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## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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### DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

#### NOTICE 3108 OF 2025

#### **PUBLICATION OF EXPLANATORY SUMMARY OF THE INTERGOVERNMENTAL MONITORING SUPPORT AND INTERVENTIONS BILL, 2025**

1. Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister of Cooperative Governance and Traditional Affairs intends to introduce the Intergovernmental Monitoring, Support and Interventions Bill, 2025, in the National Assembly shortly.
2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

The Bill is intended to regulate the implementation of, and the processes provided for in sections 100 and section 139 of the Constitution; it provide for provisions of targeted support to provinces and municipalities in need of assistance; it provide for the monitoring of provinces and municipalities as to the fulfilment of their executive obligations in terms of the Constitution or legislation; it provide for alternative steps to interventions to induce compliance by provinces or municipalities in undertaking their executive obligations; and it provide for the deployment of administrators by the intervening national executive or provincial executive.

3. A copy of the Bill can be found on the websites of the Department of Cooperative Governance at <http://www.cogta.gov.za>, and that of the Parliamentary Monitoring Group at <http://www.pmg.org.za> and, after introduction, may also be obtained from: Government Printers: Cape Town (Telephone number: (021) 465-7531).

REPUBLIC OF SOUTH AFRICA

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# INTERGOVERNMENTAL MONITORING, SUPPORT AND INTERVENTIONS BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. ----of----)  
(The English text is the official text of the Bill)*

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(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 00—2025]

ISBN 978-1-4850-xxxx-x

No. of copies printed .....150

# BILL

**To regulate the implementation of, and the processes provided for in sections 100 and 139 of the Constitution; to provide for 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 and mechanisms to interventions to ensure fulfilment by provinces or municipalities with their executive obligations; to provide for the appointment of administrator, national and provincial executive representative by the intervening national executive or provincial executive; and to provide for matters connected therewith.**

## PREAMBLE

**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;

**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;
- that cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget; or
- that 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** 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** section 125(3) of the Constitution requires the national government, by legislative and 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 and other measures, to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers, and to perform their functions;

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

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## CHAPTER 1

### INTERPRETATION AND APPLICATION OF ACT

#### Definitions

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; 5
- “**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; 10
- “**administrator**” means a person appointed in terms of section 69;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**delegate**”, in relation to a duty, includes an instruction or request to perform or to assist in performing that duty; 15
- “**directive**” means a directive issued by—
- (a) the national executive in terms of section 13(2)(a); or
  - (b) a provincial executive in terms of section 42(2)(b);
- “**executive obligation**”, in relation to—
- (a) a province, includes a mandatory instruction in law to the province to exercise a function in terms of the provisions of the Constitution or legislation; or 20
  - (b) a municipality, includes a mandatory instruction in law to the municipality and the relevant municipal council to exercise a function in terms of the provisions of the Constitution or legislation;
- “**impending**”, in relation to a failure to fulfil an executive obligation, means that a failure to fulfil the obligation is likely to occur if preventative steps are not taken to avert the failure; 25
- “**Intergovernmental Relations Framework Act**” means Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);
- “**intervention step**”— 30
- (a) in relation to a province, includes an intervention step referred to in section 13(2); or
  - (b) in relation to a municipality, includes an intervention step referred to in section 42(2);
- “**MEC**” means a member of the Executive Council in a province; 35
- “**Minister**” means a member of the Cabinet 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 municipality referred to in section 155(6) of the Constitution; 40
- “**municipal entity**” has the meaning ascribed to it in section 1 of the Municipal Systems Act;
- “**Municipal Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 45
- “**national department**” means a department listed in Schedule 1 to the Public Service Act, 1994;
- “**national coordinating committee**” means a committee established in terms of section 3(1); 50
- “**national executive**” means the Cabinet referred to in section 91(1) of the Constitution;
- “**national executive member**” means a member of the Cabinet responsible for specific national legislation;
- “**national executive representative**” means a person appointed in terms of section 17(1)(a). 55
- “**national intervention**” means an intervention by the national executive—
- (a) in a province in terms of section 100 of the Constitution; or
  - (b) in a municipality in the stead of the provincial executive in terms of section 54(5); 60



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

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

“**national public entity**” means—

- (a) a national government business enterprise; or 5
- (b) a board, commission, company, corporation, fund or other entity which is—
  - (i) established in terms of national legislation;
  - (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and 10
  - (iii) accountable to Parliament;

“**Office of Standards and Compliance**” means the Office established in terms of section 17(1) of the Public Administration and Management Act;

“**official**”, in relation to—

- (a) a national department, means an employee appointed in terms of the Public Service Act; 15
- (b) a province, means—
  - (i) an employee appointed in terms of the Public Service Act;
  - (ii) an employee of a provincial public entity; or
  - (ii) a person seconded to a province to work as a member of staff of the province; or 20
- (c) a municipality, means—
  - (i) an employee of a municipality or municipal entity; or
  - (ii) a person seconded to a municipality or a municipal entity to work as a member of staff of a municipality or municipal entity; 25

“**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 77;

“**province**” means a province listed in section 103 of the Constitution and includes—

- (a) a provincial administration listed in schedule 1 to the Public Service Act; 30
- (b) a provincial department listed in Schedule 2 to the Public Service Act or provincial government component listed in Schedule 3 Part B to the Public Service Act; and
- (c) a provincial public entity listed in Schedule 3C or 3D to the Public Finance Management Act; 35

“**provincial coordinating committee**” means a committee established in terms of section 3(3);

“**provincial department**” means a department listed in schedule 2 to the Public Service Act, 1994, which falls within a provincial administration listed in Schedule 1 to that Act; 40

“**provincial executive**” means the Executive Council of a province contemplated in section 132(1) of the Constitution;

“**provincial executive representative**” means a person appointed in terms of section 46(1);

“**provincial intervention**” means an intervention by a province in a municipality in terms of section 139 of the Constitution; 45

“**Public Administration Management Act**” means the Public Administration Management Act, 2014 (Act No. 11 of 2014);

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 50

“**Public Service Act**” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“**regulatory measures**” means measures issued by—

- (a) the national executive in relation to a province when imposing an intervention step contemplated in section 13(2)(c); or 55
- (b) the provincial executive in relation to a municipality when imposing an intervention step contemplated in section 42(2)(a); and

“**this Act**” includes any regulations made in terms of section 77.

**Purposes and application of Act**

2. (1) The purposes of this Act are—
- (a) to facilitate the monitoring of whether provinces and municipalities fulfil their executive obligations in terms of the Constitution or legislation;
  - (b) to provide for mechanisms of support to provinces and municipalities to enable them to fulfil their executive obligations; and 5
  - (c) to regulate—
    - (i) the processes established by section 100 of the Constitution; and
    - (ii) the implementation of section 139 of the Constitution, including the processes established by that section, subject to subsection (2). 10
- (2) The provisions of this Act apply to interventions in terms of section 100 of the Constitution, interventions in terms of section 139(1) of the Constitution, 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. 15

**Establishment of national and provincial coordinating committees**

3. (1) There is a national coordinating committee established as a standing committee to coordinate national interventions.
- (2) The national coordinating committee is constituted of—
- (a) the Minister; 20
  - (b) the national executive member responsible for finance;
  - (c) the national executive member responsible for public service and administration; and
  - (d) any other national executive member appointed by the national executive.
- (3) There is a provincial coordinating committee in each province established as a standing committee to coordinate provincial interventions; 25
- (4) A provincial coordinating committee is constituted of the MEC responsible for local government and the MEC responsible for finance in a province, and may include any other MEC appointed by the relevant provincial executive.

**Exercise of powers, duties and functions of national executive 30**

4. (1) The national executive must exercise powers and perform duties and functions in relation to national and provincial interventions in terms of this Act.
- (2) The national executive may delegate to the national coordinating committee or to any national executive member, any of the powers, duties or functions of the national executive in terms of a provision of this Act, including the power to implement a national intervention. 35
- (3) A delegation in terms of subsection (2)—
- (a) must be in writing;
  - (b) is subject to such limitations and conditions as the national executive may determine; and 40
  - (c) does not divest the national executive of the responsibility concerning the exercise or the performance of the delegated power, duty or function.
- (4) The national executive may at any time vary or revoke any decision taken as a result of a delegation in terms of this section, but no variation or revocation may detract from any rights that have accrued as a result of the decision. 45

**Exercise of powers, duties and functions of the provincial executive**

5. (1) The provincial executive must exercise powers and perform duties and functions in terms of this Act.
- (2) The provincial executive may delegate to—
- (a) the MEC responsible for local government, any of the powers, duties or functions of the provincial executive in terms of a provision of this Act, including the power to impose an intervention in terms of section 42(2)(a), (b), (c), or (f); 50
  - (b) the MEC responsible for finance, any of the powers, duties or functions of the provincial executive in terms of a provision of this Act, including the power to impose an intervention in terms of section 42(2)(d) or (f) or section 139(4) or 55

- (5) of the Constitution, excluding the power to dissolve a Municipal Council;  
or
- (c) the provincial coordinating committee any of the powers, duties or functions of the provincial executive in terms of a provision of this Act, including the power to implement an intervention in terms of section 139(4) or (5) of the Constitution, or an intervention step contemplated in section 42(2)(a), (b), (c), (d) or (f). 5
- (3) A delegation in terms of subsection (2)—
  - (a) must be in writing;
  - (b) is subject to such limitations and conditions as the provincial executive may determine; 10
  - (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 revoked by the provincial executive.
- (4) The provincial executive may at any time, vary or revoke any decision taken in consequence of a delegation, but no variation or revocation may detract from any rights that have accrued as a result of the decision. 15

## CHAPTER 2 MONITORING AND SUPPORT OF PROVINCES

### Part 1

20

#### Fulfilment of provincial executive obligations

##### Primary responsibility

- 6. (1) The primary responsibility for ensuring that a province fulfils its executive obligations in terms of the Constitution and legislation lies with the province.
- (2) A province must have an early warning monitoring and reporting system to alert itself and the national government of any impending non-fulfilment of an executive obligation. 25
- (3) A province must immediately take remedial steps to avert non-fulfilment of the executive obligation, or to ensure sustained future fulfilment of the executive obligation if the province— 30
  - (a) encounters signs of an impending non-fulfilment of an executive obligation;  
or
  - (b) cannot or does not fulfil an executive obligation.

