the National Treasury deploys a person in terms of subsection (1)(a) or (b) for purposes of an intervention as the accounting officer of a provincial department, or provincial public entity, or as the accounting authority of a provincial public entity, the person referred to in section 36 or the person or body referred to in section 49 of the Public Finance Management Act, as the case may be, ceases for the duration of the intervention to be the accounting officer of that department, or provincial public entity, or the accounting authority of that provincial public entity.

(4) The person that may be designated to act as accounting officer or accounting authority in terms of subsection (1)(a) or (b) includes—

- (a) an official of the affected provincial department or provincial public entity;
- (b) an official of any other provincial department or provincial public entity;
- (c) an official of any national department or national public entity; or
- (d) an official or person deployed in terms of section 18 of this Act as administrator for purposes of the intervention.

(5) The National Treasury may exercise its powers in terms of subsection (1) and consult with the national coordinating committee, or undertake processes in terms of section 37 of the Public Finance Management Act, as the case may be.

**Designation of person to exercise specific powers, duties or functions of accounting officer or accounting authority during intervention**

**28.** (1) If the National Treasury has for purposes of an intervention in a province not replaced the accounting officer of a provincial department or provincial public entity or the accounting authority of a provincial public entity in terms of section 27(1)(a) or (b), the National Treasury may designate a person determined by it to exercise during the intervention any specific powers, duties or functions assigned in terms of the Public Finance Management Act to the accounting officer of the department or provincial public entity or to the accounting authority of the public entity.

(2) The National Treasury may designate a person in terms of subsection (1), during the intervention, to exercise any specific powers, duties or functions of—

- (a) the accounting officer of a provincial department, or provincial public entity, only in instances where the national executive has assumed, in terms of a section 12(2)(c) intervention step, an executive obligation of the province that, in any way, affects the functional area of that department or provincial public entity; or
- (b) the accounting authority of a provincial public entity, only in instances where the national executive has assumed, in terms of a section 12(2)(c) intervention step, an executive obligation of the province that, in any way, affects the functional area of that public entity.

(3) If the National Treasury deploys a person in terms of subsection (1) to exercise, for purposes of an intervention, specific powers, duties or functions of the accounting officer of a provincial department, or provincial public entity, or of the accounting authority of a provincial public entity, as the case may be, that person exercises those powers, duties or functions to the exclusion of that accounting officer or accounting authority, but only to the extent that the exercise of those powers, duties or functions are necessary for the fulfilment of the assumed executive obligation.

(4) The person that may be designated to exercise specific powers, duties or functions of an accounting officer or accounting authority in terms of subsection (1) includes—

- (a) an official of the affected provincial department or public entity;
- (b) an official of any other provincial department or provincial public entity;

- (c) an official of any national department or national public entity; or
- (d) an official or person deployed in terms of section 18 of this Act as administrator for purposes of the intervention.

## **Part 7**

### **Procedures for imposing, reviewing, amending, revising and terminating intervention**

#### **Notice of intervention**

**29.** (1) The intervening Minister must submit a written notice of the intervention to the national executive for approval of the intervention in terms of section 100 of the Constitution.

(2) If the national executive intervenes in the province in terms of section 100(1)(b) of the Constitution, the Minister, on behalf of the national executive, must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention has begun, and the intervention must end if the National Council of Provinces disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention.

(3) The Minister, on behalf of the national executive, must notify the province of the intervention by serving a notice of intervention on the province in the prescribed manner if it decides to intervene in a province, and has decided on an appropriate intervention step or combination of intervention steps.

(3) A notice of intervention must contain a statement that the national executive is intervening in the province in terms of section 100 of the Constitution because of a failure by the province to fulfil an executive obligation, and stipulate at least the following:

- (a) a short description of the executive obligation which the province failed to fulfil;
- (b) the extent to which the province failed to fulfil the obligation;
- (c) the intervention step or combination of intervention steps the national executive is imposing;
- (d) particulars of the intervention step or each intervention step;
- (e) the date on which the intervention will commence; and

(f) the period for which the intervention is expected to be in force.

(4) Copies of the notice of intervention, together with any attachments required by this Act, must be submitted within 14 days after the intervention begun to—

- (a) the National Council of Provinces; and
- (d) the national coordinating committee members.

(5) A notice referred to in subsection (3)(a) must, in the case of a section 12(2)(c) intervention step, be submitted to the National Council of Provinces in terms of section 30.

### **Submission of information to National Council of Provinces**

**30.** (1) When the national executive implements a section 12(2)(c) intervention step and the Minister submits a notice referred to in section 100(2)(a) of the Constitution to the National Council of Provinces in compliance with that section, it must attach to the notice a copy of the notice of intervention implementing that intervention step together with copies of the following—

- (a) all documents submitted by the national executive member to the affected province in connection with the intervention;
- (b) any information relating to the circumstances which gave rise to the intervention submitted by the province to the national executive;
- (c) copies of complaints, letters or petitions concerning the performance of the province in the possession of the national executive;
- (d) reports of investigations conducted by, or on behalf of, the national executive; and
- (e) any other information in the possession of the national executive relevant to the intervention.

(2) The Minister, in consultation with the national coordinating committee members, must submit the notice of the intervention to the National Council of Provinces on behalf of the national executive.

(3) The Minister must give notice of the intervention in the Government Gazette and at least one newspaper circulating in the province, if it intervenes in a

province in terms of section 100 of the Constitution, within 14 days after the intervention begun.

### **Review of intervention of section 100 of the Constitution**

**31.** (1) The national executive member must regularly, but at least every three months, review an intervention in terms of section 100 of the Constitution, including the effectiveness of the intervention step implemented in terms of the intervention.

(2) The national coordinating committee must, for the purposes of subsection (1), submit to the national executive, at least every three months a progress report on each intervention in terms of section 100(2) of the Constitution.

(3) After a review in terms of subsection (1), and considering the outcome of the review, the national executive may—

- (a) amend the intervention notice in terms of section 32;
- (b) revise the intervention in terms of section 33; or
- (c) terminate the intervention in terms of section 34(1).

### **Amendment of intervention notice of section 100 of the Constitution**

**32.** (1) The national executive member may, after a review in terms of section 31, amend a section 100(1) notice of intervention in any way appropriate to the intervention step implemented by the notice, including by—

- (a) altering, withdrawing or adding to any of the particulars referred to in section 29(2)(d) contained in the notice;
- (b) replacing a person deployed as administrator for purposes of the intervention, or effecting other changes relating to the administrator deployed for purposes of the intervention; and
- (c) making technical changes or correcting any errors that are not material.

(2) The national executive member must notify the province of the amendment of a notice of intervention by serving an amended notice of intervention on the province in a prescribed manner.

(3) A copy of the amended notice of intervention must be submitted to the organs of state referred to in section 29(3).

(4) This section may not be applied to revise an existing intervention step.

### **Revision of existing intervention step**

**33.** (1) The national executive member may, after a review in terms of section 31, revise the existing intervention step by replacing it with another intervention step, or combine it with an additional intervention step if the existing intervention step is not effective or sufficiently effective within 14 days after conclusion of the review, if it has reviewed an intervention in terms of section 31.

(2) The national executive member must notify the province by serving on it a notice of revised intervention in the prescribed manner if it revises an existing intervention step.

(3) A notice of revised intervention must contain a statement that the national executive has revised the existing intervention step, and stipulate the following;

- (a) particulars of the new intervention step that replaces, or is added to the existing intervention step;
- (b) the reasons for the revision;
- (c) the date on which the revision will commence; and
- (d) the period for which the intervention is expected to continue.

(4) (a) A copy of the revised notice of intervention must be submitted to the organs of state referred to in section 29(3).

(b) Section 33, with any necessary changes the context may require, apply to a notice of revised intervention.

(5) The national executive member may afford the province an opportunity to respond to the review, amendments, or revised intervention in the province



undertaken in terms of sections 31, 32 and 33 of the Act on any material amendments, revisions or replacements made.

### **Termination of intervention of section 100 of the Constitution**

**34.** (1) The national executive member must issue a notice of termination of intervention to the province if the intervention ends in terms of section 100(2)(b) of the Constitution, in the case of a section 12(2)(c) intervention step;

(2) The national executive member must, after a review in terms of section 31, terminate an intervention implemented in terms of section 100 of the Constitution if —

- (a) the objective of the intervention has been met;
- (b) the province has the capacity and is committed to fulfil the obligation in a sustainable manner; and
- (c) the need for continuing the intervention has ended.

(3) A notice of termination of intervention must state —

- (a) that the intervention has or is to be ended;
- (b) the date on which the intervention has ended or will end; and
- (c) the reason for the ending of the intervention.

(4) A copy of the notice of termination of intervention must be submitted to the organs of state referred to in section 29(3).

(5) The national executive member must give notice of the termination of the intervention implemented in terms of section 100 of the Constitution within 14 days after conclusion of the termination, in the Government Gazette and at least one newspaper circulating in the province, if the intervention in a province is terminated.

## **Part 8**

### **Monitoring and review of national intervention in provinces**

#### **Request by National Council of Provinces for information concerning intervention**

**35.** The national executive member must, on request by the National Council of Provinces, submit to the Council such information concerning an intervention in a province in terms of section 100 of the Constitution, as the Council may require.

#### **Recommendations by National Council of Provinces to national executive**

**36.** (1) The intervention must end if the National Council of Provinces disapproves the intervention within 180 days after the intervention began, or by end of that period, has not approved the intervention.

(2) If the National Council of Provinces makes recommendations to the national executive member on any intervention in a province in terms of section 100 of the Constitution, the national executive member must—

- (a) consider those recommendations; and
- (b) provide reasons to the Council if it fails or decides not to implement any of the recommendations.

(3) The National Council of Provinces must, while the intervention continues, review the intervention regularly, and may make any appropriate recommendations to the national executive member

### **Part 9**

#### **Miscellaneous provisions**

##### **Access to information, records and documents during intervention**

**37.** During an intervention in a province in terms of section 100(1) of the Constitution, the national executive member, and any administrator, or national department, or public entity deployed with fulfilling the obligation, has access to such information, records and documents of the province, as may be necessary, for executing the intervention.

##### **Capacity building and transfer of skills during national intervention**

**38.** During an intervention in terms of section 100 of the Constitution, the national executive member must—

- (a) determine whether the province has the capacity and skills to fulfil the executive obligation which the province failed to fulfil; and
- (b) if the province lacks the capacity, skills or commitment for the fulfilment of the obligation in a sustainable manner, assist the province in acquiring the necessary capacity, skills or commitment.

### **Report on intervention**

**39.** (1) The national executive member must, within 30 days after the intervention ended, submit a report on the intervention to the National Council of Provinces if it terminates an intervention in a province in terms of section 34(1).

(2) A report in terms of subsection (1) must include—

- (a) the reasons why the national executive has terminated the intervention;
- (b) the results of the intervention; and
- (c) whether the province is able and committed to fulfil, in a sustainable way, the executive obligation which gave rise to the intervention.

### **Status of provincial executive council during intervention**

**40.** (1) The provincial executive must function in terms of the Constitution, subject to any implementation of an intervention in terms of section 100 of the Constitution;

(2) The provincial executive may not take any decisions which threaten to prevent, delay or ultimately undermine the success of the intervention implemented by the national executive;

(3) The national executive member responsible for concurrent portfolios as that of the MEC, represents that MEC in the provincial executive;

(4) The national executive member may delegate to the Deputy Minister of that portfolio, or may delegate to the administrator, any of the powers and functions in terms of subsection (3).

## CHAPTER 4 MONITORING AND SUPPORT OF MUNICIPALITIES

### Part 1

#### Monitoring fulfilment of municipal executive obligations

##### Primary responsibility

41. (1) The primary responsibility for ensuring that a municipality fulfils its obligations in terms of section 152 of the Constitution, and other obligations in terms of the Constitution and legislation, lies with the municipality itself.

(2) A municipality must have an early warning monitoring and reporting system complying with requirements as may be prescribed, to alert itself, the relevant province, and the Minister, of any possible or impending non-fulfilment of an executive obligation.

(3) If a municipality is—

- (a) encountering signs of a possible or impending non-fulfilment of an executive obligation; or
- (b) has failed to fulfil an executive obligation, it must immediately take remedial steps to avert non-fulfilment of the obligation, or to ensure sustained future fulfilment of the obligation.

##### National and provincial monitoring

42. The Minister, national executive member, and provincial executive member responsible for local government in the relevant province must, within its local government monitoring arrangements, establish a monitoring system to monitor compliance, by municipalities, with their executive obligations, including—

- (a) mechanisms and procedures in the national or provincial administration for—
  - (i) the identification of any early signs that a municipality might not be able to fulfil an executive obligation; and

- (ii) reporting to the Minister and other relevant national executive members, or to the MEC responsible for local government, and other relevant MECs in the province—
  - (aa) any early signs of a possible non-fulfilment, by a municipality, of an executive obligation;
  - (bb) any impending non-fulfilment, by a municipality, of an executive obligation; and
  - (cc) any actual failure, by a municipality, to fulfil an executive obligation; and
- (b) the roles and responsibilities of national executive members, or MECs, departments, public entities and officials in implementing the national or provincial monitoring system.

## Part 2

### Targeted national and provincial support for municipalities in need

#### Identification of municipalities in need of targeted support

**43.** (1) Any municipality that is in need of support additional to the support it receives from the national or provincial executive to manage its own affairs, and to exercise its powers, duties and functions, may submit a detailed written motivation for support, stating—

- (a) the critical functional areas for which support is needed;
- (b) the reasons why the support is needed, and where the reason for support is lack of capacity, to detail the current and required capacity;
- (c) the kind and extent of the support needed;
- (d) the expected timeframes and period for which support is needed; and
- (e) if the support needed is in relation to a matter outside the competence of the province, state the national department responsible for the function.

(2) On receipt of the request, the national or provincial executive—

- (a) must assess the need of the municipality for such additional support; and
- (b) may identify that municipality for targeted support.

(3) If a municipality is identified for targeted support, the relevant department, or the national or provincial executive, must—

- (a) after consultation with the municipality, prepare a detailed support initiative stating—
  - (i) the critical functional areas for which support is needed;
  - (ii) the reasons why the support is needed;
  - (iii) the kind and extent of the support needed;
  - (iv) the conditions on which the support is to be provided;
  - (v) any financial resources to the support; and
  - (vi) the actions that must be taken to give effect to the support initiative.
- (b) assign roles and responsibilities for the implementation of the support initiative;
- (c) submit a copy of the support initiative to the municipality; and
- (d) regularly monitor the implementation and the outcomes of the support initiative.

(4) The support needed in relation to a matter outside the competence of the province, in terms of subsection (1)(b), must be made through the office of the provincial executive member responsible for local government, to the national department responsible for the function.

#### **Kinds of national and provincial support**

**44.** The targeted support the national or provincial department or executive may provide to a municipality identified for support in terms of section 43, include, but not limited to—

- (a) the provision of professional, technical or administrative guidance and advice;
- (b) the temporary secondment of key professional, technical or administrative personnel;
- (c) the assistance in managing, operating or maintaining—
  - (i) administrative, personnel or financial systems;
  - (ii) municipal service and other technical systems;
  - (iii) operational systems, supply chain processes, performance monitoring and reporting processes; or
  - (iv) infrastructure, equipment or other assets;

- (d) the access to technical equipment and facilities;
- (e) the training of, and transfer of skills to, councillors or staff;
- (f) the assistance in guiding decision-making;
- (g) the sharing of information; and
- (h) financial.

**Provincial support for municipalities facing possible, impending or actual non-fulfilment of executive obligation**

**45.** (1) If the provincial executive is alerted through the provincial monitoring system, or by any other indicator, or any other means, to a possible, impending or actual failure by a municipality to fulfil any of its executive obligations, the MEC responsible for local government must—

- (a) establish—
  - (i) the extent, seriousness and cause of the possible, impending or actual failure; and
  - (ii) whether the municipality is considering taking, or has taken any remedial steps to prevent a possible or impending failure from occurring, or to deal with the consequences of an actual failure;
- (b) in writing, inform the Minister, the national executive member responsible for finance, and the provincial executive member responsible for finance of the situation in the municipality, and also any other national executive member responsible for administering sectoral legislation affected by the situation; and
- (c) regularly monitor the situation.

(2) If remedial steps proposed or taken by the municipality to deal with the situation are ineffective, or are likely to be ineffective, or if the municipality has not proposed or taken any remedial steps to deal with the situation, the MEC responsible for local government, must—

- (a) determine whether the municipality has the skills, resources and capacity to take remedial steps to avert non-fulfilment of the obligation, or to deal with the consequences should non-fulfilment occur, or if non-fulfilment has already occurred, to ensure a turnaround and sustained future fulfilment of the obligation;
- (b) if the municipality does not have the required skills, resources or capacity—

- (i) determine whether provincial support is needed to enable the municipality to take those remedial steps, or to deal with those consequences, or to ensure sustained future fulfilment of the obligation; and
- (ii) if so, determine the kind and extent of provincial support needed;
- (c) prepare a report on the matter and submit it to—
  - (i) the Premier;
  - (ii) the Minister;
  - (iii) the national executive member responsible for finance;
  - (iv) the organised local government; and
  - (iv) any other national executive member responsible for administering sectoral legislation affected by the matter.

(3) If any proposed provincial support is approved by the provincial executive, the MEC responsible for local government must prepare and implement a support initiative in terms of section 44.

(4) If the relevant executive obligation is contained in national or provincial legislation for which another MEC is responsible in the province, subsections (1), (2) and (3) must be implemented—

- (a) by the MEC for local government in concurrence with that other MEC; or
- (b) if the Premier so instructs, by that other MEC in consultation with the MEC for local government.

(5) The MEC for local government must immediately inform the Minister if the province does not have the skills, resources and capacity to provide to a municipality the support referred to in subsection (2)(b).

**National support for municipalities facing possible, impending or actual non-fulfilment of executive obligation**

**46.** (1) If the national executive member is alerted to an impending or actual failure by a municipality to fulfil an executive obligation which the municipality is required to fulfil in terms of the Constitution, national or provincial legislation, and there is reason



to believe that the situation may call for national support, the national executive member —

- (a) may request the relevant province to submit a report referred to in section 46(2)(d), if the report has not already been submitted; and
- (b) must, if the municipality does not have the required skills, resources and capacity to take remedial steps to avert non-fulfilment of the obligation or to deal with the consequences should non-fulfilment occur or, if non-fulfilment has already occurred, to ensure a speedy turnaround and sustained future fulfilment of the obligation—
  - (i) determine whether national support is in fact needed to enable the municipality to take those remedial steps or to deal with those consequences or to ensure a turnaround and sustained future fulfilment of the obligation; and
  - (ii) if so, determine the kind and extent of national support needed and whether that support should be given directly or through the province.

(2) The Minister must prepare a support initiative in terms of section 44 if the national support is approved by the national executive.

(3) If the relevant executive obligation is contained in national legislation within the portfolio of another national executive member, subsections (1) and (2) must be implemented—

- (a) by the Minister in concurrence with that other national executive member; or
- (b) if the President so determines, by that other national executive member in consultation with the Minister.

## **CHAPTER 5**

### **PROVINCIAL INTERVENTION IN MUNICIPALITIES**

#### **Part 1**

#### **Decision-making processes**

**Determining whether intervention is appropriate**

47. (1) Whenever the provincial executive is prompted by an adverse situation in a municipality to consider whether it should intervene in the municipality in terms of section 139(1) of the Constitution, the provincial executive must, before intervening in terms of that section—

- (a) determine whether the situation in the municipality is in fact caused by non-fulfilment of an obligation by the municipality;
- (b) satisfy itself that the obligation is an executive obligation in terms of the Constitution or legislation as contemplated in section 139(1) of the Constitution;
- (c) if it is so satisfied, identify the executive obligation with reference to the constitutional provision or legislation in which it is contained;
- (d) determine—
  - (i) the cause of failure to fulfil the obligation by the municipality and the extent to which the obligation is not fulfilled; and
  - (ii) whether or not section 137 of the Municipal Finance Management Act applies;
- (e) consider whether an intervention in terms of section 139(1) of the Constitution in the municipality is the appropriate mechanism in the circumstances to deal with non-fulfilment of the obligation by the municipality or whether section 48 should not first be applied; and
- (f) if it considers intervention in terms of section 139(1) of the Constitution to be appropriate, determine the intervention step, or combination of intervention steps to be implemented.

(2) The provincial executive must intervene in the municipality in terms of the Municipal Finance Management Act to the extent applicable to the provisions of this Act, if the preconditions for an intervention in terms of section 139(4) or (5) of the Constitution are realised.

**Alternative steps to induce compliance by municipality with executive obligation**

48. (1) The provincial executive may, instead of intervening in terms of section 139(1) of the Constitution, take any other step to induce compliance, by the

municipality, with the obligation, if the conditions for an intervention in terms of section 139(1) of the Constitution in a municipality are met, including—

- (a) utilising the forums, mechanisms and procedures established by the Intergovernmental Relations Framework Act;
- (b) invoking any legislation regulating municipalities and the exercise of their powers, duties and functions, including the Municipal Finance Management Act; or
- (c) providing targeted support to the municipality in terms of Part 2 of Chapter 4.
- (d) taking any other steps to induce compliance, by the municipality, with its executive obligation.

(2) Subsection (1) is not a prerequisite for an intervention in terms of section 139(1) of the Constitution and the provincial executive may, subject to subsection (3), summarily intervene if it so decides, provided that the conditions for a provincial intervention in terms of section 139(1) of the Constitution are met.

(3) If the obligation which the municipality failed to fulfil is a measure referred to in section 216(2) of the Constitution, the provincial executive must consult the National Treasury before intervening in the municipality in terms of section 139(1) of the Constitution.

### **Intervention steps**

**49.** (1) The provincial executive must determine the intervention step, or a combination of intervention steps it intends to take to ensure fulfilment of the obligation if the conditions for an intervention in terms of section 139(1) of the Constitution in a municipality are met, and the provincial executive decides to intervene in the municipality in terms of that section.

(2) The intervention steps a provincial executive may take in terms of an intervention in terms of section 139(1) of the Constitution include the following:

- (a) the imposition of measures aimed at regulating decisions of a municipality relating to the executive obligation which the municipality failed to fulfil;
- (b) the issuing of a directive as contemplated in section 139(1)(a) of the Constitution;

- (c) the assumption of responsibility for the executive obligation which the municipality failed to fulfil as contemplated in section 139(1)(b) of the Constitution;
- (d) the imposition of measures regulating chapter 3 of the Municipal Finance Management Act;
- (e) the suspension of any official of the municipality; and
- (f) the dissolution of the municipal council and the deployment of an administrator as contemplated in section 139(1)(c) of the Constitution.

(3) If a provincial executive cannot, or does not, or does not adequately, exercise the powers, duties and functions referred to in subsection (2), the Minister may, in consultation with the national executive member responsible for finance, and after approval by the national executive, intervene in terms of subsection (2) in the stead of the provincial executive.

#### **Determination of appropriate intervention step**

**50.** To determine whether an intervention step considered by the provincial executive in terms of section 49 will, in the circumstances of the case, be appropriate, as contemplated in section 139(1) of the Constitution, the provincial executive must—

- (a) consider—
  - (i) the nature of the obligation which the municipality cannot or does not fulfil;
  - (ii) the cause of failure to fulfil the obligation by the municipality, and the extent to which the obligation is not fulfilled;
  - (iii) the consequences of the failure to fulfil the obligation for the local community;
  - (iv) the urgency of correcting failure to fulfil the obligation by the municipality;
  - (v) the capacity of the municipality to rectify the failure and fulfil the obligation; and
  - (vi) the interests of the municipality with due regard to the principles of co-operative government; and
- (b) consider whether any proposed intervention step will ensure fulfilment of the obligation.

#### **Part 2**

#### **Regulatory measures—section 49(2)(a) intervention step**

**Nature of measures that may be implemented**

- 51.** (1) The provincial executive may implement measures in terms of section 49(2)(a) intervention step including:
- (a) designating a department or public entity, or an adviser with appropriate specialist knowledge, to act as a consultative mechanism for the municipality, and whom the municipality must consult before taking any decision in connection with the executive obligation which the municipality failed to fulfil;
  - (b) requiring the concurrence of the provincial executive before any such decision by the municipality may be implemented;
  - (c) imposing conditions on the exercise by the municipality of a power in terms of which any such decision is taken; or
  - (d) any other additional reasonable measures that may be taken.

(2) The provincial executive may in terms of subsection (1)(a) designate a national department, or national public entity as a consultative mechanism for a municipality only if the national department, or national public entity agrees to the designation.

**Consequences of non-compliance with measures**

**52.** A decision taken or implemented by a municipality in contravention of section 51 is an unauthorised decision, and expenditure incurred as a result of such a decision is subject to the Municipal Finance Management Act.

**Part 3****Issuing of directives—section 49(2)(b) intervention step****Contents of directives**

- 53.** If the provincial executive implements a section 49(2)(b) intervention step, the directive referred to in that section must –
- (a) describe the extent of failure to fulfil the executive obligation, by the municipality, which gave rise to the intervention; and

- (b) state the steps which the municipality is required to take to ensure fulfilment of that obligation, and any timeframes within which those steps must be taken.

### **Compulsory effect of directives and consequences of non-compliance**

- 54.** (1) A municipality must comply with a directive referred to in section 49.  
(2) The provincial executive may, in terms of section 139(1) of the Constitution, take any steps available to it to ensure compliance with the directive, including by assuming responsibility for compliance with the directive in terms of section 139(1)(b) of the Constitution, if the municipality fails to fulfil the obligation placed on it in terms of subsection (1).

## **Part 4**

### **Assumption of responsibility for executive obligation— section 49(2)(c) intervention step**

#### **Deployment of administrator or national organ of state to fulfil assumed obligations on behalf of provincial executive**

- 55.** (1) If the provincial executive implements a section 49(2)(c) intervention step, it may—
- (a) deploy an official of a national or provincial department, provincial public entity or municipality in the province, or a person in private sector, as administrator, to fulfil the assumed executive obligation of the municipality, or specific aspects of the assumed executive obligation on behalf of the provincial executive; or
- (b) by agreement with a national department or national public entity, appoint that department or public entity to fulfil the assumed obligation, or specific aspects of the assumed obligation on behalf of the provincial executive, on an agency basis, if the obligation relates to—
- (i) a non-provincial function that is regulated at the national level of government; or
- (ii) a concurrent function in respect of which the province has no, or insufficient capacity.

(2) (a) A person deployed in terms of subsection (1)(a) as administrator holds office, and must exercise the powers, duties and functions of the office in terms of Chapter 6.

(b) The mandate of an administrator deployed in terms of subsection (1)(a) is confined to exercising the powers, duties and functions of the municipality necessary for fulfilling the assumed obligation, or the relevant specific aspects of the assumed obligation on behalf of the provincial executive, except those powers, duties and functions excluded from the mandate of administrator in terms of section 88.

(3) (a) A national department or national public entity assigned in terms of subsection (1)(b), must exercise the powers, duties and functions of the municipality necessary to fulfil the assumed obligation, or the relevant specific aspects of the assumed obligation on behalf of the provincial executive.

(b) A national department or national public entity referred to in paragraph (a) must designate an official to be responsible for the implementation of the agreement with the provincial executive.

### **Effect of assumption of responsibility for obligation on municipality**

**56.** (1) If the provincial executive assumes responsibility for an executive obligation of a municipality in terms of a section 49(2)(c) intervention step—

- (a) the provincial executive, or the administrator, or national department, or public entity deployed with fulfilling the obligation, may exercise any of the powers, duties and functions assigned to the municipal council or official of the municipality, but only to the extent that the exercise of those powers, duties and functions are necessary to—
- (i) fulfil the assumed obligation; and
  - (ii) comply with section 139(1)(b)(i), (ii) and (iii) of the Constitution;
- (b) the right of that municipal council or official of the municipality to continue exercising those powers, duties and functions, to the extent that those powers, duties and functions are exercised by the provincial executive, an administrator, or the national department, or public entity in terms of paragraph (a), is suspended until the section 49(2)(c) intervention step ends;

- (c) the municipality—
  - (i) may not withdraw any of its staff, funds or other resources allocated by it for the fulfilment of the assumed obligation; and
  - (ii) must provide such additional staff, funds and other resources, and render such other assistance, within its means and approved budget, to facilitate fulfilment of the obligation in terms of the reasonable requirements of the provincial executive, or administrator, or the national department, or public entity;
- (d) the assumption of responsibility does not affect the right of a municipality to administer the affairs of the municipality other than the obligation for which the provincial executive has assumed responsibility; and
- (e) the municipality remains responsible for budgeting for and funding the fulfilment of the obligation.

(2) The provincial executive may, in exceptional circumstances, intervene, by assuming all executive obligations of a municipality and municipal council in terms of section 139(1)(b) of the Constitution, if the municipality cannot or is unable to executive its obligations in terms of section 99 regulation criteria;

(3) The provincial executive may recover from the municipality any necessary and reasonable expenses incurred by it in connection with the fulfilment of the obligation.

### **Status of municipal council and administration**

**57.** (1) The municipal council must continue to function to fulfil its executive obligations in terms of the Constitution or legislation, subject to any implementation of an intervention in terms of section 139 of the Constitution;

(2) The municipal council cannot take any decisions which threaten to prevent, delay or ultimately undermine the success of the intervention implemented by the provincial or national executive;



(3) The provincial executive may assign the exercising of all the powers, duties or functions of the executive obligations of the municipal council and administration to a deployed administrator;

(4) The municipal council and administration are accountable to the deployed administrator in terms of subsection (3), subject to the terms of reference of the administrator issued in terms of section 97 regulations;

(5) The provincial executive may assign the exercising of all the powers, duties or functions of the municipal council and municipal administration to the administrator in terms of section 97 regulations, including

- (a) any of the powers of the municipal manager in terms of section 55 of the Local Government Systems, and section 60 of the Municipal Finance Management Act; and
- (b) any of the powers of the municipal council, and those of the municipal mayor in terms of section 56 of the Municipal Structures Act;

(6) The administrator may delegate to other members of the intervention team, any of the powers and functions conferred to the administrator in terms of (3) and (5).

## **Part 5**

### **Suspension of officials of municipality— section 49(2)(e) intervention step**

#### **Suspension of an official of municipality**

**58.** (1) The provincial executive may suspend an official from office in cases where the continued presence of the official in the relevant municipality or municipal entity threatens to prevent, delay or ultimately undermine the success of the intervention;

(2) The provincial executive may initiate or institute disciplinary proceedings against an official, in terms of any legislation subject to which that official holds office, if it suspends an official of a municipality, or where appropriate, direct the municipality or the administrator to initiate or institute such disciplinary proceedings;

(3) The provincial executive may delegate, to the MEC or to an independent person, the powers and functions in terms of subsection (1) and (2).

#### **Continuation of functions of suspended official**

**59.** (1) If the provincial executive suspends an official of a municipality, it may—

- (a) designate another person or another official of the municipality to be responsible for exercising the powers, duties or functions of the suspended official during his or her suspension; or
- (b) in the case of the suspension of an official, designate an official of a provincial department, or provincial public entity in the province, or a person in private sector, as administrator to exercise the powers, duties and functions of the suspended official.

(2) A person designated in terms of subsection (1)(b) as administrator holds office, and must exercise the functions of office in terms of Chapter 6.

(3) (a) The mandate of an administrator deployed in terms of subsection (1)(b) is confined to exercising the powers, duties and functions of the suspended official, except those powers, duties and functions excluded from the mandate of administrator in terms of section 88.

(b) Any powers, duties and functions of the suspended official excluded from the mandate of the administrator, vest in the provincial executive, who may delegate any of those powers, duties and functions to any official of the municipality.

(4) Subsection (1) does not apply in the case of the suspension of a member of a municipal council, and any vacancy that may arise following the suspension of the councillor, in terms of applicable legislation, must be filled in terms of that legislation as vacancies arising in municipal councils.

#### **Effect of suspension of an official in municipality**

**60.** (1) If an official of a municipality is suspended in terms of a section 49(2)(e) intervention step—

- (a) the municipality must provide such staff and other resources, and render such other assistance as may be necessary, and within its means and approved budget to enable any person deployed as administrator to exercise the powers, duties and functions of the suspended official effectively; and
- (b) the municipality remains responsible for funding the exercise, by the administrator, of the powers, duties and functions of the suspended official.

(2) the provisions of sections 58, 59 and 60 are implemented in terms of sections 57(3) and (5) of this Act.

## **Part 6**

### **Section 139(1) dissolution of municipal council—section 49(2)(f) intervention step**

#### **Exceptional circumstances warranting dissolution of municipal council**

**61.** (1) To decide whether there are exceptional circumstances warranting a section 49(2)(f) intervention step, as required by section 139(1)(c) of the Constitution, the provincial executive must—

- (a) consider all relevant factors, including those specified in subsection (2); and
- (b) decide whether the seriousness, extent and cause of failure to fulfil the obligation in terms of the Constitution or legislation by the municipality, taken together, constitute exceptional circumstance warranting dissolution of the municipal council, and the deployment of an administrator to ensure fulfilment of the obligation.