##### National monitoring

- 7. The Minister of public service and administration must, through the Office of Standards and Compliance, establish a monitoring system to monitor compliance by provinces of their executive obligations, that includes— 35
  - (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 40
    - (ii) reporting to the national coordinating committee and other relevant national executive members—
      - (aa) any early signs of an impending non-fulfilment by a province of an executive obligation; and 45
      - (bb) 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

### National support for provinces in need

#### Request by province in need of support

8. (1) A provincial department in need of support to exercise its powers or perform its duties and functions must submit to the relevant Office of the Premier a written motivation to request support from the relevant national executive member, stating— 5
- (a) the critical functional areas for which support is needed;
  - (b) the reasons why the support is needed, and where the reason for the support is lack of capacity, to detail the current and required capacity;
  - (c) the kind and extent of the support needed; 10
  - (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) The relevant Premier may submit the request referred to in subsection (1) to the relevant national department for consideration by the relevant national executive member. 15
- (3) The support referred to in subsection (1) is support that is additional to any support that a province ordinarily receives from the national government in the exercise of its powers or the performance of its duties and functions.
- (4) Within three months of receipt of the request referred to in subsection (1)— 20
- (a) the relevant department must analyse the need of the province for additional support and make a written recommendation to the relevant national executive member; and
  - (b) the relevant national executive member may approve the request.
- (5) The relevant department must, within 30 days of approval of the request as contemplated in subsection (4) and after consultation with the province— 25
- (a) prepare a detailed additional support initiative that includes—
    - (i) the critical functional areas for which the support is needed;
    - (ii) the reasons why the support is needed;
    - (iii) the kind and extent of the support needed; 30
    - (iv) the conditions on which the support is to be provided;
    - (v) composition of the support team; and
    - (vi) the actions that must be taken to give effect to the support initiative.
  - (b) delegate roles and responsibilities for the implementation of the support initiative; 35
  - (c) submit a copy of the support initiative to the province; and
  - (d) regularly monitor implementation and outcomes of the support initiative.
- (6) The relevant Premier may submit the request for additional support to the President if the relevant national executive member does not respond by the end of the period referred to in subsection (4). 40

#### Kinds of additional support

9. The additional support which the relevant national executive member may provide to a province in terms of section 8 includes—
- (a) provision of professional, technical or administrative guidance and advice;
  - (b) the temporary secondment of key professional, technical or administrative personnel; 45
  - (c) assistance in managing, operating or maintaining—
    - (i) administrative, human resource or financial systems;
    - (ii) operational systems, supply chain processes, performance monitoring and reporting processes; and 50
    - (iii) infrastructure, equipment or other assets;
  - (d) access to technical equipment and facilities;
  - (e) training and transfer of skills to staff;
  - (f) check on competency profile of the staff to help the province to recruit qualified and competent personnel; 55
  - (g) assistance in guiding decision-making; and
  - (h) sharing of information.

### **Monitoring and support of provinces facing impending or actual non-fulfilment of executive obligation**

- 10.** (1) The relevant national executive member, must, if alerted by the monitoring system referred to in section 7 to an impending or actual failure by a province to fulfil any of its executive obligations— 5
- (a) within 30 days of such alert establish—
    - (i) the extent, seriousness and cause of the impending or actual failure; and
    - (ii) whether the province is considering or has taken any remedial steps to prevent an impending failure from occurring, or to deal with the consequences of actual failure; 10
  - (b) in writing, inform the national coordinating committee of the situation; and
  - (c) regularly monitor the situation and submit a report on developments to the national coordinating committee.
- (2) If the remedial steps proposed or taken by a 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, the relevant national executive member, acting in consultation with the national coordinating committee, must— 15
- (a) within 30 days of establishing any of the factors referred to in subsection (1)(a), determine whether the province has the skills, resources and capacity and appropriate political environment to take remedial steps to avert non-fulfilment of the executive obligation, or to deal with the consequences of non-fulfilment of an executive obligation, or if non-fulfilment has already occurred, to ensure a turnaround and sustained future fulfilment of the obligation; 20
  - (b) if the province does not have the required skills, resources or capacity determine whether additional 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 executive obligation; 25
  - (c) if additional support is need, determine the kind and extent of support needed, and may approve such support; 30
  - (d) consider whether the situation warrants or may ultimately warrant an intervention; and
  - (e) prepare and submit a report on the matter to the national executive.

## **CHAPTER 3**

### **NATIONAL INTERVENTION IN PROVINCES**

#### **Part 1**

#### **Decision-making process**

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

- 11.** (1) If a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant national executive member or the national executive member responsible for implementing the national legislation, may submit a notice of intention to impose a national intervention to the national coordinating committee for consideration prior to submitting to the national executive for consideration for approval. 40
- (2) The national coordinating committee must consider the notice referred to in subsection (1) and recommend to the national executive whether to approve the national intervention. 45
- (3) Before making the recommendation referred to in subsection (2), the national coordinating committee must—
- (a) determine whether the situation in the province is caused by non-fulfilment of an executive obligation by the province; 50
  - (b) if the situation is caused by non-fulfilment of the obligation, satisfy itself that the obligation is an executive obligation in terms of the Constitution or legislation as contemplated in section 100(1) of the Constitution;
  - (c) if so satisfied, identify the executive obligation with reference to the constitutional provision or legislation in which it is contained; 55
  - (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) determine whether the failure to exercise a function in accordance with the mandatory instruction—
    - (i) has not been rectified; or
    - (ii) resulted in an adverse situation, such as non-delivery of a service by a province, that still continues; 5
  - (f) determine whether any specific set of facts for the exercise of a function occurred.
  - (g) consider whether a national intervention is the appropriate mechanism in the circumstances to deal with the non-fulfilment of the executive obligation by the province, or whether section 12 should first be applied; and 10
  - (h) if it considers a national intervention to be appropriate, determine the intervention step or combination of intervention steps to be implemented.
- (4) (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. 15
- (b) A determination by the national coordinating committee as to whether an executive obligation referred to in paragraph (a) has been fulfilled, must be made after considering information provided by the national executive member responsible for implementing any relevant national legislation. 20
- (5) The national executive must, having regard to the recommendations of the national coordinating committee, decide whether to approve the intervention.

#### **Alternative steps to ensure province fulfils executive obligations**

- 12.** (1) The national executive may, having regard to the factors listed in section 11, instead of intervening in terms of section 100(1) of the Constitution, take any other step to ensure that a province fulfils an executive obligation, including— 25
- (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 or the performance of their duties and functions, including the Public Finance Management Act; or 30
  - (c) providing additional support to the province in terms of Part 2 of Chapter 2.
- (2) Subsection (1) is not a prerequisite for an intervention, 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. 35
- (3) If the obligation which the province cannot or does not 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— 40
- (a) taking steps in terms of that section; or
  - (b) submitting to the national coordinating committee a proposal for a national intervention in the province.

#### **National intervention steps**

- 13.** (1) If the national executive approves a national intervention, it must determine an appropriate intervention step or combination of intervention steps to ensure the fulfilment of the executive obligation. 45
- (2) The intervention steps the national executive may determine include—
- (a) the issuing of a directive as contemplated in section 100(1)(a) of the Constitution; and 50
  - (b) the assumption of responsibility for the executive obligation which the province cannot or does not fulfil as contemplated in section 100(1)(b) of the Constitution; or
  - (c) the implementation of measures aimed at regulating decisions of a province relating to the executive obligation which the province failed to fulfil. 55
- (3) A province must comply with a directive referred to in subsection (2)(a) within the timelines provided by the national executive.



(4) The national coordinating committee must provide an opportunity to the relevant province to comment on the intended intervention step contemplated in subsection (2)(b) prior recommending to the national executive.

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

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

**14.** (1) In determining whether a specific intervention step considered in terms of section 13 is appropriate as contemplated in section 100(1) of the Constitution, the national executive must consider the recommendations of the national coordinating committee. 10

(2) In making a recommendation to the national executive as contemplated in subsection (1), the national coordinating committee must—

- (a) consider—
  - (i) the nature of the executive obligation which the province cannot or does not fulfil, and the extent to which it cannot or does not fulfil the executive obligation; 15
  - (ii) the cause of the failure to fulfil the executive obligation and the extent to which the executive obligation is not fulfilled;
  - (iii) the consequences of the failure to fulfil the executive obligation for the people of the province; 20
  - (iv) the urgency of correcting the failure to fulfil the executive obligation;
  - (v) the capacity of the province to correct the failure and fulfil the executive obligation;
  - (vi) any previous intervention in the province; and 25
  - (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 executive obligation.

## **Part 2 30**

### **Regulatory measures**

#### **Nature of measures that may be implemented**

**15.** (1) If the national executive approves a national intervention, the relevant national executive member may implement measures contemplated in section 13(2)(c), including— 35

- (a) designating a national department or national public entity, or an adviser with appropriate specialist knowledge, to act as a consultant whom the province must consult before taking any decision in connection with the executive obligation which the province cannot or does not fulfil;
- (b) requiring the concurrence of the national executive member before any decision referred to in paragraph (a) may be implemented; 40
- (c) imposing conditions on the exercise by the province of a power in relation to any decision referred to in paragraph (a); or
- (d) any other additional measure that may be appropriate.

(2) A decision taken or implemented by a province in disregard of measures implemented in terms of subsection (1) or in contravention of conditions contemplated in that subsection is an unauthorised decision, and expenditure incurred as a result of such decision is subject to Chapter 10 of the Public Finance Management Act. 45

## **Part 3**

### **Issuing of directives 50**

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

**16.** (1) A directive issued in terms of section 13(2)(a) must—

- (a) describe the extent of the failure to fulfil an executive obligation by the province which gave rise to the issuing of the directive; and

- (b) indicate steps or measures which the province is required to take to ensure fulfilment of that executive obligation, and any timeframes within which those steps must be taken.
- (2) A province must comply with a directive referred to in subsection (1).
- (3) If the province fails to comply with the directive referred to in subsection (1), the national executive may take any appropriate step to ensure compliance with the directive, including assuming responsibility for compliance with the directive. 5

#### **Part 4**

#### **Assumption of responsibility for executive obligation**

#### **Appointment of national executive representative or organ of state to fulfil assumed obligation on behalf of national executive 10**

- 17.** (1) If the national executive implements an intervention step referred to in section 13(2)(b), it may—
- (a) appoint a person in terms of section 69 as a national executive representative to fulfil the assumed executive obligation or specific aspects of the assumed executive obligation on behalf of the national executive; or 15
  - (b) appoint a national department or national public entity to fulfil the assumed executive obligation or specific aspects of the assumed executive obligation on behalf of the national executive.
- (2) Any decision by the national coordinating committee to appoint a national executive representative in terms of subsection (1)(a), or to appoint a national department or national public entity in terms of subsection (1)(b), must be taken in consultation with national executive member responsible for the concurrent functional area in which the assumed executive obligation falls. 20
- (3) (a) A person appointed in terms of subsection (1)(a) holds office and must exercise the powers, duties and functions of office in terms of Chapter 6. 25
- (b) The mandate of the national executive representative is confined to exercising the powers or performing the duties and functions of the province necessary for fulfilling the assumed executive obligation, or the relevant specific aspects of the assumed executive obligation on behalf of the national executive. 30
- (4) (a) A national department or national public entity or a person in private sector appointed in terms of subsection (1)(b), must exercise the powers or perform the duties and functions of the province necessary for fulfilling the assumed executive obligation, or the relevant specific aspects of the assumed obligation on behalf of the national executive. 35
- (b) The national department or national public entity referred to in paragraph (a), must designate an official of the department or entity to be responsible for the exercise of the powers or performance of the duties and functions referred to in paragraph (a).
- (5) For the duration of the intervention step—
- (a) the national executive member responsible for the concurrent functional area as that of a provincial executive member, assumes the powers, duties and functions of that provincial executive member responsible for the executive obligation, only to an extent of the fulfilment of that obligation in terms of section 18; 40
  - (b) the provincial executive member responsible for the intervened portfolio, may not participate in any decision-making regarding the executive obligation affected by the intervention step; and 45
  - (c) the national executive member may delegate powers referred to in paragraph (a) to the deputy minister of that portfolio, or to the national executive representative to act on behalf of the national executive. 50

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

- 18.** (1) If the national executive assumes responsibility for an executive obligation of a province in terms of a section 13(2)(b) intervention step—
- (a) the intervening national executive member, or the national executive representative or national department or public entity appointed to fulfil the executive obligation on behalf of the national executive, may exercise any of the powers or perform any of the duties or functions specified in the notice of intervention necessary to— 55



- (i) fulfil the assumed executive obligation; and
  - (ii) comply with section 100(1)(b) of the Constitution;
  - (b) the right of the official of the province or provincial executive member in the province to continue exercising the powers or performing the duties or functions referred to in paragraph (a) is suspended until that intervention step ends; 5
  - (c) the assumption of responsibility does not affect the right to administer the affairs of the province by the province other than the executive obligation for which the national executive has assumed responsibility; and
  - (d) the province remains responsible for budgeting and funding the fulfilment of the relevant obligation. 10
- (2) The relevant national executive member may recover from the province any necessary and reasonable expenses incurred in assuming responsibility for the fulfilment of an intervention step in terms of section 13(2)(b).
- (3) The province resumes responsibility for the executive obligation when an intervention in terms of section 13(2)(b) ends. 15

## Part 5

### Suspension of official in province

#### Suspension of official in province

19. (1) The national coordinating committee may suspend an official from office, including the head of department in a province, if the official was responsible for serious maladministration or malfeasance leading to the intervention or wilfully interferes with, hinders or obstructs the implementation of the intervention and the continued presence of the official in office threatens to prevent, delay or ultimately undermine the success of the intervention. 20 25
- (2) If the national coordinating committee 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 national executive representative to initiate or institute disciplinary proceedings. 30
- (3) The national executive may delegate to the Minister or the national executive representative the powers and functions in terms of subsections (1) and (2).
- (4) If the national coordinating committee suspends an official of a province, it may—
- (a) designate another person or another official of the province to be responsible for exercising the powers or performing the duties or functions of the suspended official during the suspension of the official; or 35
  - (b) appoint an official of a national department, national public entity, or a person in private sector, as national executive representative to exercise the powers or perform the duties and functions of the suspended official.
- (5) A person appointed as national executive representative holds office and must exercise their powers and perform their functions in terms of Chapter 6. 40
- (6) (a) The national executive representative is confined to exercising the powers or performing the duties and functions specified in the mandate and terms of reference issued in terms of section 71 or of a suspended official of a province.
- (b) Any powers, duties and functions of the suspended official excluded from the mandate and terms of reference of the national executive representative, vest in the national executive member who may delegate any of those powers, duties and functions to any official of the province. 45 50

#### Effect of suspension of official in province

20. If an official of a province is suspended in terms of section 19 the affected provincial department must— 50
- (a) provide such staff and other resources, and render such other assistance as may be necessary and within its means; and
  - (b) approve a budget to enable any person appointed as national executive representative to exercise the powers or perform the duties and functions of the suspended official effectively. 55

**Part 6****Provisions to facilitate achievement of intervention objective****Provincial assistance during intervention**

- 21.** (1) For the duration of a national intervention, the relevant 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; 5
  - (b) must take all reasonable steps to prevent its officials and the provincial executive from interfering with, hindering or obstructing implementation of the intervention; 10
  - (c) in the case of a section 13(2)(b) 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;
    - (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; 15
    - (iii) must ensure that any of its staff members give effect to the directives and instructions of the national executive representative to the extent necessary to fulfil the neglected obligation and ensure future performance; and 20
    - (iv) set spending limits and budget parameters which bind the province for a specified period or until stated conditions have been met.

**Financial accountability and responsibilities of accounting officer and accounting authority during intervention** 25

**22.** (1) The accounting officer of a provincial department or the accounting authority of a provincial public entity affected by a national intervention continues during the intervention to be responsible in that capacity as provided for in the Public Finance Management Act.

(2) The accounting officer of a provincial department or the accounting authority of a provincial entity affected by a national intervention must manage the responsibilities of accounting officer or accounting authority in terms of the Public Finance Management Act with due regard to the requirements needed for achieving the objectives of the intervention. 30

**Designation of person to replace accounting officer or accounting authority during intervention** 35

**23.** (1) The National Treasury may, in terms of section 36(3), 37 or 49(3) of the Public Finance Management Act, and after consultation with the national coordinating committee, designate a person during a national intervention as—

- (a) the accounting officer of a provincial department; or 40
  - (b) the accounting authority of a provincial public entity in the province.
- (2) The National Treasury may designate a person in terms of subsection (1) as accounting officer or accounting authority only in an instance where—
- (a) the post is vacant;
  - (b) a person who is the accounting officer or accounting authority has been suspended in terms of a section 19; or 45
  - (c) the national executive has assumed in terms of a section 13(2)(b) intervention step an executive obligation of the province that embraces the whole or a material part of the functional area of the relevant provincial department or provincial public entity. 50
- (3) If the National Treasury designates a person in terms of subsection (1)(a) or (b), the person referred to in section 36(2) of the Public Finance Management Act or the person or body referred to in section 49(2) of that Act may not exercise the powers or perform the functions of the accounting officer or accounting authority for the duration of the intervention. 55
- (4) The National Treasury may, in terms of subsection (1), designate a person that 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 appointed in terms of section 17 as national executive representative for purposes of the intervention. 5

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

**24.** (1) Subject to subsection (2), the National Treasury may designate a person determined by it to exercise during the intervention any specific powers and to perform any duties or functions of the accounting officer of the provincial department or provincial public entity or of the accounting authority of the provincial public entity in terms of the Public Finance Management Act. 10

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

- (a) the accounting officer of a province only in instances where the national executive has assumed in terms of an intervention step contemplated in section 13(2)(b), an executive obligation of the province that in any way affects the functional area of the relevant department or the functions of the relevant provincial public entity; or 15
- (b) the accounting authority of a provincial public entity only in instances where the national executive has assumed in terms of an intervention step contemplated in section 13(2)(b) an executive obligation of the province that in any way, affects the functions of that public entity. 20

(3) A person designated in terms of subsection (1), exercises the specified powers or performs the specified duties or functions to the exclusion of the accounting officer or accounting authority of the relevant provincial department or provincial public entity, but only to the extent that the exercise of those powers or the performance of those duties or functions is necessary for the fulfilment of the assumed executive obligation. 25

(4) The person that may be designated in terms of subsection (1) include—

- (a) an official of the affected provincial department or public entity; 30
- (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 appointed in terms of section 17 as national executive representative for purposes of an intervention.

#### **Part 7 35**

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

##### **Notice of intervention**

**25.** (1) Upon the approval of an intervention in terms of section 11, the Minister, on behalf of the national executive, must— 40

- (a) notify the province of the intervention by serving a notice of intervention on the province; and
- (b) submit a copy of the notice of intervention to the National Council of Provinces within 14 days after the date contemplated to in subsection (3)(e). 45

(2) The Minister must publish the notice of intervention in the *Gazette* and at least one newspaper circulating in the relevant province, within 14 days after the date contemplated in subsection (3)(e).