(2) The provincial executive must, for purposes of subsection (1) consider—

- (a) the seriousness of a failure to fulfil the obligation by the municipality;
- (b) how and the extent to which—
  - (i) the local community is affected by a failure to fulfil the obligation by the municipality; or
  - (ii) the failure poses a risk to public health or safety or to the local economy or the environment;

- (c) the cause of failure to fulfil the obligation by the municipality, and whether it is due to the conduct of municipal council or other circumstances pertaining to the municipal council itself, such as—
- (i) an inability to form a quorum for a meeting of the municipal council to discuss or take a decision necessary for the fulfilment of the obligation;
  - (ii) an inability to muster enough votes for a decision necessary for the fulfilment of the obligation;
  - (iii) unwillingness or refusal on the part of the municipal council to fulfil the obligation;
  - (iv) manipulation or obstructive behaviour in the municipal council, or by a councillor, to prevent the municipal council from discussing or taking a decision necessary for the fulfilment of the obligation;
  - (v) unwillingness or refusal by the municipal council to implement or to cooperate in the implementation of a prior intervention in terms of section 139(1) of the Constitution to induce fulfilment of the obligation;
  - (vi) infighting in the municipal council obstructing proper functioning of the municipal council;
  - (vii) bad management of municipal council schedules or procedures;
  - (viii) general malfunctioning of the municipal council;
  - (ix) improper interference by councillors in the administration of the municipality;
  - (x) corrupt practices in the municipal council or by councillors; or
  - (xi) inefficiency of the municipal council to manage the affairs of the municipality;
- (d) if the cause of the failure to fulfil the obligation is due to the conduct of municipal council or other circumstances pertaining to the municipal council itself—
- (i) the extent to which the conduct of municipal council or those other circumstances are systemic; and
  - (ii) the ease with which the conduct of municipal council or those other circumstances could be corrected by other corrective steps or amendments to existing corrective steps without resorting to the dissolution of the municipal council; and

- (e) if the cause of the failure to fulfil the obligation is due to the conduct of municipal council or other circumstances pertaining to the municipal council itself—
  - (i) any councillor in that municipality at the time of dissolution of municipal council is prohibited from running as incumbent councillor in that municipality for a period of 3 years from the date of the dissolution of municipal council; and
  - (ii) any councillor in that municipality at the time of dissolution of municipal council is prohibited from any kind of employment in that municipality for a period of 3 years from the date of the dissolution of municipal council.

(3) The provincial executive must dissolve the municipal council and appoint an administrator until a new municipal council is elected if any of the conditions referred to in subsection (2) above are present during a request for an intervention in terms of section 139(1) of the Constitution,

#### **Deployment of administrator**

**62.** (1) The provincial executive must, upon serving on the municipality the notice of intervention implementing a section 49(2)(f) intervention step, deploy an official of a national or provincial department, or provincial public entity in the province, or a person in private sector, as administrator to administer the affairs of the municipality from the date of dissolution of the municipal council, until a new elected municipal council is declared elected.

- (2) A person deployed in terms of subsection (1) as administrator—
  - (a) holds office and must exercise the powers, duties and functions of office in terms of Chapter 6; and
  - (b) may exercise any power, duty or function vested in the municipality necessary for the effective administration of the affairs of the municipality, except those powers, duties and functions excluded from the mandate of administrator in terms of section 90.

(3) The provincial executive may assign the exercising of all the powers, duties or functions of the executive and legislative obligations of the municipal council and administration, to a deployed administrator;

(4) The municipal council and administration are accountable to the deployed administrator in terms of subsection (3), subject to the terms of reference of the administrator issued in terms of section 99 regulations;

(5) The provincial executive may assign the exercising of all the powers, duties or functions of the municipal council and municipal administration to the administrator in terms of section 99 regulations, including

- (a) any of the powers of the municipal manager in terms of section 55 of the Local Government Systems, and section 60 of the Municipal Finance Management Act; and
- (b) any of the powers of the municipal council, and those of the municipal mayor in terms of section 56 of the Municipal Structures Act;

(6) The administrator may delegate to other members of the intervention team, any of the powers and functions conferred to the administrator in terms of (3) and (5).

(7) The deployment of an administrator may be terminated if the dissolution of the municipal council is set aside by –

- (a) the Minister in terms of section 139(3)(b) or section 76(3)(b);
- (b) the National Council of Provinces in terms of section 139(3)(b); or
- (c) the intervention is set aside by a court;

#### **Status of councillors when municipal council is dissolved**

**63.** Members of a municipal council dissolved in terms of a section 49(2)(f) intervention step cease to be councillors from the date the municipal council is dissolved.

### **Part 7**

#### **Provisions to facilitate achievement of intervention objective**

**Municipal assistance in intervention**

**64.** If the provincial executive intervenes in a municipality in terms of section 139(1) of the Constitution, the municipality –

- (a) must assist the provincial executive to achieve the objectives of the intervention, and to bring the intervention to a successful conclusion as speedily as possible;
- (b) must take all reasonable steps to prevent its internal functionaries and members or officials from interfering with, hindering or obstructing implementation of the intervention; and
- (c) in the case of a section 49(2)(c), (e) or (f) intervention step –
  - (i) may not withdraw any of its staff, funds or other resources allocated by it for the fulfilment of the relevant executive obligation; and
  - (ii) must provide such additional staff, funds and other resources, and render such other assistance, within its means and approved budget to facilitate fulfilment of the obligation in terms of the reasonable requirements of the provincial executive, or person acting on its behalf, including any administrator deployed for purposes of the intervention.

**Undue interference in intervention**

**65.** (1) If the continued presence of an official in the municipality or municipal entity threatens to prevent, delay or ultimately undermine the success of the intervention implemented in terms of section 139 of the Constitution, the provincial executive may direct the MEC responsible for local government to —

- (a) suspend that official from office; or
- (b) initiate or institute disciplinary proceedings against that official in terms of any legislation subject to which that official holds office.

(2) Section 59, with any necessary changes as the context may require, applies when an official or a member of a municipal council is suspended in terms of this section.

**Financial accountability and responsibilities of accounting officers during intervention**

**66.** (1) Subject to section 67, the accounting officer of a municipality that becomes subject to an intervention in terms of section 139(1), (4) or (5) of the Constitution, and the accounting officer of any municipal entity under the sole or shared control of such a municipality—

- (a) continues, during the intervention, to be responsible in that capacity for complying with the Municipal Finance Management Act; and
- (b) must manage the responsibilities of accounting officer in terms of that Act, with due regard to the requirements needed for achieving the objectives of the intervention.

#### **Designation of person to replace accounting officer during intervention**

**67.** (1) The provincial treasury may designate, for purposes of the Municipal Finance Management Act, a person determined by it during the intervention, if the provincial executive intervenes in a municipality in terms of section 139 of the Constitution, as the accounting officer of—

- (a) the municipality; or
- (b) a municipal entity under the sole or shared control of the municipality.

(2) The provincial treasury may designate a person in terms of –

- (a) subsection (1)(a) as accounting officer of a municipality only in instances where the provincial executive—
  - (i) suspended the municipal manager, either in terms of a section 49(2)(e) intervention step, or in terms of section 65;
  - (ii) assumed, in terms of a section 49(2)(c) intervention step, any executive obligations of the municipality embracing the whole, or a material part of the local government matters administered by the municipality;
  - (iii) implemented a financial recovery plan for the municipality, in terms of a section 49(2)(d) intervention step;
  - (iv) dissolved the municipal council in terms of a section 49(2)(f) intervention step; or
  - (v) intervened in the municipality in terms of section 139(4) or (5); or



- (b) subsection (1)(b) as accounting officer of a municipal entity under the sole or shared control of the municipality only in instances where the provincial executive has—
- (i) suspended the chief executive officer of the municipal entity either in terms of a section 49(2)(e) intervention step or in terms of section 65;
  - (ii) assumed in terms of a section 49(2)(c) intervention step an executive obligation of the municipality embracing the whole or a material part of the local government matters administered by that municipal entity;
  - (iii) implemented a financial recovery plan for the municipality in terms of a section 49(2)(d) intervention step which affects the municipal entity;
  - (iv) dissolved the municipal council in terms of a section 49(2)(f) intervention step; or
  - (v) intervened in the municipality in terms of section 139(4) or (5).

(3) the person referred to in section 60 or 93 of the Municipal Finance Management Act, as the case may be, ceases for the duration of the intervention to be the accounting officer of the municipality or of that municipal entity if the provincial treasury deploys a person in terms of subsection (1)(a) or (b) for purposes of an intervention, as the accounting officer of a municipality or a municipal entity.

(4) The person that may be designated as accounting officer in terms of subsection (1)(a) or (b) includes—

- (a) an official of the municipality or the relevant municipal entity;
- (b) an official of any other municipality or municipal entity in the province;
- (c) an official of any national or provincial department or public entity; or
- (d) an official or person deployed as administrator for purposes of the intervention.

(5) The provincial treasury may exercise its powers in terms of subsection (1) only after consultation with—

- (a) the Minister; and
- (b) the National Treasury, if the budget of the municipality normally exceeds R500 million, unless another amount is, for purposes of this section, prescribed by regulation in terms of the Municipal Finance Management Act.

### **Designation of person to exercise specific powers, duties or functions of accounting officer during intervention**

**68.** (1) The provincial treasury may designate a person determined by it to exercise, during the intervention, any specific powers, duties or functions assigned in terms of the Municipal Finance Management Act to the accounting officer of the municipality or municipal entity if the provincial treasury has, for purposes of an intervention in a municipality, not replaced, in terms of section 67(1)(a) or (b) the accounting officer of the municipality, or of a municipal entity under the sole or shared control of the municipality.

(2) The provincial treasury may designate a person in terms of subsection (1), to exercise, during the intervention, any specific powers, duties or functions of the accounting officer of—

- (a) a municipality in any of the instances referred to in section 67(2)(a)(ii) to (v); or
- (b) a municipal entity under the sole or shared control of the municipality in any of the instances referred to in section 67(2)(b)(ii) to (v).

(3) If the provincial treasury deploys a person, in terms of subsection (1), to exercise for purposes of an intervention, specific powers, duties or functions of the accounting officer of a municipality, or a municipal entity, that person exercises those powers, duties or functions to the exclusion of the accounting officer of the municipality or municipal entity, as the case may be, but only to the extent that the exercise of those powers, duties or functions are necessary for the purpose of achieving the objective of the relevant intervention step.

(4) The person that may be designated to exercise powers, duties or functions of an accounting officer in terms of subsection (1)(a) or (b) includes—

- (a) an official of the municipality or the relevant municipal entity;
- (b) an official of any other municipality or municipal entity in the province;
- (c) an official of any national or provincial department or public entity; or
- (d) an official or person deployed as administrator for purposes of the intervention.

(5) The provincial treasury may exercise its powers in terms of subsection (1) only after consultation with—

- (a) the Minister; and
- (b) the National Treasury, if the budget of the municipality normally exceeds R500 million, unless another amount is, for purposes of this section, prescribed by regulation in terms of the Municipal Finance Management Act.

## Part 8

### Procedures for imposing, reviewing, amending, revising and terminating interventions

#### Notice of intervention

**69.** (1) The provincial executive must notify the municipality of the intervention by serving a notice of intervention on the municipality in the prescribed manner, if the provincial executive decides to intervene in a municipality in terms of a section 139(1), 139(4) or 139(5) of the Constitution, and has, in case of an intervention in terms of section 139(1) of the Constitution, decided on an appropriate intervention step.

(2) A notice of intervention must contain at least the following—

- (a) in the case of an intervention in terms of section 139(1) of the Constitution—
  - (i) a statement that the provincial executive is intervening in the municipality, in terms of section 139(1) of the Constitution, because of a failure by the municipality to fulfil an executive obligation;
  - (ii) a short description of the executive obligation which the municipality failed to fulfil;
  - (iii) the extent to which the municipality failed to fulfil the obligation;
  - (iv) the intervention steps the provincial executive is imposing, including the extent to which the specific executive obligation will be taken over;
  - (v) particulars of the intervention step, including any prescribed particulars required for the relevant intervention step; (vi) the date on which the intervention will commence;
  - (vii) the period for which the intervention step is expected to be in force; and

- (viii) the action the provincial executive may take should the intervention step not secure fulfilment of the obligation;
- (b) in the case of an intervention in terms of section 139(4) of the Constitution—
  - (i) a statement that the provincial executive is intervening in the municipality, in terms of section 139(4) of the Constitution, read with sections 26 and 136(3) of the Municipal Finance Management Act, because of a failure by the municipality to approve a budget or revenue-raising measures to give effect to the budget; and
  - (ii) the date from which the municipal council of the municipality is dissolved, and the administrator is deployed in terms of section 26 of the Municipal Finance Management Act; and
- (c) in the case of an intervention in terms of section 139(5) of the Constitution—
  - (i) a statement that the provincial executive is intervening in the municipality in terms of section 139(5) of the Constitution, read with section 139 of the Municipal Finance Management Act, as a result of a crisis in its financial affairs as contemplated in that section, stating particulars of
    - (aa) any serious or persistent material breach by the municipality of its obligations to provide basic services, or to meet its financial commitments; or
    - (bb) any admission by the municipality that it is unable to meet its obligations or financial commitments;
  - (ii) a statement that the provincial executive has, in terms of section 139 of the Municipal Finance Management Act, requested the preparation of a financial recovery plan for the municipality, that will bind the municipality in the exercise of both its legislative and executive authority to the extent necessary to achieve the objectives of the plan;
  - (iii) the date on which the intervention will commence;
  - (iv) the date from which the municipal council of the municipality is dissolved, if the provincial executive decided to dissolve the municipal council, and the administrator is deployed; and
  - (v) the period for which the intervention is expected to be in force.

(3) The provincial executive must submit a copy of the notice of intervention together with any attachments required by this Act to—

- (a) the Minister;
- (b) the National Council of Provinces;
- (c) the relevant provincial legislature;
- (d) the district municipality of the area in which the municipality falls, if a local municipality is the subject of the intervention;
- (e) each local municipality in the area of the municipality, if a district municipality is the subject of the intervention;
- (f) organised local government nationally and in the relevant province;
- (g) the National Treasury; and
- (h) any national department responsible for implementing sectoral legislation affected by the intervention.

(4) Copies of the intervention notice must, in the case of an intervention in terms of section 139(1)(a), (b) or (c), (4) or (5) of the Constitution, be submitted to the Minister, the National Council of Provinces and the relevant provincial legislature in terms of section 70.

(5) The provincial executive must give notice of the intervention in the Provincial Gazette, and at least one newspaper circulating in the municipality if it intervenes in a municipality in terms of section 139(1), (4) or (5) of the Constitution.

### **Submission of information to Minister, National Council of Provinces and provincial legislature**

**70.** When the provincial executive implements an intervention in terms of section 139(1)(b) or (c), (4) or (5) of the Constitution, and submit a notice referred to in section 139(2)(a), (3)(a) or 139(6) of the Constitution to the Minister, the National Council of Provinces and the provincial legislature in compliance with that section, it must attach to the notice a copy of the notice of intervention imposing that intervention together with copies of the following:

- (a) all documents submitted by the provincial executive to the affected municipality in connection with the intervention, or for purposes of considering the imposition of the intervention;
- (b) any representations received by the provincial executive from the municipality in connection with the intervention, or for purposes of considering the imposition of the intervention;
- (c) any information relating to the circumstances which gave rise to the intervention submitted by the municipality to the provincial executive;
- (d) any representations or reports on those circumstances submitted to the provincial executive by organised local government;
- (e) complaints, letters or petitions concerning the performance of the municipality in the possession of the provincial executive;
- (f) reports of investigations conducted by provincial officials; and
- (g) any other information in the possession of the provincial executive relevant to the intervention, including any views received from the affected local community.

#### **Review of intervention of section 139(1) of the Constitution**

**71.** (1) The provincial executive must regularly, but at least every three months, review an intervention in terms of section 139(1) of the Constitution, including the effectiveness of the intervention step implemented in terms of the intervention.

(2) After a review in terms of subsection (1), and considering the outcome of the review, the provincial executive—

- (a) may—
  - (i) amend the intervention notice in terms of section 72;
  - (ii) revise the existing intervention step in terms of section 73; or
  - (iii) terminate the intervention in terms of section 74(1); or
- (b) must intervene in the municipality in terms of section 139(4) or (5) if section 75 applies.

**Amendment of intervention notice of section 139(1) of the Constitution**

**72.** (1) The provincial executive may, after a review in terms of section 71, amend a notice of an intervention in terms of section 139(1) of the Constitution in any way appropriate, to the intervention step implemented by the notice, including by—

- (a) altering, withdrawing or adding to any of the particulars referred to in section 69(2)(a)(v) contained in the notice;
- (b) replacing a person deployed as administrator for purposes of the intervention, or effecting other changes relating to the administrator deployed for purposes of the intervention; and
- (c) making technical changes or correcting any errors.

(2) The provincial executive must notify the municipality of the amendment of a notice of intervention by serving an amended notice of intervention on the municipality in the prescribed manner.

(3) A copy of the amended notice of intervention must be submitted to the organs of state referred to in section 69(3).

(4) This section may not be applied—

- (a) to revise an existing intervention step; or
- (b) to withdraw a section 49(2)(f) intervention step.