(3) The notice of intervention must contain a statement that the national executive is intervening in the province in terms of section 100 of the Constitution, and stipulate at least the following: 50

- (a) a short description of the executive obligation which the province cannot or does not fulfil;
- (b) the extent to which the province cannot or does not fulfil the obligation;
- (c) the intervention step or combination of intervention steps the national executive is imposing; 55
- (d) particulars of the intervention step or combination of intervention steps taken;
- (e) the date on which the intervention commences; and
- (f) the period for which the intervention is expected to be in force.

### Submission of information to National Council of Provinces

- 26.** (1) The Minister, when submitting the notice referred to in section 25(1)(b), must attach to the notice copies of—
- (a) all documents submitted by the national executive member to the affected province in connection with the intervention; 5
  - (b) any information relating to the circumstances which gave rise to the intervention submitted by the province to the national executive;
  - (c) any 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; 10 and
  - (e) any other information in the possession of the national executive relevant to the intervention.
- (2) 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 15 not approved the intervention.

### Review of national intervention

- 27.** (1) The intervening national executive member must regularly but at least every three months, review an intervention, including the effectiveness of an intervention step implemented in terms of this Act, and submit a report to the national coordinating 20 committee.
- (2) The national coordinating committee must, following a review referred to in subsection (1), submit to the national executive, at least every three months a progress report on each intervention undertaken.
- (3) The national executive, considering the outcome of the review referred to in 25 subsection (1), may—
- (a) amend the intervention notice in terms of section 28;
  - (b) revise the intervention in terms of section 29; or
  - (c) terminate the intervention in terms of section 30.
- (4) If the national executive intends to amend, revise, or terminate the intervention as 30 contemplated in subsection (3), the intervening national executive member must provide an opportunity to the province to comment on the intended amendment, revision, or termination.

### Amendment of national intervention notice

- 28.** (1) The intervening national executive member may, after a review in terms of section 27, amend the 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 25(3)(d) contained in the notice;
  - (b) replacing a person appointed as national executive representative, or effecting 40 other changes relating to the national executive representative; and
  - (c) making technical changes or correcting any errors that are not material.
- (2) The intervening national executive member must notify the province of the amendment of the notice of intervention by serving an amended notice of intervention on the province. 45
- (3) The Minister must submit a copy of the amended notice of intervention to the organs of state referred to in section 33(1).

### Revision of existing national intervention step

- 29.** (1) The intervening national executive member may after a review in terms of section 27, revise the existing intervention step by replacing it with another intervention 50 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) The intervening national executive member must notify the province by serving on it a notice of revised intervention if it revises an existing intervention step.
- (3) A notice of revised intervention must contain a statement that the national 55 executive has revised the existing intervention step, and stipulate—

- (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 revised intervention is expected to continue. 5
- (4) The intervening national executive member must submit a copy of the revised notice of intervention to the organs of state referred to in section 33(1).

### **Termination of national intervention**

**30.** (1) The intervening national executive member must, in the case of an intervention step contemplated in section 13(2)(b), issue a notice of termination of intervention to the province within 14 days after the intervention ends in terms of section 100(2)(b) of the Constitution. 10

(2) The intervening national executive member must, after a review in terms of section 27 terminate an intervention if—

- (a) the objectives of the intervention have been met; 15
- (b) the province has the capacity and is committed to fulfil the executive obligation in a sustainable manner; and
- (c) the need for continuing the intervention has ended.

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

- (a) that the intervention has or is to be ended; 20
- (b) the date on which the intervention has ended or will end; and
- (c) the reason for ending the intervention.

(4) The intervening national executive member must submit a copy of the notice of termination of intervention to the organs of state referred to in section 33(1).

(5) The intervening national executive member must publish the notice of the termination of the intervention, within 14 days after the termination, in the *Gazette* and at least one newspaper circulating in the province. 25

## **Part 8**

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

#### **Request by National Council of Provinces for information concerning intervention 30**

**31.** (1) The intervening national executive member must, on request by the National Council of Provinces, submit to the National Council of Provinces such information concerning an intervention in a province as the National Council of Provinces may require.

(2) The National Council of Provinces must, while the intervention continues, review the intervention at least on a quarterly basis and may make any appropriate recommendations to the intervening national executive member. 35

(3) The intervening national executive member must if the National Council of Provinces makes recommendations in terms of subsection (2)—

- (a) consider those recommendations; and 40
- (b) provide written reasons to the National Council of Provinces if the national executive member fails or decides not to implement any of the recommendations.

## **Part 9**

### **Miscellaneous provisions 45**

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

**32.** During an intervention in a province, the intervening national executive member and any national executive representative, national department or public entity appointed to fulfil the executive obligation, has access to such information, records and documents of the province, as may be necessary, for executing the intervention. 50

**Report on national intervention**

**33.** (1) The intervening national executive member must, within 30 days after the intervention ended in terms of section 30, submit a report on the intervention to the National Council of Provinces, the relevant Premier and the affected MEC.

- (2) A report in terms of subsection (1) must include— 5
- (a) reasons for the termination of the intervention;
  - (b) the results of the intervention; and
  - (c) whether there are any outstanding issues requiring further action by the national executive or the province post the intervention.

**Status of provincial executive council during intervention 10**

**34.** (1) The provincial executive must function in terms of the Constitution and relevant legislation, subject to any terms of the notice of an intervention in terms of section 100 of the Constitution.

- (2) The provincial executive may not take any decision or action which is likely to prevent, delay or ultimately undermine the success of an intervention implemented by 15 the national executive.

**CHAPTER 4****MONITORING AND SUPPORT OF MUNICIPALITIES****Part 1****Monitoring fulfilment of municipal executive obligations 20****Primary responsibility**

**35.** (1) The primary responsibility for ensuring that a municipality fulfils its executive obligations in terms of the Constitution or legislation lies with the municipality.

- (2) A municipality must have an early warning monitoring and reporting system to alert itself, the relevant province, and the Minister of any impending non-fulfilment of 25 an executive obligation.

(3) If a municipality is alerted by the system referred to in subsection (2) of impending non-fulfilment of an executive obligation or failure to fulfil an executive obligation, it must immediately take remedial steps to avert the non-fulfilment of the executing executive obligation. 30

(4) The national and provincial governments must monitor municipalities in terms of Chapter 10 of the Municipal Systems Act and section 5 and Chapter 13 of the Municipal Finance Management Act.

**Part 2****National and provincial support for municipalities in need 35****Request by municipalities in need of support**

**36.** (1) A municipality that is in need of support to exercise its powers, duties and functions and to manage its own affairs, may submit a request accompanied by a written motivation for such support to the relevant MEC responsible for local government, stating— 40

- (a) the critical functional areas for which support is needed;
- (b) the reasons why the support is needed, and where the reason for the 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 45
- (e) if the support needed is in relation to a matter outside the competence of the province, state the national department or organ of state responsible for the function.

(2) The support referred to in subsection (1) is support that is additional to any support that a municipality receives from the national government or provincial government in 50 the exercise of its powers and the performance of its duties and functions.



- (3) The relevant MEC responsible for local government—  
 (a) must assess the need of the municipality for the support; and  
 (b) may approve the request for support.
- (4) If the relevant MEC responsible for local government does not approve the request for support in terms of subsection (3), that MEC must submit the request and written motivation to the relevant member of the national executive for consideration. 5
- (5) If the request for support is approved in terms of subsection (3) or as contemplated in subsection (4), the relevant national executive member or national department, or the relevant MEC or provincial department, as the case may be, must—
- (a) after consultation with the municipality, prepare a detailed support initiative 10 indicating—  
 (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; 15  
 (v) financial implications relating to the support; and  
 (vi) the actions that must be taken to give effect to the support initiative.
- (b) delegate roles and responsibilities for the implementation of the support initiative;
- (c) submit a copy of the support initiative to the municipality and request the 20 opinion of the municipality within 30 days after submission; and
- (d) regularly monitor the implementation and the outcomes of the support initiative.
- (6) If a request referred to in subsection (1) is in relation to a matter outside the competence of a province, it must be submitted through the relevant MEC responsible 25 for local government to the national department responsible for the relevant function for consideration.

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

- 37.** (1) The support which the national or relevant provincial executive may provide to a municipality identified for support in terms of section 36 may, subject to available 30 resources, include—  
 (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— 35  
 (i) administrative, human resource or financial systems;  
 (ii) operational systems, supply chain management processes, performance monitoring and reporting processes; or  
 (iii) infrastructure, equipment or other assets;  
 (d) access to technical equipment and facilities; 40  
 (e) the training of and transfer of skills to staff;  
 (f) check on competency profile of the staff to help the municipality to recruit qualified and competent personnel;  
 (g) assistance in guiding decision-making; and  
 (h) sharing of information. 45
- (2) The relevant municipal council must approve the support package offered to the municipality in terms of this section.