**Revision of existing intervention step of section 139(1) of the Constitution**

**73.** (1) The provincial executive may, after a review in terms of section 71 of an intervention in terms of section 139(1) of the Constitution, revise the intervention by replacing an existing intervention step with another intervention step, or combine it with an additional intervention step if the existing intervention step is not sufficiently effective.

(2) The provincial executive must notify the municipality by serving on the municipality a notice of revised intervention in terms of subsections (3) and (4) if it revises an existing intervention step.

(3) A notice of revised intervention must contain a statement that the provincial executive has revised the existing intervention step, and stipulate the following—

- (a) particulars of the new intervention step that replaces or is added to the existing intervention step;
- (b) the reasons for the revision;
- (c) the date on which the revision will commence; and
- (d) the period for which the intervention is expected to continue.

(4) (a) A copy of the revised notice of intervention must be submitted to the organs of state referred to in section 69(3).

(b) Section 65, with any necessary changes the context may require, apply to a notice of revised intervention.

#### **Termination of intervention of section 139(1) of the Constitution**

**74.** (1) The provincial executive that intervened in a municipality in terms of section 139(1) of the Constitution, must issue a notice of termination of intervention to the municipality if the intervention ends —

- (a) (i) in terms of section 139(2)(b) or (3)(b) of the Constitution, in the case of a section 49(2)(c) or (f) intervention step; or
- (ii) in terms of section 148(1) of the Municipal Finance Management Act, in the case of a discretionary financial intervention;
- (b) the intervention is set aside by a court; or
- (c) the provincial executive terminates the intervention in terms of subsection (2).

(2) (a) The provincial executive must, after a review in terms of section 71, terminate an intervention in terms of section 139(1) of the Constitution, subject to paragraph (c), if the provincial executive, after following such consultative processes as may be prescribed by regulation, has reason to believe that—

- (i) the objective of the intervention has been met;
- (ii) the municipality has the capacity to fulfil the obligation in a sustainable manner, as measured against prescribed indicators in terms of section 99 regulations; and
- (iii) the need for continuing the intervention has ended.



(b) The provincial executive must follow the consultative processes referred to in paragraph (a) to determine whether the criteria set out in paragraph (a)(i), (ii) and (iii) have been met.

(c) Paragraph (a) does not apply to an intervention which implemented a section 49(2)(f) intervention step.

(3) A notice of termination of intervention must state—

- (a) that the intervention has, or is to be ended;
- (b) the date on which the intervention has ended or will end; and
- (c) the reason for the ending of the intervention including conditions related to termination of intervention.

(4) The provincial executive must submit a copy of the notice of termination of intervention to the organs of state referred to in section 69(3).

(5) If an intervention in a municipality in terms of section 139(1) of the Constitution is terminated, the provincial executive must give notice of the termination of the intervention in the Provincial Gazette, and at least one newspaper circulating in the municipality.

#### **Imposition of an intervention of section 139(4) or (5) during an intervention of section 139(1) of the Constitution**

**75.** (1) If during an intervention in terms of section 139(1) of the Constitution in a municipality the conditions for a section 139(4) or (5) intervention are met, the provincial executive must apply section 139(4) or (5), as the case may be, despite the existing intervention in terms of section 139(1) of the Constitution.

(2) A section 139(4) or (5) intervention supersedes the existing intervention in terms of section 139(1) of the Constitution, subject to section 139(3) of the Municipal Finance Management Act, but does not affect anything intervention done in terms of section 139(1) of the Constitution.

(3) If in terms of an intervention in terms of section 139(1) of the Constitution, the municipal council has been dissolved, and an administrator has been deployed for the municipality—

- (a) the intervention in terms of section 139(4) or (5) of the Constitution does not affect the dissolution of the municipal council, and the dissolution of the municipal council must remain effective; and
- (b) the administrator may continue as if deployed in terms of section 139(4) or (5) of the Constitution.

## **Part 9**

### **Monitoring and review of provincial intervention in municipality**

#### **Constitutional review by Minister**

**76.** (1) When notified in terms of section 139(2)(a)(i) or 139(3)(a)(i) of the Constitution that the provincial executive has intervened in a municipality in terms of section 139(1)(b) or (c) of the Constitution, the Minister must review the intervention by—

- (a) evaluating information and documents submitted to the Minister in terms of this Act, or otherwise in the possession of the Minister; and
- (b) determining whether—
  - (i) the intervention constituted an appropriate step within the meaning of section 139(1) of the Constitution for the fulfilment of the executive obligation which the municipality failed to fulfil;
  - (ii) in the case of an intervention in terms of section 139(1)(c) of the Constitution, whether there are exceptional circumstances warranting the dissolution of the municipal council; and
  - (iii) the intervention should be allowed to proceed.

(2) The Minister may for purposes of subsection (1), conduct a separate investigation to obtain information relevant to the intervention under review.

(3) The Minister must notify the provincial executive in writing if the Minister—

- (a) in the case of an intervention in terms of section 139(1)(b) of the Constitution, disapproves or approves the intervention within the timeframe of 28 days specified in section 139(2)(b)(i), or by the end of that period, has not approved the intervention; or
- (b) in the case of an intervention in terms of section 139(1)(c) of the Constitution, sets the intervention aside within the timeframe of 14 days specified in section 139(3)(b) of the Constitution.

### **Monitoring of intervention of section 139(1) of the Constitution**

**77.** (1) The Minister must monitor each intervention in terms of section 139(1) of the Constitution in a municipality.

(2) (a) The provincial executive must, for the purposes of subsection (1), submit to the Minister at least every three months a progress report on each intervention in terms of section 139(1) of the Constitution.

(b) The provincial executive must submit the progress report to the Minister within 14 days after conclusion of the review if it has reviewed an intervention in terms of section 71.

(3) A copy of each progress report must simultaneously be submitted to the organs of state referred to in section 69(3).

### **Request by Minister for information concerning intervention**

**78.** The provincial executive must, on request by the Minister, submit to the Minister such information concerning an intervention in terms of section 139(1), (4) or (5) of the Constitution in a municipality as the Minister may require.

### **Request by National Council of Provinces or provincial legislature for information concerning interventions**

**79.** The provincial executive must, on request by the National Council of Provinces or the provincial legislature, submit to the Council or the legislature such information concerning an intervention in a municipality in terms of section 139(1), (4) or (5) of the Constitution, as the Council or the legislature may require.

**Recommendation by Minister, National Council of Provinces or provincial legislature to provincial executive**

**80.** If the Minister, the National Council of Provinces or the provincial legislature makes recommendations to the provincial executive on any intervention in a municipality in terms of section 139(1) of the Constitution, the provincial executive must—

- (a) consider those recommendations; and
- (b) provide reasons to the Minister, the Council or the provincial legislature if it fails or decides not to implement any of those recommendations.

**Interventions of section 139(4) and 139(5) of the Constitution**

**81.** Before a provincial executive takes a decision on the dissolution of a municipal council in terms of a section 139(1)(c), (4) or (5) of the Constitution, it must—

- (a) determine and consider the impact that the dissolution of the municipal council will have on the interests of the local community; and
- (b) consult the Minister and the national executive member responsible for finance for their views on whether dissolving the municipal council is the appropriate step to ensure approval of a budget, or revenue raising measures, to provide basic services or meet its financial commitments, as contemplated in section 139(4) and (5) of the Constitution.

**Part 10****Miscellaneous provisions****Access to information, records and documents during intervention**

**82.** During an intervention in a municipality in terms of section 139(1), (4) or (5) of the Constitution, the provincial executive, or the deployed administrator, or any other person deployed by the provincial executive, has access to such information, records and documents of the municipality or of any municipal entity under the sole or shared control of the municipality, as may be necessary, for executing the intervention.

**Capacity building and transfer of skills during provincial intervention**

**83.** (1) During an intervention in terms of section 139(1) of the Constitution, the provincial executive must determine whether the municipality has the capacity and skills to fulfil the executive obligation which the municipality failed to fulfil.

(2) If the municipality lacks the capacity and skills for the fulfilment of the obligation in a sustainable manner, the provincial executive must —

- (a) in consultation with the municipality—
  - (i) identify the capacity and skills the municipality lacks; and
  - (ii) prepare a plan of action setting out ways and means to ensure that the municipality acquires the capacity and skills it lacks; and
- (b) provide such support to the municipality as may be necessary to give effect to the plan of action.

(3) The kinds of support a province may provide to a municipality in terms of subsection (2) includes those mentioned in section 45.

**Report on intervention**

**84.** (1) The provincial executive must, within 30 days after the intervention ended, submit a report on the intervention in the municipality if it terminates the intervention in terms of section 74(2), to—

- (a) the Minister;
- (b) the National Council of Provinces;
- (c) the provincial legislature;
- (d) organised local government nationally and in the relevant province;
- (e) the municipality, and—
  - (i) if the municipality is a local municipality, also to the district municipality of the district in which the local municipality is situated; or
  - (ii) if the municipality is a district municipality, also to the local municipalities in the area of the district municipality;
- (f) the National Treasury; and
- (g) any national department responsible for implementing sectoral legislation affected by the intervention.

- (2) A report in terms of subsection (1) must include—
- (a) the reasons why the provincial executive has decided to terminate the intervention;
  - (b) the results of the intervention; and
  - (c) whether the municipality is able to fulfil in a sustainable way the executive obligation which gave rise to the intervention, including conditions for termination.

## **CHAPTER 6**

### **ADMINISTRATORS IN PROVINCIAL AND MUNICIPAL INTERVENTIONS**

#### **List of persons approved for deployment as administrators**

**85.** (1) No person may, for purposes of an intervention in a province or a municipality, be deployed as an administrator unless the name of that person appears on a list of persons approved for deployment as an administrator issued from time to time by notice in the Gazette by the national coordinating committee acting with the concurrence of the national executive member responsible for the concurrent portfolio.

(2) Subsection (1) does not apply to the deployment by the national or provincial executive of a person who is an official of a national or provincial department, or public entity, or of a municipality or municipal entity.

(3) No person may be included in the list referred to in subsection (1) unless that person –

- (a) has the minimum requirements relating to skills, expertise, competence and qualifications, as may be prescribed by regulation; and
- (b) is otherwise a fit and proper person for deployment as an administrator in terms of any criteria as may be prescribed by regulation.

#### **Deployment of administrator**

- 86.** (1) An administrator may be –
- (a) a natural person;

- (b) an institution, corporate or unincorporated; or
- (c) more than one person acting in unison in terms of the direction of the intervening national or provincial executive.

(2) If an administrator is to be deployed for purposes of an intervention in a province or a municipality, the selected person must be deployed in terms of a written agreement between the national executive or provincial executive, as the case may be, and the person being deployed.

(3) An agreement referred to in subsection (2) must—

(a) regulate all aspects relating to the deployment of the administrator, including, subject to consistency with any regulations as may be prescribed in relation to administrators—

- (i) remuneration, benefits and other terms and conditions of deployment, in the case of a person in private sector deployed as administrator;
- (ii) the term of deployment;
- (iii) reporting requirements to the national or provincial executive, as the case be;
- (iv) performance evaluation; and

(b) be signed by both parties before commencement of the deployment.

(4) An agreement referred to in subsection (2) may provide for the deployment by the administrator, or the secondment by the national or provincial executive, as the case may be, of such assistants as may be—

(a) needed for the effective carrying out of the mandate of the administrator; and (b) approved by the national or provincial executive, as the case may be.

(5) A person deployed as an administrator in terms of subsection (2), or seconded as an assistant in terms of subsection (4), who is an official or employee of a national or provincial department, or public entity, or of a municipality or municipal entity—

- (a) holds office as administrator or as such assistant in terms and conditions of his or her employment as such an official or employee; and
- (b) national coordinating committee may decide on any additional remuneration and benefits because of the deployment or secondment otherwise than in terms of the legislation regulating the employment of that person as such an official or employee.

### **Term of deployment**

**87.** (1) The term of deployment of a person as administrator as agreed to in the agreement referred to in section 88, may not be for a period beyond the duration of the intervention, subject to subsection (4).

(2) The deployment of an administrator ends if—

- (a) the period for which the administrator was deployed expires;
- (b) the deployment is terminated by the national or provincial executive in terms of subsection (3);
- (c) the administrator resigns after giving notice in terms of the agreement;
- (d) in the case of a section 12(2)(c) intervention step, implemented in terms of a section 100(1) of the Constitution in a province—
  - (i) the intervention is terminated by the national executive in terms of section 34(2); or
  - (ii) the intervention step is replaced by the national executive with another intervention step in terms of section 33(1);
- (e) in the case of a section 49(2)(c) or (e) intervention step implemented in terms of an intervention in terms of section 139(1) of the Constitution in a municipality—
  - (i) the intervention is terminated by the provincial executive in terms of section 74(2); or
  - (ii) the intervention step is replaced by the provincial executive with another intervention step in terms of section 73(1), which does not provide for the deployment of an administrator;
- (f) the intervention is set aside by a court; or
- (g) the intervention ends in terms of the legislation applicable to it.



(3) The national or provincial executive, as the case may be, may terminate the deployment of a person as administrator before the term of office expires on any good ground, including on the ground of—

- (a) a failure or refusal to give effect to the directions of the national or provincial executive;
- (b) a failure to execute his or her mandate;
- (c) the unauthorised assumption of un-mandated powers, duties or functions;
- (d) misconduct, incompetence, mental or physical incapacity;
- (e) absence from office without leave; or
- (f) any other circumstances applicable to the administrator in terms of the agreement referred to in section 88(2).

(4) Subsections (1) and (2) do not prevent the person deployed as administrator from continuing after the intervention has ended, to perform such transitional functions as may be agreed with the national or provincial executive, including functions relating to the monitoring of, or the provision of support or advice to the affected province or municipality.

#### **Mandates of administrator**

**88.** (1) The national executive member —

- (a) must issue to an administrator deployed for purposes of a section 12(2)(c) intervention step implemented in a province, a written mandate authorising the administrator to exercise the powers, duties and functions of the province necessary for purposes of the intervention; and
- (b) may amend the mandate of the administrator when necessary.

(2) The provincial executive—

- (a) must issue to an administrator deployed for purposes of—
  - (i) an intervention in terms of section 139(1) of the Constitution in a municipality, a written mandate assigning the administrator to exercise the executive obligations in terms of powers, duties and functions of—

- (aa) the municipality necessary to fulfil the executive obligation for which the provincial executive assumed responsibility, if a section 49(2)(c) intervention step was implemented;
  - (bb) the suspended official of the municipality, if a section 49(2)(e) intervention step was implemented, suspending an official;-or
  - (cc) the municipal council, including power of delegation in terms of the Municipal Systems Act, if a section 49(2)(f) intervention step was implemented; or
- (ii) an intervention in terms of section 139(4)(a) or 139(5)(b)(i) of the Constitution, a written mandate assigning to the administrator to exercise executive obligations in terms of the powers, duties and functions of the municipal council; and
- (b) may, in writing, amend the mandate of administrator when necessary.

(3) Mandate of an administrator referred to in subsections (1) and (2)–

- (a) is subject to such limitations and qualifications as set out in the mandate;
- (b) does include the exercise of legislative powers in terms of section 160(2) of the Constitution, where necessary; and
- (c) may, subject to section 26 or 72 as may be appropriate, not be inconsistent or allow interference—
  - (i) in the case of a section 12(2)(c) intervention step, with the powers and functions of the accounting officer, or accounting authority of the affected provincial department or public entity;
  - (ii) in the case of a section 49(2)(c) intervention step, with the powers and functions of the accounting officer of the affected municipality or municipal entity; or
  - (iii) in the case of a section 49(2)(e) intervention step, with the powers and functions of the accounting officer of the affected municipality or municipal entity, unless the accounting officer is the person who has been suspended.

(4) Anything done by an administrator in terms of the mandate is legally binding.

**Relationship between administrator and national or provincial executive**

**89.** (1) An administrator must implement his or her mandate in terms of the directions of the national or provincial executive, as the case may be.

(2) When a dispute arises between—

- (a) a province and the administrator deployed for purposes of an intervention in the relevant province, the administrator must promptly report the matter to the national coordinating committee; or
- (b) a municipality and the administrator deployed for purposes of an intervention in the municipality, the administrator must promptly report the matter to the MEC responsible for local government in the relevant province.

**Report of administrator when intervention ends**

**90.** (1) When an intervention in terms of section 100 or 139(1) of the Constitution ends, the administrator deployed for the intervention must, within 14 days, submit to the national executive, or the provincial executive, as the case may be, a report on the intervention.

(2) A report in terms of subsection (1) must include—

- (a) the results of the intervention; and
- (b) whether the relevant province or municipality can fulfil in a sustainable way, the executive obligation which gave rise to the intervention.

**CHAPTER 7  
MISCELLANEOUS****Costs of intervention**

**91.** (1) (a) The national government is, through its responsible departments, responsible for any costs arising from the deployment of an administrator for purposes of an intervention in a province, including the remuneration and benefits of the administrator, but may recover those costs to the extent that they are reasonable from the province.

(b) The costs of the intervention, including the cost of implementing the decisions and actions of the administrator, may be defrayed by the relevant province from its own funds.

(2) (a) The relevant provincial government is, through its responsible departments, responsible for any costs arising from the deployment of an administrator for purposes of an intervention in a municipality, including the remuneration and benefits of the administrator, but may recover those costs to the extent that they are reasonable from the municipality.

(b) The costs of the intervention, including the cost of implementing the decisions and actions of the administrator, may be defrayed by the municipality from its own funds.

#### **Audit committee oversight**

**92.** An intervention in terms of section 100 or 139(1) of the Constitution does not affect the relevant province or audit committee of municipality, and the audit committee remains competent during the intervention to exercise its powers, duties and functions in terms of the Public Finance Management Act or the Municipal Finance Management Act, unless the audit committee itself is the subject of the intervention.

#### **Disputes arising from interventions**

**93.** (1) A dispute relating to an intervention in terms of section 100 or 139(1) of the Constitution must be referred to the National Council of Provinces if the application of regulations referred to in section 97(e) does not resolve the dispute.

(2) The Minister must be cited as a party in any judicial proceedings between organs of state or against an organ of state which arises from a dispute relating to an intervention or the application of this Act.

#### **Offences and penalties**

**94.** (1) A member or an official of a province is guilty of an offence if that person wilfully interferes with, hinders or obstructs –

(a) the national executive member in the implementation of an intervention in the relevant province in terms of section 100 of the Constitution;

- (b) a person designated in terms of section 16(2)(c) in the performance of the duties of that person; or
- (c) an administrator or national department or public entity deployed in terms of section 18(1)(a) or (b) in the performance of their duties.

(2) A member or official of a municipality is guilty of an offence if that person wilfully interferes with, hinders or obstructs –

- (a) the provincial executive in the implementation of an intervention in terms of section 139(1), (4) or (5) of the Constitution;
- (b) an administrator, department or public entity deployed in terms of section 56(1)(a) or (b), 59(1)(b) or 62(1) in the performance of their duties; or
- (c) a person designated in terms of section 59(1)(a) in the performance of the duties of that person.

(3) A person who commits an offence in terms of subsection (1) or (2) is liable on conviction to a fine or imprisonment for a period not exceeding one year, or to both that fine and that imprisonment.

#### **National coordinating committee secretariat**

**95.** (1) The Minister chairs the meetings of the national coordinating committee established in terms of section 3(2); and

(2) The Department of the Minister is responsible for providing administrative and other support services to the national coordinating committee.

#### **Memorandum of understanding**

**96.** (1) Any national executive member deployed by the President in terms of section 3 to implement the intervention in terms of section 100 of the Constitution, may sign a memorandum of understanding with the MEC responsible for the same portfolio as that of the national executive member, to implement policy, exercise a statutory power, perform a statutory function, or provision of a service;

(2) the memorandum of understanding—

- (a) may be coordinated by the national coordinating committee, or appropriate intergovernmental forum;
- (b) may describe the roles and responsibilities of each organ of state in the implementation of policy, exercising of a statutory power, performance of a statutory function, or providing a service; and
- (c) must identify any challenges facing the implementation of policy, the exercise of the statutory power, the performance of statutory function or provision of a service and may state how these challenges are to be addressed.

### **Regulations**

**97.** The Minister may make regulations not inconsistent with this Act, in consultation with the national executive member responsible for public service and administration, and insofar as such regulations relate to matters dealt with in the Public Finance Management Act, or the Municipal Finance Management Act, in consultation with the national executive member responsible for finance, prescribing—

- (a) any matter that may be prescribed in terms of this Act;
- (b) sources of information for provincial monitoring systems;
- (c) municipal performance criteria determining key dysfunctional areas for an intervention;
- (d) prototype criteria for the development of the terms of reference for the intervention;
- (e) procedures for including persons on the list of persons approved for deployment as administrators referred to in section 85;
- (f) qualifications, scales of remuneration, benefits and other terms and conditions of the deployment of persons in private sector deployed as administrators;
- (g) mechanisms and procedures to resolve disputes arising from the interventions in terms of sections 100 or section 139(1) of the Constitution;
- (h) mechanisms and monitoring systems on on-going interventions in the provinces and municipalities arising from interventions in terms of section 100 or section 139(1) of the Constitution; and
- (i) any other matter necessary for facilitating the application of this Act.

### **Short title**

**98.** This Act is called the Intergovernmental Monitoring, Support and Interventions Act, 2023

## **MEMORANDUM ON THE OBJECTS OF THE INTERGOVERNMENTAL MONITORING, SUPPORT AND INTERVENTIONS BILL, 2023**

### **1. INTRODUCTION**

**1.1** The Constitution establishes a system of cooperative government in the Republic, constituted as national, provincial and local spheres of government. In terms of the principles of cooperative government set out in Chapter 3 of the Constitution, each sphere of government must respect the constitutional status, powers and functions of another sphere. Each sphere of government must exercise its powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. All spheres of government must provide effective, transparent, accountable and coherent government for the Republic as a whole, and cooperate with each other by assisting and supporting one another. In this regard section 125(3) of the Constitution obliges the national government to assist provinces to develop the administrative capacity required for the effective exercise of their powers and functions. Similarly on the other hand, section 154(1) obliges both the national government and the provincial governments to support and strengthen the capacity of municipalities in order to manage their own affairs.

**1.2** In order to be prepared for any anticipation or occurrence of breakdowns in the effective, transparent, accountable and coherent governance in the provincial and local spheres of government, the Constitution makes provision for intervention processes by a higher sphere of government to intervene in circumstances where a province or municipality fails to fulfil certain constitutional or statutory obligations. These processes are dealt with in sections 100 and 139 of the Constitution. Section 100 of the Constitution provides that the national executive may intervene in a province if the province cannot or does not fulfil an executive obligation imposed on the province in terms of the Constitution or legislation. Similarly, section 139 of the Constitution enables the provincial executive to intervene if a municipality cannot or does not fulfil an executive or budgetary obligation imposed on the municipality in terms of the Constitution or legislation.

- 1.3** The Constitution furthermore makes provision for national legislation to regulate sections 100 and s139 of the Constitution providing that national legislation may regulate the process established by section 100, and section 139(8) provides that national legislation may regulate the implementation of section 139 as well as the processes established by it.
- 1.4** Currently, there is no universal national legislation in place regulating interventions in provinces in terms of section 100. In the case of municipalities, Chapter 13 of the Local Government: MFMA, 2003 (MFMA), regulates section 139 of the Constitution in regard to interventions in municipalities, but only where the cause of the intervention is of a financial nature. There is no legislation to regulate interventions in municipalities arising from other causes. This IMSI Bill is therefore intended to fill this void and in order to regulate interventions in terms of both sections 100 and 139 of the Constitution, but in order not to encroach on the area already covered by the MFMA, the Bill will apply to discretionary financial interventions and section 139(4) and (5) interventions only to the extent that the Bill's provisions are not inconsistent with the MFMA.

## **2. PROPOSED PROVISIONS OF THE INTERGOVERNMENTAL MONITORING, SUPPORT AND INTERVENTIONS BILL**

### **2.1 GENERAL**

- 2.1.1** The general purpose of the IMSI Bill is to provide for the monitoring and supervision of provinces and municipalities. Supervision entails not only intervening in a province or municipality when executive constitutional and legislative obligations are not fulfilled, but also their monitoring for the purpose of identifying provinces and municipalities experiencing difficulties and challenges in with the fulfilling their executive constitutional and legislative obligations in terms of the Constitution or legislation and, where necessary, provide targeted national or provincial support in order to avert defaults in service delivery and hence interventions. Targeted support is additional to the “normal” support



provided to provinces and municipalities to enable them to manage their affairs, and exercise their powers and functions.

**2.1.2** In terms of section 100 and section 139(1) of the Constitution, the national executive or a provincial executive can only intervene in a province or a municipality, respectively, if the province or municipality cannot or does not fulfil an executive obligation imposed in terms of the Constitution or legislation. The whole aim of an intervention is, accordingly, to ensure fulfilment of the obligation which the province or municipality failed to fulfil. As the degree of intrusion into the affairs of the province or municipality needed to ensure fulfilment of an obligation varies in accordance with the factual circumstances of each case, the Bill distinguishes between various intervention steps that may be considered in a specific case.

## **2.2 CHAPTER 1: INTERPRETATION, PURPOSE AND APPLICATION OF BILL**

**2.2.1** This Chapter firstly provides in clause 1 for the definitions of key concepts in the Bill such as an “Administrator”, a “Directive”, “executive obligation”, “intervention step”, “legislation”, “regulatory measures”, “internal structure”, “internal functionary” and so on. This Chapter also establishes a the “national coordinating committee” as a standing committee coordinating the intervention and is constituted of the Minister and national executive members responsible for finance, and for public service and administration, and any other national executive member as necessary, and may be appointed by the President as necessary.

**2.2.2** Chapter 1 also states the purpose, application and scope of the Bill. In terms of this Chapter, the purpose of the Bill is to monitor whether provinces and municipalities fulfil their constitutional and statutory obligations. Secondly, the purpose of the Bill is also to provide targeted support to provinces and municipalities to enable them to fulfil their constitutional and statutory obligations. Thirdly, the regulates the processes established by, and the implementation sections 100 and 139 of the Constitution. Clause 2(2) provides that the Bill applies to discretionary section 139(1); financial and mandatory interventions in

terms of sub-section 139(4) and (5) of the Constitution only to the extent that the provisions of the Bill are not inconsistent with the MFMA dealing with financial interventions. The reason for this provision is that the MFMA already specifically regulates interventions arising from financial problems in municipalities.

**2.2.3** Clause 3 deal with the powers of the President together with other members of the national executive in regard to national interventions. It provides for the establishment of a national coordinating committee constituted of the Minister and national executive members responsible for finance, and for public service and administration, and any other national executive member as necessary, and may be appointed by the President. The President may delegate the intervening powers to this committee acting jointly with another national executive member having an interest in the intervened provincial department, any of the powers, duties or functions assigned to the national executive in terms of a provision of this Act, including the power to implement an intervention in terms of section 100 of the Constitution in a province. A delegation must be in writing; is subject to such limitations and conditions as the President may determine; and does not divest the national executive of the responsibility concerning the exercise of the delegated power, duty or function. The President may, at any time, alter or repeal any decision taken as a result of a delegation in terms of this section, but no such alteration or repeal may detract from any rights that have accrued as a result of the decision.

**2.2.4** Clause 4 deal with the powers of the Premier together with other members of the provincial executive in regard to provincial interventions. It provides for the Premier to can delegate to the MEC responsible for local government, any of the powers, duties or functions assigned to the provincial executive in terms of a provision of this Act, including the power to impose certain specific intervention modes; or to delegate to the MEC responsible for finance, any of the powers, duties or functions assigned to the provincial executive in terms of Bill, including the power to impose a section 139(4) or (5) of the Constitution. Further, this section establishes a provincial coordinating committee. And this committee may be delegated intervening powers, duties or functions assigned to the provincial executive, together with another MEC acting jointly, any of the powers, including

the power to implement a section 139(4) or (5) of the Constitution, or other modes of interventions. The delegation by the Premier must be in writing; must be subject to such limitations and conditions as the Premier may determine; does not divest the provincial executive of the responsibility concerning the exercise of the delegated power, duty or function; and may at any time be amended or repealed by the Premier.

## **2.3 CHAPTER 2: MONITORING AND SUPPORT OF PROVINCES**

**2.3.1** Part 1 of this Chapter deals with monitoring compliance by provinces in terms of their executive constitutional and legislative obligations. Clause 5 provides that the primary responsibility for ensuring that a province fulfils its obligations lies with the province itself. If a province encounter signs of a possible or impending non-fulfilment of an executive obligation; or has failed to fulfil an executive obligation, it must immediately take remedial steps to avert non-fulfilment of the obligation. Each province must have an early warning monitoring and reporting system to alert itself and the national government of any possible or impending non-fulfilment of an executive obligation. The Minister of public service and administration, through the Office of Standards and Compliance established in terms of Public Administration Management Act, establish a monitoring system to monitor compliance by provinces with their executive obligations, that includes mechanisms and procedures in national departments and other national organs of state for the identification of any early signs that a province might not be able to fulfil an executive obligation; and reporting to the national coordinating committee and other relevant national executive members any early signs of a possible non-fulfilment by a province of an executive obligation.

**2.3.2** Part 2 of this Chapter deals with the concept of “targeted support” which is the support needed by a specific province in addition to the support it normally receives from the national government. In terms of clause 7, any province that is in need of a targeted support, may submit a motivated written request for additional support to the national executive. The national executive must then investigate the province’s need for such additional support. If a province is identified for targeted support, the relevant national executive member must,

after consultation with the province, prepare a detailed support initiative; and assign roles and responsibilities for the implementation of the support initiative.

**2.3.3** The types and kinds of targeted support are listed in clause 8 and include temporary secondment of key personnel, the making available of professionals, technical or administrative guidance, access to technical equipment and facilities, etc. Clause 9 sets out the responsibilities of the national executive when alerted to a possible, impending or actual failure by a province to fulfil any of its executive constitutional and legislative obligations. These responsibilities include monitoring the ability of province to take remedial steps and determining whether the province needs support, and if so, the kind of support needed to enable it to take those remedial steps, or to ensure sustained future fulfilment of the obligation, and preparing a support initiative.

## **2.4 CHAPTER 3: NATIONAL INTERVENTIONS IN PROVINCES**

**2.4.1** Part 1 of this Chapter deals with the decision-making processes in determining whether intervention is appropriate or not; and it prescribes for general provisions relating to the decision-making process when a situation arises in a province, prompting the national executive to consider an intervention.

**2.4.2** Clause 10 prescribes for a national executive process to identify an executive obligation which the province cannot or does not perform, and to consider whether the situation calls for an intervention in terms of section 100(1) of the Constitution, or whether other steps should be employed in terms of clause 11 to secure fulfilment of the obligation which the province failed to fulfil. These alternative steps include utilising the forums, mechanisms and procedures established by the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), or providing the province with targeted support as mentioned above. If the obligation which the province failed to fulfil is a financial in nature, measures referred to in section 216(2) of the Constitution, compliance may be enforced by the National Treasury by taking steps in terms of that section instead of intervening in the province in terms of section 100(1).

- 2.4.3** Clause 12 prescribes for once the conditions for a section 100(1) intervention are met and the national executive has decided to intervene in the province, the national executive must determine the precise intervention step that would be appropriate in the circumstances. Clause 12 provides for the following intervention steps:
- (a) measures aimed at regulating the decisions of a province relating to the executive obligation which the province failed to fulfil (“section 12(2)(a) intervention step”);
  - (b) a “Directive” binding the province to take specific steps to ensure fulfilment of the obligation which the province failed to fulfil (“section 12(2)(b) intervention step”);
  - (c) assumption of responsibility for the obligation by the national executive (“section 12(2)(c) intervention step”).
- 2.4.4** Clause 13 prescribes for a process to assist the national executive in determining the precise intervention step that would be appropriate in the circumstances.
- 2.4.5** Parts 2, 3 and 4 of Chapter 3 contain provisions that are specifically applicable to each of the different intervention steps available in the Bill. Part 2 of this Chapter deals with regulatory measures on intervention that falls short of the actual intervention. Clause 14 It deals with the nature of measures that may be implemented; designating a national department, as one entity, to act as a consultative mechanism for the province, and whom the province must consult before taking any decision in connection with the executive obligation which the province failed to fulfil; and requiring the concurrence of the national executive member before any such decision by the province may be implemented.
- 2.4.6** Clause 14 deals with the nature of measures that may be implemented by the relevant national executive member, including-designating a national department or national public entity, or an adviser with appropriate specialist knowledge, to act as a consultative mechanism for the province, and whom the province must consult before taking any decision in connection with the executive obligation which the province failed to fulfil. Clause 15 deals with the consequences of non-compliance with measures and a decision taken or implemented by a province in

contravention of section 14 above is an unauthorised decision, and expenditure incurred as a result of such decision is subject to the Public Finance Management Act.

**2.4.7** Part 3, covering the section 12(2)(b) intervention step, provides that “Directives” issued by the national executive concerning the obligation which a province failed to fulfil, may include a “Directive” that the provincial executive:

- (a) suspend from office, any internal functionary or any member or official of an internal structure (excluding the Premier or an MEC) who caused or contributed to the failure to fulfil the obligation;
- (b) initiate or institute dismissal or disciplinary proceedings against the suspended person;
- (c) designate another person to be responsible for the suspended person’s duties.

Such “Directives” issued by the national executive are obligatory and the national executive may in terms of clause 17, assume the responsibility for fulfilling the “Directive” if the province fails to comply.