### **Provincial support of municipalities facing impending or actual non-fulfilment of executive obligation**

- 38.** (1) If the provincial executive is alerted through the provincial monitoring system 50 to an impending or actual failure by a municipality to fulfil any of its executive obligations, the MEC responsible for local government in the province must—  
 (a) establish—  
 (i) the extent, seriousness and cause of the impending or actual failure; and  
 (ii) whether the municipality is considering or has taken any remedial steps 55 to prevent an impending failure from occurring, or to deal with the consequences of an actual failure.
- (2) If remedial steps proposed or taken by the municipality to deal with the impending or actual failure are ineffective, or are likely to be ineffective, or if the municipality has

not proposed or taken any remedial steps to deal with the impending or actual failure, the MEC responsible for local government in a province must—

- (a) determine whether the municipality has the skills, resources and capacity to take remedial steps to avert non-fulfilment of the executive obligation, or to deal with the consequences of non-fulfilment of the obligation, or if non-fulfilment has already occurred, to ensure a turnaround and sustained future fulfilment of the obligation; 5
  - (b) if the municipality does not have the required skills, resources or capacity determine whether provincial support is needed to enable the municipality to take the remedial steps, or to deal with the consequences, or to ensure sustained future fulfilment of the obligation; 10
  - (c) if the provincial support is needed, determine the kind and extent of support needed, and may approve such support referred to in terms of section 8; and
  - (d) prepare a report on the matter and submit it to— 15
    - (i) the Minister;
    - (ii) the national executive member responsible for finance;
    - (iii) the relevant Premier;
    - (iv) organised local government; and
    - (v) any other national executive member responsible for administering the relevant national legislation. 20
- (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 37. 20
- (4) If the relevant executive obligation is contained in national or provincial legislation for which another MEC is responsible in a province, subsections (1), (2) and (3) must be implemented— 25
- (a) by the MEC for local government in concurrence with that other MEC; or
  - (b) by the other MEC in consultation with the MEC for local government, if the relevant provincial executive so instructs.
- (5) The relevant 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). 30

#### **Additional national support for municipalities facing impending or actual non-fulfilment of executive obligation**

- 39.** (1) Any national executive member, if alerted to an impending or actual failure by a municipality to fulfil an executive obligation, and there is reason to believe that the situation may call for additional support, must— 35
- (a) request the relevant province to submit a report referred to in section 38(2)(d), within 30 days, if the report has not already been submitted; and
  - (b) after consideration of the report, determine if the municipality has the required skills, resources or capacity to ensure fulfilment of the obligation within a reasonable time. 40
- (2) The relevant member of the national executive must—
- (a) if the member determines that a municipality has the required skills, resources and capacity, issue a directive to the municipality to fulfil the obligation within a specified time commensurate with the period it would reasonably take to fulfil that obligation; or 45
  - (b) if the member determines that a municipality does not have the required skills, resources and capacity, prepare an additional support initiative in terms of section 36 if the additional support is approved by the national executive. 50
- (3) If any proposed national additional support is approved by the national executive, the national executive member referred to in subsection (1) must publish the approved support initiative in the *Gazette* within 30 days of its approval.
- (4) 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 by that other national executive member. 55
- (5) The Minister must immediately take steps and consult with the relevant Premier and MEC responsible for local government if the Minister becomes aware that a municipality is failing to fulfil its executive obligations in terms of the Constitution or legislation and request the Premier and MEC to address the failure as a matter of urgency and to submit a progress report thereon. 60



(6) The relevant national executive member must provide an opportunity to the relevant municipality to comment on the intended support package to be provided to the municipality.

## **CHAPTER 5**

### **PROVINCIAL INTERVENTION IN MUNICIPALITIES**

#### **Part 1**

#### **Decision-making process**

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

- 40.** (1) Whenever an MEC is alerted to an adverse situation in a municipality that signals a failure of the municipality to fulfil any of its executive obligations and the MEC considers a provincial intervention, the MEC may, before intervening— 10
- (a) determine whether the situation in the municipality is in fact caused by non-fulfilment of an executive obligation by the municipality;
  - (b) satisfy themselves that the obligation is an executive obligation in terms of the Constitution or legislation; 15
  - (c) determine whether the failure to exercise a function in accordance with the mandatory instruction—
    - (i) has not been rectified; or
    - (ii) resulted in an adverse situation, such as non-delivery of a service by a municipality, that still continues; and 20
  - (d) determine whether any specific set of facts for the exercise of a function occurred.
- (2) If the failure to fulfil an executive obligation relates to non-compliance with minimum norms and standards as contemplated in section 11(3) of the Municipal Systems Act or in terms of any other national legislation, the MEC must— 25
- (a) determine the cause of failure to fulfil the obligation by the municipality and the extent to which the obligation is not fulfilled; and
  - (b) confirm whether section 137 of the Municipal Finance Management Act applies.
- (3) The MEC must consider whether a provincial intervention is the appropriate mechanism in the circumstances to deal with non-fulfilment of the executive obligation by the municipality or whether section 41 should first be applied. 30
- (4) The MEC must provide an opportunity to the relevant municipality to comment on the intended intervention step to be taken by the province.
- (5) The MEC responsible for a concurrent functional area must consult with the relevant national executive member responsible for the national legislation affected by the non-fulfilment of the executive obligation in terms of the Constitution or legislation. 35
- (6) Any MEC may, if a provincial intervention is considered appropriate, submit a request to the relevant provincial executive for approval of a provincial intervention.

##### **Alternative steps to ensure fulfilment of executive obligation by municipality** 40

- 41.** (1) The provincial executive may instead of intervening in terms of section 139(1) of the Constitution take any other step to ensure fulfilment by the municipality of an executive obligation in terms of the Constitution or legislation, including—
- (a) utilising forums, mechanisms and procedures established by the Intergovernmental Relations Framework Act; 45
  - (b) invoking any legislation regulating municipalities and the exercise of their powers, duties and functions, including the Municipal Finance Management Act;
  - (c) providing additional support to the municipality in terms of Part 2 of Chapter 4; or 50
  - (d) approaching a court for an order instructing the municipality to fulfil an executive obligation in terms of the Constitution or legislation.
- (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 are met. 55

(3) The relevant MEC must consult the National Treasury before the provincial executive intervenes in the municipality in terms of section 139(1) of the Constitution if the executive obligation which the municipality cannot or does not fulfil is a measure referred to in section 216(2) of the Constitution,

(4) The provincial executive must give an opportunity to the relevant municipality to comment on the appropriate step to be taken by the provincial executive prior invoking the intended intervention. 5

### Provincial intervention steps

**42.** (1) If the situation in a municipality is such that an intervention is considered appropriate, and the provincial executive has decided to intervene in the municipality, the relevant MEC must determine the intervention step or combination of intervention steps to take to ensure fulfilment of the executive obligation. 10

(2) The intervention steps an MEC may take include—

- (a) the imposition of measures aimed at regulating decisions of a municipality relating to the executive obligation which the municipality cannot or does not fulfil; 15
- (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 cannot or does not fulfil as contemplated in section 139(1)(b) of the Constitution; 20
- (d) the imposition of measures regulating Chapter 3 of the Municipal Finance Management Act;
- (e) the dissolution of the municipal council and the appointment of an administrator as contemplated in section 139(1)(c) of the Constitution; and 25
- (f) the appointment of persons to act as municipal manager or managers directly accountable to the municipal manager when there are such vacancies during an intervention.

### Determination of appropriate intervention step

**43.** (1) To determine whether an intervention step considered by the provincial executive in terms of section 42 is appropriate as contemplated in section 139(1) of the Constitution, the provincial executive must— 30

- (a) consider at least the following:
  - (i) The nature of the executive obligation which the municipality cannot or does not fulfil; 35
  - (ii) the cause of failure to fulfil the obligation 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 the failure to fulfil the obligation; 40
  - (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. 45

(2) The provincial executive must provide an opportunity to the relevant municipality to comment on the intended intervention step to be taken by the provincial executive.

## Part 2

### Regulatory measures 50

#### Nature of measures that may be implemented

**44.** (1) The provincial executive may implement any reasonable measure to give effect to an intervention step contemplated in section 42(2)(a), including—

- (a) designating a district municipality, if the intervention is in a local municipality, provincial department or public entity, or an adviser with appropriate specialist knowledge, to act as a consultative mechanism, with whom the 55

- municipality must consult before taking any decision in connection with the executive obligation which the municipality cannot or does not fulfil;
- (b) requiring the concurrence of the MEC for local government before any decision referred to in paragraph (a) by the municipality may be implemented; or
  - (c) imposing conditions on the exercise by the municipality of a power in terms of which any decision referred to in paragraph (a) is taken.
- (2) The provincial executive may in terms of subsection (1)(a) designate a district municipality, national department, or national public entity as a consultant for a municipality only if the district municipality, national department, or national public entity agrees to the designation.
- (3) A decision taken or implemented by a municipality contrary to a measure contemplated in subsection (1) is an unauthorised decision, and expenditure incurred as a result of such a decision must be recovered from the person responsible for the decision and subject to the Municipal Finance Management Act.

### **Part 3**

#### **Issuing of directives**

##### **Contents of directives**

- 45.** (1) A directive referred to in section 42(2)(b) must—
- (a) describe the extent of failure to fulfil an executive obligation by the municipality; and
  - (b) indicate the steps which the municipality is required to take to ensure fulfilment of the obligation and any timeframes within which those steps must be taken.
- (2) A municipality must comply with a directive referred to in section 42.
- (3) 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 assuming responsibility for compliance with the directive in terms of section 139(1)(b) of the Constitution if the municipality does not comply with the issued directive.

### **Part 4**

#### **Assumption of responsibility for executive obligation**

##### **Appointment of provincial executive representative to fulfil assumed obligation on behalf of provincial executive**

- 46.** (1) If the provincial executive implements an intervention step contemplated in section 42(2)(c), it may—
- (a) appoint an official of a national or provincial department, provincial public entity or municipality in the province, or a person in private sector, as provincial executive representative to fulfil the assumed executive obligation, or specific aspects of the obligation; 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 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 appointed in terms of subsection (1)(a) holds office and must exercise the powers or perform the duties and functions of the office in terms of Chapter 6.
- (b) The mandate of the person appointed in terms of subsection (1)(a) is confined to exercising the powers or performing the duties and functions of the municipality necessary for fulfilling the assumed executive obligation, or the relevant specific aspects of the obligation on behalf of the provincial executive as set out in the mandate and the terms of reference issued in terms of section 71.
- (3) (a) A national department or national public entity appointed in terms of subsection (1)(b), must exercise the powers or perform the duties and functions of the

municipality necessary to fulfil the assumed executive obligation, or the relevant specific aspects of the obligation on behalf of the provincial executive.

(b) The 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.