**2.4.8** Part 4, covering the section 12(2)(c) intervention step, provides that where the national executive assumes responsibility for the fulfilment of the obligation which the province failed to fulfil, it may appoint an Administrator or a national department or national public entity, to fulfil the assumed obligation on behalf of the national executive. Clause 18 also provides for the national executive member responsible for the concurrent functional area as that of a provincial executive member, to assume the powers of that provincial executive member in respect of the status and standing in the provincial executive council. The national executive member may delegate such powers to the deputy minister of that portfolio, or to an administrator. Clause 19 determines the effects of an assumption of responsibility for an executive obligation by the national executive on a province, and states that the province’s right to exercise the powers and functions associated with the obligation is suspended until the intervention is revoked. Provision is also made for the national executive to recover from the province, any expenses it incurs in connection with the fulfilment of the obligation.

Clause 20 deals with the resumption of responsibility by province when assumption of obligation or intervention ends.

**2.4.9** Part 5 of the Chapter deals with suspensions of officials in the province and the effects thereof. Clause 21 provides for the national executive, through the relevant national executive member, to can suspend an official from office, including the head of department of a province, in cases where the continued presence of the official in the relevant province threatens to prevent, delay or ultimately undermine the success of the intervention. Clause 22 deals with continuation of functions of suspended official by designating to another person to be responsible for exercising the powers, duties or functions of the suspended official during his or her suspension. Clause 23 on the other hand, deals with the effect of suspension of an official in province. It provides that the affected provincial department must provide such staff and other resources, and render such other assistance as may be necessary, and, within its means, approved budget, to enable any person deployed as administrator to exercise the powers, duties and functions of the suspended official effectively.

**2.4.10** Part 6 of this Chapter deals with provisions to facilitate achievement of intervention objective. The first one is in terms of clause 24 which enjoins the province to obligatorily assist the intervening the national executive member to achieve the objectives of the intervention, and must take all reasonable steps to prevent its officials from interfering with, hindering or obstructing implementation of the intervention. It requires that any of its staff member must give effect to the directives and instructions of the administrator to the extent necessary to fulfil the neglected obligation and ensure future performance; and to reprioritise the budget of the provincial department subject to an intervention to give effect to the priorities of the intervention, subject to the approval of the national coordinating committee. Clause 25 deals with undue interference in intervention in that if the continued presence of an official in the relevant provincial department threatens to prevent, delay or ultimately undermine the success of the intervention, the national executive member, on behalf of the national executive, may direct the provincial executive to suspend that official from office; initiate or institute disciplinary proceedings against that official in terms of any legislation subject to

which that official holds office; and designate another person to be responsible for exercising the powers, duties and functions of the suspended official.

**2.4.11** Clause 26 deal with the responsibility on the retention of the financial accountability and responsibilities of accounting officers and accounting authorities during intervention. The accounting officer of a provincial department affected by an intervention in a province continues to be responsible in that capacity for complying with the Public Finance Management Act; and must manage the responsibilities of accounting officer with due regard to the requirements needed for achieving the objectives of the intervention. On the other hand, clause 27 provides for the designation of person to replace accounting officer or accounting authority during intervention. Thus it provides that the National Treasury may designate a person determined by it during an intervention if the national executive intervenes in a province in terms of section 100 of the Constitution as the accounting officer of a provincial department or provincial public entity. If the National Treasury deploys such a person, the original incumbent ceases for the duration of the intervention to be the accounting officer of that department.

**2.4.12** Clause 28 deals with the designation of person to exercise specific powers, duties or functions of accounting officer. The National Treasury may designate a person determined by it to exercise during the intervention any specific powers, duties or functions assigned in terms of the Public Finance Management Act to the accounting officer of the department or provincial public entity or to the accounting authority of the public entity. If the National Treasury deploys a person for purposes of an intervention, that person exercises those powers, duties or functions to the exclusion of that accounting officer or accounting authority, but only to the extent that the exercise of those powers, duties or functions are necessary for the fulfilment of the assumed executive obligation.

**2.4.13** Part 7 deals with the procedures for imposing, reviewing, amending, revising and terminating intervention. Clause 29 deals with the notice of intervention in that the intervening Minister must submit a written notice of the intervention to the national executive for approval of the intervention in terms of section 100 of the



Constitution. The responsibility of informing the NCOP of such an intervention is with the Minister responsible for cooperative government within 14 days after the intervention has begun, and this submission is on behalf of the national executive; and the intervention must end if the NCOP disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention. This clause also deals with the what should be contained in the notice, and the parties that must be served with the notice, who include the NCOP and the national coordinating committee members.

**2.4.14** Clause 30 deal with the submission of information to NCOP. When the national executive intervenes, the Minister must attach copies of all documents submitted by the national executive member to the affected province in connection with the intervention; any information relating to the circumstances which gave rise to the intervention submitted by the province to the national executive; copies of complaints, letters or petitions concerning the performance of the province in the possession of the national executive, ect. The Minister must also give notice of the intervention in the Government Gazette and at least one newspaper circulating in the province.

**2.4.15** Clause 31 deals with the review of intervention in terms of section 100 of the Constitution. The intervening Minister or national executive member must regularly review the intervention, including the effectiveness of the intervention step implemented in terms of the intervention. The national coordinating committee must submit to the national executive, at least every three months a progress report on each intervention in terms of section 100(2) of the Constitution.

**2.4.16** Section 32 deals with the amendment of intervention notice of section 100 of the Constitution. The intervening Minister or the national executive member may, after a review in terms of section 31, amend a section 100(1) notice of intervention in any way appropriate to the intervention step implemented by the notice, including by, amongst others, altering, withdrawing or adding to any of the particulars of the notice, replacing a person deployed as administrator for

purposes of the intervention, or effecting other changes relating to the administrator deployed for purposes of the intervention; and making technical changes or correcting any errors that are not material. Clause 33 deals with the revision of the existing intervention step. It provides that the national executive member may, after a review in terms of section 31, revise the existing intervention step by replacing it with another intervention step, or combine it with an additional intervention step if the existing intervention step is not effective or sufficiently effective within 14 days after conclusion of the review.

**2.4.17** Clause 34 deals with the termination of intervention of section 100 of the Constitution in that the intervening Minister must issue a notice of termination of intervention to the province if the intervention ends. The national executive member responsible, must, after a review of the intervention, terminate an intervention if the objective of the intervention has been met; and the province has the capacity and is committed to fulfil the obligation in a sustainable manner; and the need for continuing the intervention has ended. The national executive member must give notice of the termination of the intervention within 14 days after conclusion of the termination, in the Government Gazette and at least one newspaper circulating in the province, if the intervention in a province is terminated.

**2.4.18** Part 8 of this Chapter deals with the monitoring and review of national intervention in provinces. The NCOP may request from the national executive member responsible for the intervention to submit to the NCOP such information concerning an intervention in a province in terms of section 100 of the Constitution, as the NCOP may require. In terms of section 36, the intervention must end if the NCOP disapproves the intervention within 180 days after the intervention began, or by end of that period, has not approved the intervention. On the other hand, if the NCOP makes any recommendations to the national executive member responsible for the intervention, such national executive member must consider those NCOP recommendations; or must provide reasons if it fails or decides not to implement any of the recommendations. The NCOP must review the intervention regularly while the intervention continues, and may make any further appropriate recommendations.

- 2.4.19** Part 9 of this Chapter deals with miscellaneous provisions such as access to information, records and documents during intervention. Section 37 that during an intervention in a province, the national executive member, or administrator, must have access to such information, records and documents of the province, as may be necessary, for executing the intervention. Section 38 deals with capacity building and transfer of skills during national intervention in that during an intervention, the national executive member responsible must determine whether the province has the capacity and skills to fulfil the executive obligation which the province failed to fulfil; and if the province lacks the capacity, skills or commitment for the fulfilment of the obligation in a sustainable manner, to assist the province in acquiring the necessary capacity, skills or commitment. Section
- 2.4.20** Section 39 deals with the report on intervention in that the intervening national executive member must submit a report on the intervention to the NCOP 30 days after the intervention ended if it terminates an intervention in a province. The report must include the reasons why the national executive has terminated the intervention; the results of the intervention; and whether the province is able and committed to fulfil, in a sustainable way, the executive obligation which gave rise to the intervention.
- 2.4.21** Section 40 deals with the status of provincial executive council during intervention. It states that the PEC must function as normal as provided for in the Constitution, subject to any implementation of an intervention in terms of section 100 of the Constitution. When there is a national intervention, the PEC may not take any decision which threaten to prevent, delay or ultimately undermine the success of the intervention. The national executive member responsible for concurrent portfolios as that of the MEC, represents that MEC in the provincial executive. Such intervening national executive member may delegate to the Deputy Minister of that portfolio, or may delegate to the administrator any of the powers and functions that this member possesses in relation n to the intervention.

## **2.5 CHAPTER: 4 MONITORING AND SUPPORT OF MUNICIPALITIES**

**2.5.1** Part 1 of this Chapter deals with the monitoring of the fulfilment of municipal executive obligations by the municipalities. Section 41 provides for the primary responsibility for ensuring that a municipality fulfils its obligations in terms of section 152 of the Constitution, and other obligations in terms of the Constitution and legislation, lies with the municipality itself. A municipality must have an early warning monitoring and reporting systems to alert itself of any possible or impending non-fulfilment of an executive obligation. Section 42 deals with the national and provincial monitoring of municipalities. The Minister, any national executive member, and MECs responsible for local government in the relevant province must, within its local government monitoring arrangements, establish a monitoring system to monitor compliance, by municipalities, with their executive obligations.

**2.5.2** Part 2 of this Chapter deals with targeted support provided by the national and provincial governments to municipalities in need of such. Section 43 provides for any municipality that is in need of support additional, may submit a detailed written motivation for support, stating, amongst others, the critical functional areas for which support is needed; the reasons why the support is needed, and where the reason for support is lack of capacity, to detail the current and required capacity, and so on. On receipt of the request, the national or provincial executive must assess the need of the municipality for such additional support; and may identify that municipality for targeted support. Section 44 provides for the kinds of national and provincial support, which may include, amongst others, the provision of professional, technical or administrative guidance and advice. the temporary secondment of key professional, technical or administrative personnel; the assistance in managing, operating or maintaining administrative, personnel or financial systems; municipal service and other technical systems, and others.

**2.5.2** Section 45 deals with the provincial support for municipalities facing possible, impending or actual non-fulfilment of executive obligation. It provides that if the PEC is alerted through the provincial monitoring system, or any other means to

a possible, impending or actual failure by a municipality to fulfil any of its executive obligations, the MEC responsible for local government must establish the extent, seriousness and cause of the possible, impending or actual failure; and whether the municipality is considering taking, or has taken any remedial steps to prevent a possible or impending failure from occurring, or to deal with the consequences of an actual failure. In writing, inform the Minister, the Minister of Finance, and MEC responsible for finance and the intervening Minister.

**2.5.3** Section 46 of this Chapter deals with the national support for municipalities facing possible, impending or actual non-fulfilment of executive obligation. It provides that if the national executive member is alerted to an impending or actual failure by a municipality to fulfil an executive obligation which the municipality is required to fulfil, and there is reason to believe that the situation may call for national support, the relevant national executive member may request the relevant province to submit a report on its status of support required. If the municipality does not have the required skills, resources and capacity to take remedial steps to avert non-fulfilment of the obligation or to deal with the consequences should non-fulfilment occur or, if non-fulfilment has already occurred, to ensure a speedy turnaround and sustained future fulfilment of the obligation, determine whether national support is in fact needed to enable the municipality to take those remedial steps or to deal with those consequences or to ensure a turnaround and sustained future fulfilment of the obligation, and so on.

## **2.6 CHAPTER 5: PROVINCIAL INTERVENTIONS IN MUNICIPALITIES**

**2.6.1** Part 1 of Chapter 5 deals with the decision-making processes in determining whether intervention is appropriate. Section 47 provides leverage to the PEC that before intervening, the PEC must determine whether the situation in the municipality is in fact caused by non-fulfilment of an obligation by the municipality; satisfy itself that the obligation is an executive obligation in terms of the Constitution or legislation; and if so satisfied, identify the executive obligation not fulfilled. On the other hand, the PEC must intervene in the municipality in terms of the MFMA, if the preconditions for an intervention in terms of section 139(4) or (5) of the Constitution are realised.

**2.6.2** Section 48 deals with the alternative steps to induce compliance by municipality with executive obligation in that the PCE may, instead of intervening, take any other step to induce compliance by the municipality with the obligation. Such optional steps may include utilising the forums, mechanisms and procedures established by the Intergovernmental Relations Framework Act; invoking any legislation regulating municipalities and the exercise of their powers, duties and functions, including the Municipal Finance Management Act; or providing targeted support to the municipality in terms of Part 2 of Chapter 4; or taking any other steps to induce compliance, by the municipality, with its executive obligation. These alternative options are not a prerequisite for an intervention in terms of section 139(1) of the Constitution and the provincial executive may, summarily intervene if it so decides. If the obligation which the municipality failed to fulfil is a measure referred to in section 216(2) of the Constitution, the PEC must consult the National Treasury before intervening in the municipality in terms of section 139(1) of the Constitution.

**2.6.3** Section 49 is one of the important provisions of this Chapter in that it provides types of intervention steps. Firstly, the PEC must determine the intervention step. The intervention steps a PEC may take include the imposition of measures aimed at regulating decisions of a municipality relating to the executive obligation which the municipality failed to fulfil; the issuing of a directive as contemplated in section 139(1)(a) of the Constitution; the assumption of responsibility for the executive obligation which the municipality failed to fulfil as contemplated in section 139(1)(b) of the Constitution; the imposition of measures regulating chapter 3 of the MFMA; the suspension of any official of the municipality; and the dissolution of the municipal council and the deployment of an administrator as contemplated in section 139(1)(c) of the Constitution. If the PEC cannot, or does not, or does not adequately, exercise the powers, duties and functions referred to in in terms of section 139(4) and (5) of the Constitution, then the Minister of CoGTA may, in consultation with the national executive member responsible for finance, and after approval by the national executive, intervene in terms of section 139(7) of the Constitution.

- 2.6.4** Section 50 deals with the determination of appropriate intervention step that may be employed given the circumstances. To determine whether an intervention step considered by the PEC will be appropriate, the provincial executive must consider the nature of the obligation which the municipality cannot or does not fulfil; the cause of failure to fulfil the obligation by the municipality, and the extent to which the obligation is not fulfilled; the consequences of the failure to fulfil the obligation for the local community; the urgency of correcting failure to fulfil the obligation by the municipality; the capacity of the municipality to rectify the failure and fulfil the obligation; the interests of the municipality with due regard to the principles of co-operative government; and consider whether any proposed intervention step will ensure fulfilment of the obligation.
- 2.6.5** Part 2 of this Chapter deals with the regulatory measures nature of measures that may be implemented. Section 51 provides that the PEC may implement intervention step measures that may include designating a department or public entity, or an adviser with appropriate specialist knowledge, to act as a consultative mechanism for the municipality, and whom the municipality must consult before taking any decision in connection with the executive obligation which the municipality failed to fulfil; requiring the concurrence of the provincial executive before any such decision by the municipality may be implemented; imposing conditions on the exercise by the municipality of a power in terms of which any such decision is taken; or any other additional reasonable measures that may be taken.
- 2.6.6** Section 52 deals with the consequences of non-compliance with measures if a decision taken or implemented by a municipality in contravention of the above, will be an unauthorised decision, and expenditure incurred as a result of such a decision is subject to the provisions of the MFMA.
- 2.6.7** Part 3 of this Chapter deals with the issuing of directives in terms of section 139(1)(a) of the Constitution. Section 53 makes provisions as to the contents of the directives. If the PEC issue a directive, it must describe the extent of failure to fulfil the executive obligation, by the municipality, which gave rise to the intervention; and state the steps which the municipality is required to take to

ensure fulfilment of that obligation, and any timeframes within which those steps must be taken. Section 54 provides for the compulsory effect of directives and consequences of non-compliance in that a municipality must comply with a directive; and the PEC may take any steps available to it to ensure compliance with the directive, including by assuming responsibility for compliance with the directive in terms of section 139(1)(b) of the Constitution if the municipality fails to fulfil the obligation placed on it.

**2.6.8** Part 4 of this Chapter deals with the assumption of responsibility for executive obligation in terms of section 139(1)(b) of the Constitution and the deployment of administrator or national organ of state to fulfil assumed obligations on behalf of provincial executive. In terms of section 55, if the PEC implements an intervention in terms of section 139(1)(b) of the Constitution, it may deploy an official of a national or provincial department, or a person in private sector, as administrator, to fulfil the assumed executive obligation of the municipality, or specific aspects of the assumed executive obligation on behalf of the provincial executive; or by agreement with a national department to appoint that department to fulfil the assumed obligation on behalf of the PEC on an agency basis, if the obligation relates to a non-provincial function that is regulated at the national level of government; or a concurrent function in respect of which the province has no, or insufficient capacity. The mandate of an administrator deployed is confined to exercising the powers, duties and functions of the municipality necessary for fulfilling the assumed obligation on behalf of the PEC.

**2.6.9** Section 56, on the effect of assumption of responsibility for obligation on municipality, provides for the PEC to assume responsibility for an executive obligation of a municipality. The PEC or the administrator deployed for fulfilling the obligation, may exercise any of the powers, duties and functions assigned to the municipal council or official of the municipality, but only to the extent that the exercise of those powers, duties and functions are necessary to fulfil the assumed obligation; and comply with section 139(1)(b)(i), (ii) and (iii) of the Constitution. The right of that municipal council or official of the municipality to continue exercising those powers, are exercised by the provincial executive, an administrator, or the national department. The municipality may not withdraw any



of its staff, funds or other resources allocated by it; and must provide such additional staff, funds and other resources, and render such other assistance, within its means and approved budget, to facilitate fulfilment of the obligation in terms of the reasonable requirements of the PEC. The assumption of responsibility does not affect the right of a municipality to administer the affairs of the municipality other than the obligation for which the provincial executive has assumed responsibility. The municipality remains responsible for budgeting for and funding the fulfilment of the obligation. This section also provides that the PEC may recover from the municipality any necessary and reasonable expenses incurred by it in connection with the fulfilment of the obligation.

**2.6.10** Section 57 deals with the status of municipal council and administration during the intervention. It provides that the municipal council must continue to function to fulfil its executive obligations in terms of the Constitution or legislation, subject to any implementation of an intervention in terms of section 139 of the Constitution. The municipal council cannot take any decisions which threaten to prevent, delay or ultimately undermine the success of the intervention implemented by the provincial or national executive. The PEC may assign the exercising of all the powers, duties or functions of the executive obligations of the municipal council and administration to a deployed administrator. The municipal council and administration are accountable to the deployed administrator and subject to the terms of reference of the administrator issued. The PEC may assign the exercising of all the powers, duties or functions of the municipal council and municipal administration to the administrator, including any of the powers of the municipal manager in terms of section 55 of the Local Government Systems, and section 60 of the Municipal Finance Management Act; and any of the powers of the municipal council, and those of the municipal mayor in terms of section 56 of the Municipal Structures Act.

**2.6.11** Part 5 of Chapter 5 deals with the suspension of officials of municipality. Section 58 provides that the PEC may suspend an official from office in cases where the continued presence of the official in the relevant municipality or municipal entity threatens to prevent, delay or ultimately undermine the success of the intervention. The PEC may initiate or institute disciplinary proceedings against

an official, in terms of any legislation subject to which that official holds office, if it suspends an official of a municipality, or where appropriate, direct the municipality or the administrator to initiate or institute such disciplinary proceedings. The PEC may delegate to the MEC or to an independent person, the powers and functions on disciplinary issues. Section 59, on the other hand, deals with the continuation of functions of suspended official in that if the PEC suspends an official of a municipality, it may designate another person or another official of the municipality to be responsible for exercising the powers of the suspended official during his or her suspension; or in the case of the suspension of an official, designate an official of a provincial department, or a person in private sector, as administrator to exercise the powers, duties and functions of the suspended official. The mandate of an administrator deployed is confined to exercising the powers of the suspended official. Any powers, duties and functions of the suspended official excluded from the mandate of the administrator, vest in the PEC who may delegate any of those powers, duties and functions to any official of the municipality. All of these do not apply in the case of the suspension of a member of a municipal council, and any vacancy that may arise following the suspension of the councillor, in terms of applicable legislation, must be filled in terms of that legislation as vacancies arising in municipal councils. Section 60 deals with the effects of suspension of an official in municipality. If an official of a municipality is suspended, the municipality must provide such staff and other resources, and render such other assistance as may be necessary, and within its means and approved budget to enable any person deployed as administrator to exercise the powers, duties and functions of the suspended official effectively. The municipality remains responsible for funding the exercise of the powers, duties and functions of the suspended official.

**2.6.12** Part 6 deals with the processes of the dissolution of municipal council in terms of section 139(1)(c) of the Constitution. Section 61 provides for exceptional circumstances warranting dissolution of municipal council, providing that in order to decide whether there are exceptional circumstances warranting a dissolution of the municipal council, the PEC must consider all relevant factors, and decide whether the seriousness, extent and cause of failure to fulfil the obligation in terms of the Constitution or legislation by the municipality, taken together,

constitute exceptional circumstance warranting dissolution of the municipal council, and the deployment of an administrator to ensure fulfilment of the obligation. When taking such decision, amongst others, the PEC must consider the seriousness of a failure to fulfil the obligation by the municipality; how and the extent to which the local community is affected by a failure to fulfil the obligation by the municipality; or the failure poses a risk to public health or safety or to the local economy or the environment. The Municipal Council may be dissolved due to, amongst others, an inability to form a quorum for a meeting of the municipal council to discuss or take a decision necessary for the fulfilment of the obligation; an inability to muster enough votes for a decision necessary for the fulfilment of the obligation; unwillingness or refusal on the part of the municipal council to fulfil the obligation; manipulation or obstructive behaviour in the municipal council, or by a councillor, to prevent the municipal council from discussing or taking a decision necessary for the fulfilment of the obligation; unwillingness or refusal by the municipal council to implement or to cooperate in the implementation of a prior intervention in terms of section 139(1) of the Constitution to induce fulfilment of the obligation; infighting in the municipal council obstructing proper functioning of the municipal council; bad management of municipal council schedules or procedures; general malfunctioning of the municipal council; improper interference by councillors in the administration of the municipality; corrupt practices in the municipal council or by councillors; or inefficiency of the municipal council to manage the affairs of the municipality.

**2.6.13** Section 62 deals with the deployment of administrator. The PEC must, upon serving on the municipality the notice of intervention, deploy an official of a national or provincial department, or a person in private sector, as administrator to administer the affairs of the municipality from the date of dissolution of the municipal council, until a new elected municipal council is declared elected. A person deployed holds office and must exercise the powers, duties and functions of office in terms of Chapter 6; and may exercise any power, duty or function vested in the municipality necessary for the effective administration of the affairs of the municipality, except those powers, duties and functions excluded from the mandate of administrator. The PEC may assign the exercising of all the powers,

duties or functions of the executive and legislative obligations of the municipal council and administration, to a deployed administrator. The municipal council and administration are accountable to the deployed administrator. The PEC may assign the exercising of all the powers, duties or functions of the municipal council and municipal administration to the administrator, including any of the powers of the municipal manager in terms of section 55 of the Local Government Systems, and section 60 of the Municipal Finance Management Act; and any of the powers of the municipal council, and those of the municipal mayor in terms of section 56 of the Municipal Structures Act. The administrator may delegate to other members of the intervention team, any of the powers and functions conferred to the administrator. The deployment of an administrator may be terminated if the dissolution of the municipal council is set aside by the Minister in terms of section 139(3)(b) of the Constitution; NCOP in terms of section 139(3)(b); or the intervention is set aside by a court. Section 63 deals with the status of councillors when municipal council is dissolved. It provides that the members of a municipal council dissolved in terms of section 139(1)(c) of the Constitution, cease to be councillors from the date the municipal council is dissolved.

**2.6.14** Part 7 of this Chapter deals with the provisions to facilitate achievement of intervention objective. It provides for municipal assistance in intervention and section 64 postulates that if the PEC intervenes in a municipality in terms of section 139(1) of the Constitution, the municipality must assist the PEC to achieve the objectives of the intervention, and to bring the intervention to a successful conclusion as speedily as possible. The municipality must take all reasonable steps to prevent its internal functionaries and members or officials from interfering with, hindering or obstructing implementation of the intervention; and may not withdraw any of its staff, funds or other resources allocated by it for the fulfilment of the relevant executive obligation; and must provide such additional staff, funds and other resources, and render such other assistance, within its means and approved budget to facilitate fulfilment of the obligation in terms of the reasonable requirements of the provincial executive, or person acting on its behalf, including any administrator deployed for purposes of the intervention.

**2.6.15** Section 65 deals with undue interference in intervention. It provides that if the continued presence of an official in the municipality or municipal entity threatens to prevent, delay or ultimately undermine the success of the intervention implemented in terms of section 139 of the Constitution, the PEC may direct the MEC responsible for local government to suspend that official from office; or initiate or institute disciplinary proceedings against that official in terms of any legislation subject to which that official holds office.

**2.6.16** Section 66 deals with the financial accountability and responsibilities of accounting officers during intervention. The accounting officer of a municipality that becomes subject to an intervention continues, during the intervention, to be responsible in that capacity for complying with the Municipal Finance Management Act; and must manage the responsibilities of accounting officer in terms of that Act, with due regard to the requirements needed for achieving the objectives of the intervention. Section 67, on the other hand, deals with the designation of person to replace accounting officer during intervention. It provides the PEC to may designate, for purposes of the MFMA, a person determined by it during the intervention, if the PEC intervenes in a municipality in terms of section 139 of the Constitution, as the accounting officer of the municipality. A person may be appointed as accounting officer of a municipality only in instances where the PEC has suspended the municipal manager; assumed the responsibility for the any executive obligations of the municipality; implemented a financial recovery plan for the municipality; dissolved the municipal council; or intervened in the municipality in terms of section 139(4) or (5). The Municipal Manager ceases for the duration of the intervention to be the accounting officer of the municipality if the provincial treasury deploys another person to be an accounting officer. When deploying another person to be an accounting officer, the provincial treasury may exercise its powers only after consultation with the Minister; and the National Treasury, if the budget of the municipality normally exceeds R500 million, unless another amount is, for purposes of this section, prescribed by regulation in terms of the Municipal Finance Management Act.

**2.6.17** Section 68 deals with the designation of person to exercise specific powers, duties or functions of accounting officer during intervention. The provincial treasury may designate a person determined by it to exercise, during the intervention, any specific powers, duties or functions assigned in terms of the Municipal Finance Management Act to the accounting officer of the municipality if the provincial treasury has, for purposes of an intervention in a municipality, not replaced the accounting officer of the municipality. If the provincial treasury deploys a person to exercise for purposes of an intervention, specific powers, duties or functions of the accounting officer of a municipality, that person exercises those powers, duties or functions to the exclusion of the accounting officer of the municipality, but only to the extent that the exercise of those powers, duties or functions are necessary for the purpose of achieving the objective of the relevant intervention step. The person that may be designated includes an official of the municipality or the relevant municipal entity; an official of any other municipality or municipal entity in the province; an official of any national or provincial department or public entity; or an official or person deployed as administrator for purposes of the intervention. The provincial treasury may exercise its powers only after consultation with the Minister; and the National Treasury, if the budget of the municipality normally exceeds R500 million, unless another amount is, for purposes of this section, prescribed by regulation in terms of the Municipal Finance Management Act.

**2.6.18** Part 8 of Chapter 5 deals with the procedures for imposing, reviewing, amending, revising and terminating interventions. In terms section 69, the PEC must notify the municipality of the intervention by serving a notice of intervention on the municipality in the prescribed manner, if the provincial executive decides to intervene in a municipality in terms of a section 139(1), 139(4) or 139(5) of the Constitution. The notice of intervention must contain, amongst others, and in the case of an intervention in terms of section 139(1) of the Constitution, a statement that the provincial executive is intervening in the municipality, in terms of section 139(1) of the Constitution; a short description of the executive obligation which the municipality failed to fulfil; the extent to which the municipality failed to fulfil the obligation; the intervention steps the provincial executive is imposing; particulars of the intervention step, including the date on which the intervention

will commence; the period for which the intervention step is expected to be in force; and the action the PEC may take should the intervention step not secure fulfilment of the obligation. In the case of an intervention in terms of section 139(4) of the Constitution, the PEC must issue a statement that the PEC is intervening in the municipality in terms of section 139(4) of the Constitution, read with sections 26 and 136(3) of the Municipal Finance Management Act, because of a failure by the municipality to approve a budget or revenue-raising measures to give effect to the budget; and the date from which the municipal council of the municipality is dissolved, and the administrator is deployed in terms of section 26 of the Municipal Finance Management Act. In the case of an intervention in terms of section 139(5) of the Constitution, the PEC must issue a statement that the PEC is intervening in the municipality in terms of section 139(5) of the Constitution, read with section 139 of the Municipal Finance Management Act, as a result of a crisis in its financial affairs as contemplated in that section, stating particulars of any serious or persistent material breach by the municipality of its obligations to provide basic services, or to meet its financial commitments; or any admission by the municipality that it is unable to meet its obligations or financial commitments. A statement on the preparation of a financial recovery plan for the municipality that will bind the municipality to the extent necessary to achieve the objectives of the plan; the date on which the intervention will commence; the date from which the municipal council of the municipality is dissolved, if the PEC decided to dissolve the municipal council, and the administrator is deployed; and the period for which the intervention is expected to be in force.

**2.6.19** Section 69 further provides that the PEC must submit a copy of the notice of intervention to the Minister; the NCOP; the relevant provincial legislature; the district municipality of the area in which the municipality falls, if a local municipality is the subject of the intervention; each local municipality in the area of the municipality, if a district municipality is the subject of the intervention; SALGA; the National Treasury; and any national department responsible for implementing sectoral legislation affected by the intervention. The PEC must give notice of the intervention in the Provincial Gazette, and at least one newspaper circulating in the municipality if it intervenes in a municipality in terms of section 139(1), (4) or (5) of the Constitution.

**2.6.20** Section 70 deals with the submission of information to Minister, NCOP, provincial legislature. When the PEC implements an intervention in terms of section 139(1)(b) or (c), (4) or (5) of the Constitution, it requires the submission of a notice referred to in section 139(2)(a), (3)(a) or 139(6) of the Constitution to the Minister, the NCOP and the provincial legislature. It must also attach to the notice all documents submitted by the PEC to the affected municipality in connection with the intervention; any representations received by the PEC from the municipality in connection with the intervention; or any information relating to the circumstances which gave rise to the intervention submitted by the municipality to the provincial executive; any representations or reports on those circumstances submitted to the provincial executive by organised local government; complaints, letters or petitions concerning the performance of the municipality in the possession of the provincial executive; reports of investigations conducted by provincial officials; and any other information in the possession of the PEC relevant to the intervention, including any views received from the affected local community.

**2.6.21** Section 71 deals with the review of intervention of section 139(1) of the Constitution. It requires that the PEC must regularly, but at least every three months, review an intervention, including the effectiveness of the intervention step implemented in terms of the intervention. After a review, and considering the outcome of the review, the PEC may amend the intervention; revise the existing intervention step; or terminate the intervention; or must intervene in the municipality in terms of section 139(4) or (5) of the Constitution.

**2.6.22** Section 72 deals with amendment of intervention notice. It provides that the PEC, after a review, amend a notice of an intervention in any way appropriate, to the intervention step implemented by the notice, including by altering, withdrawing or adding to any of the particulars; replacing a person deployed as administrator for purposes of the intervention, or effecting other changes relating to the administrator deployed for purposes of the intervention; and making technical changes or correcting any errors. The PEC must notify the municipality of the amendment of a notice of intervention by serving an amended notice of



intervention on the municipality in the prescribed manner. A copy of the amended notice of intervention must be submitted to the organs of state referred to in section 69(3).

**2.6.23** Section 73 deals with the revision of existing intervention, providing that the PEC, after a review, may revise the intervention by replacing an existing intervention step with another intervention step, or combine it with an additional intervention step if the existing intervention step is not sufficiently effective. The PEC must notify the municipality by serving on the municipality a notice of revised intervention. A notice of revised intervention must contain a statement that the PEC has revised the existing intervention step, and stipulate, amongst others, particulars of the new intervention step that replaces or is added to the existing intervention step; the reasons for the revision; the date on which the revision will commence; and the period for which the intervention is expected to continue. A copy of the revised notice of intervention must be submitted to the organs of state referred to in section 69(3).

**2.6.24** Section 74 deals with the termination of intervention. In terms of this section, the PEC that intervened in a municipality in terms of section 139(1) of the Constitution, must issue a notice of termination of intervention to the municipality if the intervention ends in terms of section 139(2)(b) or (3)(b) of the Constitution; the intervention is set aside by a court; or the PEC provincial executive terminates the intervention. The PEC must, after a review, terminate an intervention, and if there is a reason to believe that the objective of the intervention has been met; the municipality has the capacity to fulfil the obligation in a sustainable manner; and the need for continuing the intervention has ended. The PEC must follow the consultative processes to determine whether the criteria set out have been met. A notice of termination of intervention must state that the intervention has, or is to be ended; the date on which the intervention has ended or will end; and the reason for the ending of the intervention including conditions related to termination of intervention. If an intervention in a municipality is terminated, the PEC must give notice of the termination of the intervention in the Provincial Gazette, and at least one newspaper circulating in the municipality.