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

**47.** (1) If the provincial executive assumes responsibility for an executive obligation of a municipality in terms of an intervention step contemplated in section 42(2)(c)—

- (a) the provincial executive representative, national department, or public entity appointed to fulfil the obligation on behalf of the provincial executive, may exercise any of the powers or perform any of the duties and functions of the municipal council or functionary of the municipality 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 the municipal council or functionary of the municipality to continue exercising the powers or performing the duties and functions referred to in paragraph (a), is suspended until the intervention step contemplated in section 42(2)(c) 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 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 requirements of the provincial executive representative or the national department, or public entity;
- (d) the assumption of responsibility does not affect the right of municipality to administer the affairs of the municipality not affected by the intervention; and
- (e) the municipality remains responsible for budgeting and funding the fulfilment of the assumed obligation.

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(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 does not execute its executive obligations in terms of the Constitution or legislation.

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

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

**48.** (1) (a) A municipal council must, subject to the terms of any intervention implemented in terms of section 139 of the Constitution, continue to function in terms of the Constitution or legislation;

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(b) The municipal council and the municipal administration may not take any decisions which are likely to prevent, delay or ultimately undermine the success of the intervention implemented by the provincial or national executive;

(2) The provincial executive may delegate the exercise of any of the powers or the performance of any of the duties or functions of the municipal council or the municipal administration, in relation to an assumed executive obligation, to a provincial executive representative, including—

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

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(3) During the intervention, the municipal council and the administration are accountable to the provincial executive representative, subject to the mandate and the terms of reference issued in terms of section 71;

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(4) The provincial executive representative may delegate to any other member of the intervention team, any of the powers and functions conferred on the provincial executive representative.

(5) A decision taken or implemented by a municipality contrary to the provisions of this section is an unauthorised decision, and expenditure incurred as a result of such a decision must be recovered from the person responsible for the decision, subject to the provisions of the Municipal Finance Management Act.

## **Part 5**

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### **Suspension of officials of municipality**

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

**49.** (1) Notwithstanding any law to the contrary, during an intervention the relevant provincial executive may—

- (a) suspend an official of a municipality or municipal entity from office if the official was responsible for serious maladministration or malfeasance leading to the intervention or wilfully interferes with, hinders or obstructs the implementation of the intervention and the continued presence of the official in office threatens to prevent, delay or ultimately undermine the success of the intervention; and 10
- (b) institute disciplinary proceedings against an official referred to in paragraph (a) in terms of applicable legislation, or where appropriate, direct the municipality, administrator or provincial executive representative to initiate or institute such disciplinary proceedings. 15

(2) The provincial executive may delegate to the MEC or to provincial coordinating committee the powers and functions in terms of subsection (1). 20

(3) 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 or performing the duties or functions of the suspended official; or 25
- (b) appoint an official of a provincial department, or provincial public entity in the province, or a person in private sector, as administrator or provincial executive representative to exercise the powers, duties and functions of the suspended official.

(4) A person appointed in terms of subsection (3)(b) as administrator or provincial executive representative holds office and must exercise the functions of office in terms of Chapter 6. 30

(5) (a) The mandate of the administrator or the provincial executive representative appointed in terms of subsection (3)(b) is confined to exercising the powers or performing the duties and functions of the suspended official. 35

(6) If an official of a municipality is suspended in terms of this section—

- (a) the municipality must provide staff and other resources, and render other assistance as may be necessary, and within its means and approved budget to enable any person appointed in terms of subsection (3) to effectively exercise the powers, duties and functions of the suspended official; and 40
- (b) the municipality remains responsible for funding the exercise by the administrator or provincial executive representative of the powers or performance of the duties and functions of the suspended official.

## **Part 6**

### **Dissolution of municipal council**

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

**50.** (1) The relevant provincial executive must decide whether there are exceptional circumstances warranting an intervention step contemplated in section 42(2)(e) and must—

- (a) consider all relevant factors, including those specified in subsection (2); and 50
- (b) decide whether the seriousness, extent and cause of failure to fulfil an executive obligation in terms of the Constitution or legislation by the municipality, taken together, constitute exceptional circumstances warranting dissolution of the municipal council, and the appointment of an administrator to ensure fulfilment of the obligation. 55

- (2) The relevant provincial executive must, for purposes of subsection (1), consider—
- (a) the seriousness of failure to fulfil the executive obligation by the municipality;
  - (b) the extent to which—
    - (i) the local community is affected by 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, including actions such as—
    - (i) continuous 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) obstructive behaviour in the municipal council by municipal councillors to prevent the municipal council from discussing or taking a decision necessary for the fulfilment of the obligations;
    - (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 ensure fulfilment of the obligation;
    - (vi) infighting in the municipal council obstructing proper functioning of the municipal council;
    - (vii) inappropriate management of municipal council schedules or procedures;
    - (viii) general malfunctioning of the municipal council;
    - (ix) improper interference by municipal councillors in the administration of the municipality;
    - (x) corrupt practices in the municipal council or by municipal councillors; or
    - (xi) inefficiency of the municipal council in managing the affairs of the municipality; and
  - (d) the extent to which the conduct of the municipal council or those other circumstances causing the failure to fulfil the obligation are systemic and the ease with which the conduct of the municipal council or other circumstances could be corrected by other corrective steps.
- (3) The provincial executive must provide an opportunity to the relevant municipality to comment on the intended dissolution of the municipal council by the provincial executive.
- (4) The provincial executive must, if the consideration of the factors referred to in subsection (2) necessitate it, dissolve the municipal council and appoint an administrator to ensure continued functioning of a municipality until a new municipal council is elected.
- (5) Members of a municipal council dissolved in terms of an intervention step contemplated section 42(2)(e) cease to be councillors from the date the municipal council is dissolved.

## Part 7

### Provisions to facilitate achievement of intervention objective

#### Municipal assistance during intervention

51. If the provincial executive intervenes in a municipality, 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 internal functionaries, including councillors and officials, from interfering with, hindering or obstructing the implementation of the intervention; and
  - (c) in the case of an intervention step contemplated section 42(2)(c), (d) or (e)—
    - (i) may not withdraw any of its staff, funds or other resources allocated 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 or provincial executive representative deployed for purposes of the intervention. 5

### **Financial accountability and responsibilities of accounting officer and accounting authority during intervention**

- 52.** (1) Subject to subsection (2), the accounting officer of a municipality that becomes subject to an intervention in terms of section 139 of the Constitution, and the accounting authority of any municipal entity under the sole or shared control of the municipality— 10
- (a) continues during the intervention to be responsible in that capacity and
  - (b) must manage the responsibilities of accounting officer or accounting authority in terms of the Municipal Systems Act and the Municipal Finance Management Act, with due regard to the achievement of the objectives of the intervention. 15
- (2) The provincial treasury may designate for purposes of the Municipal Finance Management Act, a person as the accounting officer or accounting authority of—
- (a) the municipality; or
  - (b) a municipal entity under the sole or shared control of the municipality. 20
- (3) The provincial treasury may designate a person in terms of—
- (a) subsection (2)(a), as accounting officer of a municipality only in instances where the provincial executive—
    - (i) assumed in terms of an intervention step contemplated in section 42(2)(c) any executive obligations of the municipality embracing the whole or a material part of the local government matters administered by the municipality; 25
    - (ii) implemented a financial recovery plan for the municipality in terms of an intervention step contemplated section 42(2)(d) intervention step;
    - (iii) dissolved the municipal council in terms of an intervention step contemplated in section 42(2)(e); or 30
    - (iv) intervened in the municipality in terms of section 139(4) or (5) of the Constitution; or
  - (b) subsection (2)(b), as accounting authority of a municipal entity under the sole or shared control of the municipality only in instances where the provincial executive has— 35
    - (i) assumed, in terms of an intervention step contemplated in section 42(2)(c), an executive obligation of the municipal entity embracing the whole or a material part of the local government matters administered by that municipal entity; 40
    - (ii) implemented a financial recovery plan for the municipal entity, in terms of an intervention step contemplated in section 42(2)(d);
    - (iii) dissolved the municipal council in terms of an intervention step contemplated section 42(2)(e); or
    - (iv) intervened in the municipality in terms of section 139(4) or (5) of the Constitution. 45
- (4) The person referred to in section 60 or 93 of the Municipal Finance Management Act ceases for the duration of the intervention to be the accounting officer of the municipality or of that municipal entity if the provincial treasury designates a person in terms of subsection (2)(a) or (b) for purposes of an intervention, as the accounting officer or accounting authority of a municipality or municipal entity. 50
- (5) The person that may be designated as accounting officer or accounting authority 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; 55
  - (c) an official of any national or provincial department or public entity; or
  - (d) an official or person appointed as administrator or provincial executive representative for purposes of the intervention;
- (6) The provincial treasury may exercise its powers in terms of subsection (1) only after consultation with the National Treasury if the budget of the municipality exceeds 60

R500 million, unless another amount is for purposes of this section prescribed in terms of the Municipal Finance Management Act.

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

- 53.** (1) The provincial treasury may designate a person to exercise, during the intervention, any specific powers or perform any specific duties or functions of the accounting officer of the municipality or accounting authority of a municipal entity in terms of the Municipal Finance Management Act if the provincial treasury has not replaced the accounting officer of the municipality or accounting authority of a municipal entity in terms of section 52(2)(a) or (b). 5 10
- (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 or accounting authority of—
- (a) a municipality in any of the instances referred to in section 52(3)(a); or
  - (b) a municipal entity under the sole or shared control of the municipality in any of the instances referred to in section 52(3)(b). 15
- (3) If the provincial treasury designates a person in terms of subsection (1), that person exercises the powers or performs the duties or functions necessary for the purpose of achieving the objective of the relevant intervention step, to the exclusion of the accounting officer of the municipality or accounting authority of municipal entity. 20
- (4) The person contemplated in subsection (1) must have appropriate qualifications and may be—
- (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; 25
  - (d) an official or person appointed as administrator for purposes of the intervention, or
  - (e) a person in private sector appointed as administrator or national or provincial executive representative.
- (5) The provincial treasury may exercise its powers in terms of subsection (1) only after consultation with the National Treasury, if the budget of the municipality exceeds R500 million, unless another amount is for purposes of this section prescribed in terms of the Municipal Finance Management Act. 30

**Part 8**

**Procedures for imposing, reviewing, amending, revising and terminating intervention 35**

**Notice of intervention**

- 54.** (1) If the provincial executive decides to intervene in a municipality in terms of a section 139(1), (4) or (5) of the Constitution, it must serve a notice of the intervention on the municipality within 14 days after the provincial executive has taken a decision to intervene in a municipality and publish that notice in the *Gazette*. 40
- (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; 45
    - (ii) a short description of the obligation which the municipality cannot or does not fulfil;
    - (iii) the extent to which the municipality cannot or does not fulfil the obligation; 50
    - (iv) the intervention steps the provincial executive is imposing, including the extent to which the 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; 55
    - (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 5
  - (ii) the date from which the municipal council is dissolved, if the provincial executive decides to dissolve the municipal council and the administrator is appointed in terms of section 69; and
- (c) in the case of an intervention in terms of section 139(5) of the Constitution— 10
  - (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 15
    - (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; 20
  - (iii) the date on which the intervention will commence; 25
  - (iv) the date from which the municipal council is dissolved if the provincial executive decided to dissolve the municipal council and the administrator is appointed; 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— 30
  - (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; 35
  - (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 40
  - (h) any national department responsible for implementing national legislation affected by the intervention.
- (4) The provincial executive must provide an opportunity to the relevant municipality to comment on the intended intervention step to be taken by the provincial executive.
- (5) If a provincial executive cannot, or does not exercise the powers or perform the duties and functions referred to in section 139(4) or (5) of the Constitution, or does not adequately do so, the Minister, in consultation with the national executive member responsible for the functional area of the executive obligation may, after approval by the national executive, intervene in terms of section 139(7) of the Constitution in the stead of the provincial executive. 50
- (6) Subsection (1) and (2) applies with the necessary changes required by the context in respect of an intervention in terms of subsection (5).

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

**55.** (1) The provincial executive must submit a notice referred to in section 139(2)(a), 139(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 when the provincial executive implements an intervention in terms of section 139(1)(b) or (c), 139(4) or 139(5) of the Constitution. 55

(2) The provincial executive may attach to the notice contemplated in subsection (1) copies of— 60

- (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; 5
- (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 submitted to the provincial executive by organised local government; 10
- (e) any complaints, letters or petitions concerning the performance of the municipality in the possession of the provincial executive;
- (f) any reports of investigations conducted by provincial officials or any other person in terms of section 106 of the Municipal Systems Act; 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. 15

### **Review of provincial intervention**

- 56.** (1) The relevant MEC or the provincial coordinating committee must develop a report on the review of the intervention and submit it to the provincial executive. 20
- (2) The provincial executive must, at least every 3 months, review an intervention in terms of section 139(1) of the Constitution, including the effectiveness of the intervention step implemented.
- (3) After a review in terms of subsection (2), and considering the outcome of the review, the provincial executive may— 25
- (a) amend the intervention notice in terms of section 57;
  - (b) revise the existing intervention step in terms of section 58; or
  - (c) terminate the intervention in terms of section 59.

### **Amendment of provincial intervention notice**

- 57.** (1) An amendment of a notice of intervention in terms of section 56(3) may include— 30
- (a) altering, withdrawing or adding to any of the particulars referred to in section 54(2)(a)(v) contained in the notice;
  - (b) replacing a person appointed as the administrator or national or provincial executive representative for purposes of the intervention, or effecting other changes relating to the administrator or national or provincial executive representative; or 35
  - (c) making technical changes or correcting any errors.
- (2) The provincial executive must notify the municipality in writing of the amendment of a notice of intervention. 40
- (3) A copy of the amended notice of intervention must be submitted to the organs of state referred to in section 54(3).
- (4) The provincial executive must provide an opportunity to the relevant municipality to comment on the intended amendment of the notice of intervention.

### **Revision of existing provincial intervention step** 45

- 58.** (1) The provincial executive may, after a review in terms of section 56 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 effective.
- (2)(a) The provincial executive must notify the municipality by serving the municipality with a notice of revised intervention if it revises an existing intervention step. 50
- (b) A notice of revised intervention must contain a statement that the provincial executive has revised the existing intervention step, and indicate—
  - (i) particulars of the new intervention step that replaces or is added to the existing intervention step; 55
  - (ii) the reasons for the revision;

- (iii) the date on which the revision will commence; and
- (iv) the period for which the intervention is expected to continue.

(3) A copy of the revised notice of intervention must be submitted to the organs of state referred to in section 54(3).

(4) The provincial executive must provide an opportunity to the relevant municipality to comment on the intended revised intervention step. 5

### **Termination of provincial intervention**

**59.** (1) The provincial executive that intervenes in a municipality in terms of section 139(1) of the Constitution, must issue a notice of termination of intervention to the municipality— 10

(a) if the intervention ends—

- (i) in terms of section 139(2)(b) or (3)(b) of the Constitution, in the case of an intervention step contemplated in section 42(2)(c) or (e); or
- (ii) in terms of section 148(1) of the Municipal Finance Management Act, in the case of a discretionary financial intervention; 15

(b) if the intervention is set aside by a court; or

(c) if the provincial executive terminates the intervention in terms of subsection (2).

(2) (a) The provincial executive must, after a review in terms of section 56, terminate an intervention in terms of section 139(1) of the Constitution, subject to paragraph (c), if the provincial executive, after consulting all the stakeholders referred to in section 54(3), has reason to believe that— 20

- (i) the objective of the intervention has been met;
- (ii) the municipality has the capacity to fulfil the relevant executive obligation; and
- (iii) the need for continuing the intervention has ended. 25

(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 an intervention step contemplated in section 42(2)(e). 30

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

- (a) the date on which the intervention has ended or will end; and
- (b) the reason for ending 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 54(3). 35

(5) The provincial executive must within 14 days after the date referred to in subsection (3)(a) publish a notice of the termination of the intervention in the Provincial Gazette.

### **Imposition of intervention in terms of section 139(4) or (5) of Constitution during intervention in terms of section 139(1)** 40

**60.** (1) The provincial executive must invoke section 139(4) or (5) of the Constitution during an intervention in terms of section 139(1) of the Constitution if conditions for an intervention in terms of section 139(4) or (5) of the Constitution are met.

(2) An intervention in terms of section 139(4) or (5) of the Constitution supersedes an existing intervention invoked in terms of section 139(1) of the Constitution, subject to section 139(3) of the Municipal Finance Management Act but does not affect any measure already implemented in terms of section 139(1) of the Constitution. 45

(3) 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 must remain effective and the administrator may continue to be appointed in terms of section 139(4) or (5) of the Constitution. 50

(4) Before a provincial executive takes a decision on the dissolution of a municipal council in terms of a section 139(4) or (5) of the Constitution, it must consider and determine the impact that the dissolution of the municipal council will have on the interests of the local community. 55

**Part 9****Monitoring and review of provincial intervention****Review by Minister and National Council of Provinces**

**61.** (1) When notified of an intervention in terms of section 139(2)(a) or 139(3)(a) of the Constitution, the Minister or National Council of Provinces, as the case may be, must review the intervention by— 5

- (a) evaluating information and documents submitted to the Minister and National Council of Provinces in terms of this Act, or otherwise in the possession of the Minister or the National Council of Provinces; and
- (b) determining whether— 10
  - (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 cannot or does not fulfil;
  - (ii) in the case of an intervention in terms of section 139(1)(c) of the Constitution, there are exceptional circumstances warranting the dissolution of the municipal council; and 15
  - (iii) the intervention should be allowed to proceed.

(2) The Minister or the National Council of Provinces may for purposes of subsection (1), conduct a separate investigation to obtain information relevant to the intervention under review. 20

(3) The Minister and the National Council of Provinces must notify the provincial executive in writing if the Minister or the National Council of Provinces—

- (a) in the case of an intervention in terms of section 139(1)(b) of the Constitution, approves or disapproves the intervention within the timeframe of 28 or 180 days respectively specified in section 139(2)(b)(i), or by the end of that period, has not approved the intervention; or 25
- (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 provincial intervention** 30

**62.** (1) The Minister and the National Council of Provinces must monitor each intervention carried out in a municipality in terms of section 139(1) of the Constitution.

(2) (a) The provincial executive must, for the purposes of subsection (1), submit to the Minister and the National Council of Provinces at least every 3 months a progress report on each intervention. 35

(b) The provincial executive must submit the progress report to the Minister and National Council of Provinces within 14 days after conclusion of the review if it has reviewed an intervention in terms of section 56.

(3) A copy of each progress report must simultaneously be submitted to the organs of state referred to in section 54(3). 40

**Request by Minister, National Council of Provinces or provincial legislature for information concerning intervention**

**63.** (1) 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. 45

(2) The provincial executive must, on request by the National Council of Provinces or the provincial legislature, submit to the National Council of Provinces or the provincial legislature such information concerning an intervention in a municipality in terms of section 139(1), (4) or (5) of the Constitution, as the National Council of Provinces or the provincial legislature may require. 50

(3) If the Minister, the National Council of Provinces or the provincial legislature makes recommendations 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 National Council of Provinces or the provincial legislature if it fails or decides not to implement any of those recommendations. 55

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

**64.** (1) The relevant MEC may, if there is a reason to believe that a municipality is not executing an executive obligation in terms of the Constitution or legislation, request such information or records of the municipality or of any municipal entity under the sole or shared control of the municipality, as may be necessary, to enable the MEC to take a decision whether to recommend an intervention in terms of section 139 of the Constitution. 5

(2) During an intervention in a municipality in terms of section 139 of the Constitution, the provincial executive, the appointed administrator, national or provincial executive representative or any other person appointed 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. 10 15

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

**65.** (1) During an intervention in terms of section 100 of the Constitution, the national executive must determine whether the province has the capacity or skills to fulfil the executive obligation which the province failed to fulfil.