**2.6.25** Section 75 deals with the imposition of an intervention of section 139(4) or (5) during an intervention of section 139(1) of the Constitution. If during an intervention in terms of section 139(1) of the Constitution in a municipality the conditions for a section 139(4) or (5) intervention are met, the PEC must apply section 139(4) or (5), as the case may be, despite the existing intervention in terms of section 139(1) of the Constitution. A section 139(4) or (5) intervention supersedes the existing intervention in terms of section 139(1) of the Constitution, but does not affect anything intervention done in terms of section 139(1) of the Constitution. If the municipal council has been dissolved, and an administrator has been deployed in the municipality, the intervention in terms of section 139(4) or (5) of the Constitution does not affect the dissolution of the municipal council, and the dissolution of the municipal council must remain effective; and the administrator may continue as if deployed in terms of section 139(4) or (5) of the Constitution.

**2.6.26** Part 9 of Chapter 5 deals with the monitoring and review of provincial intervention in municipality. It provides for the constitutional review by Minister in that when notified in terms of section 139(2)(a)(i) or 139(3)(a)(i) of the Constitution that the PEC has intervened in a municipality in terms of section 139(1)(b) or (c) of the Constitution, the Minister must review the intervention by evaluating information and documents submitted to the Minister in terms of this Bill, or otherwise in the possession of the Minister; and determining whether the intervention constituted an appropriate step within the meaning of section 139(1) of the Constitution for the fulfilment of the executive obligation which the municipality failed to fulfil; in the case of an intervention in terms of section 139(1)(c) of the Constitution, whether there are exceptional circumstances warranting the dissolution of the municipal council; and the intervention should be allowed to proceed. The Minister may conduct a separate investigation to obtain information relevant to the intervention under review. The Minister must notify the PEC in writing if the Minister, in the case of an intervention in terms of section 139(1)(b) of the Constitution, disapproves or approves the intervention within the timeframe of 28 days specified in section 139(2)(b)(i), or by the end of that period, has not approved the intervention; or in the case of an intervention in terms of section

139(1)(c) of the Constitution, sets the intervention aside within the timeframe of 14 days specified in section 139(3)(b) of the Constitution.

**2.6.27** Section 77 deals with the monitoring of intervention of section 139(1) of the Constitution. It requires that the Minister must monitor each intervention in terms of section 139(1) of the Constitution in a municipality. The PEC must submit to the Minister at least every three months a progress report on each intervention in terms of section 139(1) of the Constitution. The PEC must submit the progress report to the Minister within 14 days after conclusion of the review if it has reviewed an intervention. A copy of each progress report must simultaneously be submitted to the organs of state referred to in section 69(3).

**2.6.28** Section 78 deals with the request by Minister for information concerning the intervention. The PEC must, on request by the Minister, submit to the Minister such information concerning an intervention in terms of section 139(1), (4) or (5) of the Constitution in a municipality as the Minister may require. On the other hand, section 79 deals with the request by National Council of Provinces or provincial legislature for information concerning interventions in that the PEC, on request by the NCOP or the provincial legislature, submit to the NCOP or the legislature such information concerning an intervention in a municipality. Section 80 then deals with the recommendation by Minister, National Council of Provinces or provincial legislature to provincial executive. If the Minister, the NCOP or the provincial legislature makes recommendations to the PEC on any intervention in a municipality, the PEC must consider those recommendations; and provide reasons to the Minister, the NCOP or the provincial legislature if it fails or decides not to implement any of those recommendations.

**2.6.29** Section 81 deals with interventions of section 139(4) and 139(5) of the Constitution. Before a PEC takes a decision on the dissolution of a municipal council in terms of a section 139(1)(c), (4) or (5) of the Constitution, it must determine and consider the impact that the dissolution of the municipal council will have on the interests of the local community; and must consult the Minister and the Minister for finance for their views on whether dissolving the municipal council is the appropriate step to ensure approval of a budget, or revenue raising

measures, to provide basic services or meet its financial commitments, as contemplated in section 139(4) and (5) of the Constitution.

**2.6.30** Part 10 of this Chapter deals with miscellaneous provisions that includes access to information, records and documents during intervention in terms of section 82. During an intervention in a municipality, the PEC, or the deployed administrator, or any other person deployed by the PEC, has access to such information, records and documents of the municipality or of any municipal entity under the sole or shared control of the municipality, as may be necessary, for executing the intervention. Section 83, on the other hand, deals with capacity building and transfer of skills during provincial intervention. It provides that during an intervention, the PEC must determine whether the municipality has the capacity and skills to fulfil the executive obligation which the municipality failed to fulfil. If the municipality lacks the capacity and skills for the fulfilment of the obligation in a sustainable manner, the PEC must, in consultation with the municipality, identify the capacity and skills the municipality lacks; and prepare a plan of action setting out ways and means to ensure that the municipality acquires the capacity and skills it lacks; and provide such support to the municipality as may be necessary to give effect to the plan of action.

**2.6.31** Section 84 deals with the report on interventions. The PEC must, within 30 days after the intervention ended, submit a report on the intervention in the municipality if it terminates the intervention, to the Minister, the NCOP, the provincial legislature, SALGA, the municipality, and if the municipality is a local municipality, also to the district municipality of the district in which the local municipality is situated; or if the municipality is a district municipality, also to the local municipalities in the area of the district municipality; the National Treasury; and any national department responsible for implementing sectoral legislation affected by the intervention. A report must include the reasons why the PEC has decided to terminate the intervention; the results of the intervention; and whether the municipality is able to fulfil in a sustainable way the executive obligation which gave rise to the intervention, including conditions for termination.

## **2.7 CHAPTER 6: ADMINISTRATORS IN PROVINCIAL AND MUNICIPAL INTERVENTIONS**

**2.7.1** Section 85 under this Chapter deals with the list of persons approved for deployment as administrators. It provides that no person may, for purposes of an intervention in a province or a municipality, be deployed as an administrator unless the name of that person appears on a list of persons approved for deployment as an administrator issued from time to time by notice in the Gazette by the national coordinating committee acting with the concurrence of the national executive member responsible for the concurrent portfolio. This does not apply to the deployment by the national or provincial executive of a person who is an official of a national or provincial department, or public entity, or of a municipality or municipal entity. It provides that no person may be included in the list referred to above, unless that person has the minimum requirements relating to skills, expertise, competence and qualifications, as may be prescribed by regulation; and is otherwise a fit and proper person for deployment as an administrator in terms of any criteria as may be prescribed by regulation.

**2.7.2** Section 86 deals with the deployment of an administrator in that an administrator may be a natural person; an institution, corporate or unincorporated; or more than one person acting in unison in terms of the direction of the intervening national or provincial executive. If an administrator is to be deployed for purposes of an intervention in a province or a municipality, the selected person must be deployed in terms of a written agreement between the national executive or provincial executive, as the case may be, and the person being deployed. That agreement must regulate all aspects relating to the deployment of the administrator, including remuneration, benefits and other terms and conditions of deployment, in the case of a person in private sector deployed as administrator; the term of deployment; reporting requirements to the national or provincial executive, as the case be; performance evaluation; and be signed by both parties before commencement of the deployment. An agreement may provide for the deployment by the administrator, or the secondment by the national or provincial executive, as the case may be, of such assistants as may be needed for the effective carrying out of the mandate of the administrator; and approved

by the national or provincial executive, as the case may be. A person deployed as an administrator or seconded as an assistant, who is an official or employee of a national or provincial department, or public entity, or of a municipality or municipal entity, holds office as administrator or as such assistant in terms and conditions of his or her employment as such an official or employee; and national coordinating committee may decide on any additional remuneration and benefits because of the deployment or secondment otherwise than in terms of the legislation regulating the employment of that person as such an official or employee.

**2.7.3** Section 87 deals with the term of deployment as agreed to in the agreement referred to above, and may not be for a period beyond the duration of the intervention. The deployment of an administrator ends if the period for which the administrator was deployed expires; the deployment is terminated by the national or provincial executive; the administrator resigns after giving notice in terms of the agreement. In the case of intervention steps in terms of a section 100(1) of the Constitution in a province, the intervention is terminated by the national executive, or the intervention step is replaced by the national executive with another intervention step. In the case of an intervention in terms of section 139 of the Constitution, the intervention is terminated by the provincial executive; or the intervention step is replaced by the PEC with another intervention step, which does not provide for the deployment of an administrator; the intervention is set aside by a court; or the intervention ends in terms of the legislation applicable to it. The national or provincial executive, as the case may be, may terminate the deployment of a person as administrator before the term of office expires on any good ground, including on the ground of a failure or refusal to give effect to the directions of the national or provincial executive; a failure to execute his or her mandate; the unauthorised assumption of unmandated powers, duties or functions; misconduct, incompetence, mental or physical incapacity; absence from office without leave; or any other circumstances applicable to the administrator in terms of the agreement entered into with the administrator. However, the above does not prevent the person deployed as administrator from continuing after the intervention has ended, to perform such transitional functions as may be agreed with the national or

provincial executive, including functions relating to the monitoring of, or the provision of support or advice to the affected province or municipality.

**2.7.4** Section 88 deals with the mandates of administrator. It provide for the intervening national executive member to issue to an administrator deployed, a written mandate authorising the administrator to exercise the powers, duties and functions of the province necessary for purposes of the intervention; and may amend the mandate of the administrator when necessary. The PEC must issue to an administrator deployed for purposes of an intervention in terms of section 139(1) of the Constitution in a municipality, a written mandate assigning the administrator to exercise the executive obligations in terms of powers, duties and functions of the municipality necessary to fulfil the executive obligation for which the provincial executive assumed responsibility, if a section 49(2)(c) intervention step was implemented; the suspended official of the municipality, if a section 49(2)(e) intervention step was implemented, suspending an official; or the municipal council, including power of delegation in terms of the Municipal Systems Act, if a section 49(2)(f) intervention step was implemented; or an intervention in terms of section 139(4)(a) or 139(5)(b)(i) of the Constitution, a written mandate assigning to the administrator to exercise executive obligations in terms of the powers, duties and functions of the municipal council; and may, in writing, amend the mandate of administrator when necessary. The mandate of an administrator is subject to such limitations and qualifications as set out in the mandate; does include the exercise of legislative powers in terms of section 160(2) of the Constitution, where necessary; and may, subject to section 26 or 72 as may be appropriate, not be inconsistent or allow interference in the case of a section 12(2)(c) intervention step, with the powers and functions of the accounting officer, or accounting authority of the affected provincial department or public entity; in the case of a section 49(2)(c) intervention step, with the powers and functions of the accounting officer of the affected municipality or municipal entity; or in the case of a section 49(2)(e) intervention step, with the powers and functions of the accounting officer of the affected municipality or municipal entity, unless the accounting officer is the person who has been suspended. Anything done by an administrator in terms of the mandate is legally binding.

**2.7.5** Section 89 deals with the relationship between administrator and national or provincial executive. It provides that an administrator must implement his or her mandate in terms of the directions of the national or provincial executive, as the case may be. When a dispute arises between a province and the administrator deployed for purposes of an intervention in the relevant province, the administrator must promptly report the matter to the national coordinating committee; or a municipality and the administrator deployed for purposes of an intervention in the municipality, the administrator must promptly report the matter to the MEC responsible for local government in the relevant province.

**2.7.6** Section 90 deals with the report of administrator when intervention ends. This section provides that when an intervention in terms of section 100 or 139(1) of the Constitution ends, the administrator deployed for the intervention must, within 14 days, submit to the national executive, or the provincial executive, as the case may be, a report on the intervention. The report in must include the results of the intervention; and whether the relevant province or municipality can fulfil in a sustainable way, the executive obligation which gave rise to the intervention.

## **2.8 CHAPTER 7: MISCELLANEOUS**

**2.8.1** Section 91 deals with the costs of intervention that requires that the national government is, through its responsible departments, responsible for any costs arising from the deployment of an administrator for purposes of an intervention in a province, including the remuneration and benefits of the administrator, but may recover those costs to the extent that they are reasonable from the province. The costs of the intervention, including the cost of implementing the decisions and actions of the administrator, may be defrayed by the relevant province from its own funds. The relevant provincial government is, through its responsible departments, responsible for any costs arising from the deployment of an administrator for purposes of an intervention in a municipality, including the remuneration and benefits of the administrator, but may recover those costs to the extent that they are reasonable from the municipality. The costs of the intervention, including the cost of implementing the decisions and actions of the administrator, may be defrayed by the municipality from its own funds.



- 2.8.2** Section 92 provides for the audit committee oversight should continue on their work. In this regard, an intervention in terms of section 100 or 139(1) of the Constitution does not affect the relevant province or audit committee of municipality, and the audit committee remains competent during the intervention to exercise its powers, duties and functions in terms of the Public Finance Management Act or the Municipal Finance Management Act, unless the audit committee itself is the subject of the intervention.
- 2.8.3** Section 93 deals with disputes arising from interventions. A dispute relating to an intervention in terms of section 100 or 139(1) of the Constitution must be referred to the National Council of Provinces if the application of regulations referred to in section 97(e) does not resolve the dispute. The Minister must be cited as a party in any judicial proceedings between organs of state or against an organ of state which arises from a dispute relating to an intervention or the application of this Act.
- 2.8.4** Section 94 deals with offences and penalties. It provides that a member or an official of a province is guilty of an offence if that person wilfully interferes with, hinders or obstructs the national executive member in the implementation of an intervention in the relevant province in terms of section 100 of the Constitution; a person designated in terms of section 16(2)(c) in the performance of the duties of that person; or an administrator or national department or public entity deployed in terms of section 18(1)(a) or (b) in the performance of their duties. A member or official of a municipality is guilty of an offence if that person wilfully interferes with, hinders or obstructs the PEC in the implementation of an intervention in terms of section 139(1), (4) or (5) of the Constitution; an administrator, department or public entity deployed in terms of section 56(1)(a) or (b), 59(1)(b) or 62(1) in the performance of their duties; or a person designated in terms of section 59(1)(a) in the performance of the duties of that person. A person who commits an offence in terms of the above provisions and is liable on conviction to a fine or imprisonment for a period not exceeding one year, or to both that fine and that imprisonment.

**2.8.5** Section 95 provides for the establishment of the national coordinating committee secretariat. The Minister chairs the meetings of the national coordinating committee; and the Department of the Minister is responsible for providing administrative and other support services to the national coordinating committee. Section 96 provides for provisions to enter into a Memorandum of Understanding during interventions. Any national executive member deployed by the President in terms of section 3 to implement the intervention in terms of section 100 of the Constitution, may sign a memorandum of understanding with the MEC responsible for the same portfolio as that of the national executive member, to implement policy, exercise a statutory power, perform a statutory function, or provision of a service. The memorandum of understanding may be coordinated by the national coordinating committee, or appropriate intergovernmental forum; may describe the roles and responsibilities of each organ of state in the implementation of policy, exercising of a statutory power, performance of a statutory function, or providing a service; and must identify any challenges facing the implementation of policy, the exercise of the statutory power, the performance of statutory function or provision of a service, and may state how these challenges are to be addressed.

**2.8.6** Section 97 provides for the development of regulations by the Minister in that the Minister may make regulations not inconsistent with this Bill, and be in consultation with the Minister responsible for public service and administration, and insofar as such regulations relate to matters dealt with in the Public Finance Management Act, or the Municipal Finance Management Act, in consultation with the Minister responsible for finance, prescribing any matter that may be prescribed in terms of this Bill; sources of information for provincial monitoring systems; municipal performance criteria determining key dysfunctional areas for an intervention; prototype criteria for the development of the terms of reference for the intervention; procedures for including persons on the list of persons approved for deployment as administrators referred to in section 85; qualifications, scales of remuneration, benefits and other terms and conditions of the deployment of persons in private sector deployed as administrators; mechanisms and procedures to resolve disputes arising from the interventions in terms of sections 100 or section 139(1) of the Constitution; mechanisms and

monitoring systems on on-going interventions in the provinces and municipalities arising from interventions in terms of section 100 or section 139(1) of the Constitution; and any other matter necessary for facilitating the application of this Act.

**2.8.7** The final section of the Bill provides for the short title of the Bill to be: The Intergovernmental Monitoring, Support and Interventions Bill, 2022.

### **3. BODIES/ORGANISATIONS CONSULTED**

3.1 The Bill was distributed to all national sector departments; the 9 Office of the Premiers; the provincial departments of cooperative government and the provincial treasuries. During 2021/2022, bilateral and broader engagements were undertaken with the National Treasury, South African Local Government Association; the North-West Section 100 Administrators; the DPSA; and the DPME on the Bill.

3.2 The Bill was consulted with the CoGTA MINMEC; the Transport MINMEC; the Environmental Affairs MINMEC; and the Human Settlement, Water and Sanitation Technical MINMEC. The National Economic Development and Labour Council (NEDLAC) was also consulted.