(2) If the province lacks the capacity or skills to fulfil the executive obligation, the national executive must— 20

(a) in consultation with the province—

(i) identify the capacity or skills the province lacks; and

(ii) prepare a plan of action setting out ways and means to ensure that the province acquires the capacity or skills it lacks; 25

(b) provide such support to the province as may be necessary to give effect to the plan of action; and

(c) ensure that skills are transferred to the province.

(3) The kind of support a national may provide to a province in terms of subsection (2) includes additional support referred to in section 9. 30

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

(5) If the municipality lacks the capacity or skills to fulfil the executive obligation, the provincial executive must— 35

(a) in consultation with the municipality—

(i) identify the capacity or skills the municipality lacks; and

(ii) prepare a plan of action setting out ways and means to ensure that the municipality acquires the capacity or skills it lacks;

(b) provide such support to the municipality as may be necessary to give effect to the plan of action; and 40

(c) ensure that skills are transferred to the municipality.

(6) The kind of support a province may provide to a municipality in terms of subsection (2) includes additional support referred to in section 39.

**Report on intervention 45**

**66.** (1) The provincial executive must, within 30 days after an intervention in a municipality has ended, submit a report on the intervention to—

(a) the Minister;

(b) the National Council of Provinces;

(c) any relevant national executive member; 50

(d) the relevant provincial legislature;

(e) the relevant provincial department and the provincial department responsible for local government;

(f) the National Treasury and the relevant Provincial Treasury;

(g) organised local government nationally and in the relevant province; 55

(h) the relevant metropolitan, district and local municipality; and



- (i) any national department responsible for implementing national 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; 5
  - (b) the results of the intervention;
  - (c) any conditions applicable to the termination; and
  - (d) whether the municipality is able to fulfil in a sustainable way the executive obligation which gave rise to the intervention.

## CHAPTER 6

10

### ADMINISTRATOR, NATIONAL AND PROVINCIAL EXECUTIVE REPRESENTATIVE

#### List of persons eligible for appointment as administrator, national or provincial executive representative

- 67.** (1) No person may, for purposes of an intervention in a province or a municipality, be appointed as an administrator, national or provincial executive representative unless the name of that person appears on a list of persons approved and issued by the Minister from time to time by notice in the *Gazette*. 15
- (2) Subsection (1) does not apply to the appointment by the national or provincial executive of a person who is an official of a national or provincial department or a municipality, or national public entity, or a provincial public entity or municipal entity. 20
- (3) A person may not 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; 25
  - (b) is a fit and proper person for appointment as an administrator or national or provincial executive representative in terms of any criteria as may be prescribed; and
  - (c) has applied in the prescribed manner for inclusion in the list.
- (4) A juristic person may be included in the list referred to in subsection (1) if it is managed by a person who— 30
- (a) has the minimum requirements relating to skills, expertise, competence and qualifications, as may be prescribed; and
  - (b) is a fit and proper person for appointment as an administrator or national or provincial executive representative in terms of any criteria as may be prescribed. 35
- (5) The Minister must compile the list in consultation with the MEC responsible for local government in each province.

#### Conditions for appointment as administrator, national or provincial executive representative 40

- 68.** (1) An administrator, national or provincial executive representative may be composed of more than one person acting collectively in terms of the directives of the intervening national or provincial executive.
- (2) The person contemplated in subsection (1) must be appointed in terms of a written agreement between that person and the national or provincial executive. 45
- (3) An agreement referred to in subsection (2) must—
- (a) regulate all aspects relating to the appointment of the administrator, national or provincial executive representative including—
    - (i) remuneration, benefits and other terms and conditions of appointment, in the case of a person in private sector appointed as administrator or national or provincial executive representative; 50
    - (ii) the term of appointment;
    - (iii) reporting requirements to the national or provincial executive; and
    - (iv) performance evaluation.
  - (b) be signed by both parties before commencement of the appointment. 55
- (4) An agreement referred to in subsection (2) may provide for the appointment by the administrator, national or provincial representative, or the acceptance of secondment by the national or provincial executive, of assistants as may be—

- (a) needed for the effective carrying out of the mandate of the administrator, national or provincial executive representative; and
- (b) approved by the national or provincial executive.

#### **Appointment of administrator, national or provincial executive representative**

**69.** (1) The national executive must, upon serving on a province a notice of intervention implementing an intervention step contemplated in section 13(2)(b), appoint a person as national executive representative to administer the affairs of the province. 5

(2) The provincial administration is accountable to the national executive representative appointed in terms of subsection (1), subject to the mandate and terms of reference of the national executive representative issued in terms of section 71. 10

(3) The provincial executive must, upon serving on a municipality a notice of intervention implementing an intervention step contemplated in section 42(2)(e), or section 139(4) or (5) of the Constitution if the municipal council is dissolved, appoint a person as administrator to administer the affairs of the municipality. 15

(4) The provincial executive must, upon serving on a municipality the notice of intervention implementing an intervention step contemplated in section 42(2)(c), appoint a person as provincial executive representative to administer the affairs of the municipality.

(5) The municipal administration is accountable to the provincial executive representative appointed in terms of subsection (4), subject to the mandate and terms of reference of the provincial executive representative issued in terms of section 71. 20

(6) A person appointed in terms of subsection (1) or (4)—

- (a) holds office and must exercise the powers, duties and functions of office in terms of Chapter 6; and 25
- (b) may exercise any power, duty or function vested in the province or municipality, as the case may be, necessary for the effective administration of the affairs of the province or municipality, subject to any limitation or condition set out in the mandate and terms of reference of the national or provincial executive representative. 30

(7) The national executive may, for the duration of the intervention, delegate the exercise of any of the powers or the performance of any of the duties or functions of the province or administration to the national executive representative.

(8) The provincial executive may, for the duration of the intervention, delegate the exercise of any of the powers or the performance of any of the duties or functions of the municipal council or administration to the administrator or provincial or provincial executive representative, including— 35

- (a) any of the powers of the municipal manager in terms of section 55 of the Municipal Systems Act, and section 60 of the Municipal Finance Management Act; and 40
- (b) any of the powers of the municipal council, in terms of Chapter 4 of the Municipal Structures Act;

#### **Term of appointment of administrator, national or provincial executive representative**

**70.** (1) The term of appointment of an administrator, national or provincial executive representative as may be agreed to in terms of section 68, may not be for a period beyond the duration of the relevant intervention, subject to subsection (4). 45

(2) The term of appointment referred to in subsection (1) ends if—

- (a) the period for which an administrator, national or provincial executive representative was appointed expires or, in the case of an administrator, a newly elected municipal council is declared elected; 50
- (b) the appointment is terminated by the national or relevant provincial executive in terms of subsection (3);
- (c) the administrator or national or provincial representative resigns after giving notice in terms of the agreement; 55
- (d) in the case of an intervention step contemplated in section 13(2)(b)—
  - (i) the intervention is terminated by the national executive in terms of section 59(2); or

- (ii) the intervention step is replaced by the national executive with another intervention step in terms of section 56(3);
- (e) in the case of an intervention step contemplated in section 42(2)(c) or (e)—
  - (i) the intervention is terminated by the provincial executive in terms of section 59(2); or
  - (ii) the intervention step is replaced by the provincial executive with another intervention step in terms of section 58(1),
- (f) the intervention is set aside by a court; or
- (g) the intervention ends in terms of sections 100 and 139 of the Constitution.
- (3) The national or provincial executive may terminate the appointment of a person as administrator, national or provincial executive representative before the term of office expires on any good ground, including on the ground of—
  - (a) a court order;
  - (b) incompetence or failure to perform functions, duties or mandate as an administrator or national or provincial executive representative;
  - (c) engaging in illegal acts or misconduct;
  - (d) incapacity; and
  - (e) any other circumstances applicable to the administrator, national or provincial executive representative in terms of the agreement referred to in section 68(2).
- (4) Subsection (1) does not prevent the person appointed as administrator, national or provincial executive 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.
- (5) An administrator appointed upon dissolution of a municipal council ceases to hold office when a newly elected municipal council has been declared elected and may, if another intervention step is implemented in the municipality, be appointed under a new mandate and terms of reference as national or provincial executive representative to deal with execution of executive obligations associated with such step.
- (6) A person whose appointment is terminated in terms of subsection (3) must be removed from the list of persons referred to in section 67(1) and is not eligible for inclusion in that list.

#### **Mandate and terms of reference of administrator, national or provincial executive representative**

- 71.** (1) The relevant national executive member—
- (a) must issue to an administrator, national or provincial executive representative a written mandate and the terms of reference authorising the administrator, the national or provincial executive representative to exercise the powers, duties and functions necessary for purposes of the intervention; and
  - (b) may by written agreement amend the mandate and the terms of reference of the administrator, national or provincial executive representative when necessary.
- (2) The provincial executive—
- (a) must issue to an administrator, national or provincial executive representative appointed for purposes of—
    - (i) an intervention in terms of section 139(1) of the Constitution, a written mandate and the terms of reference authorising the administrator, national or provincial executive representative 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 an intervention step contemplated in section 42(2)(c) is implemented;
      - (bb) the municipal council, including power of delegation in terms of the Municipal Systems Act, if an intervention step contemplated in section 42(2)(e) is implemented; or
    - (ii) an intervention in terms of section 139(4)(a) or 139(5)(b)(i) of the Constitution, a written mandate or terms of reference authorising the administrator to fulfil executive obligations in terms of the powers, duties and functions of the municipal council; and
  - (b) may, in writing, amend the mandate and the terms of reference of administrator, national or provincial executive representative when necessary.



- (3) The mandate of an administrator, national or provincial executive representative referred to in subsections (1) and (2)—
- (a) is subject to such limitations and qualifications as set out in the mandate and the terms of reference;
  - (b) include the exercise of legislative powers in terms of section 160(2) of the Constitution when a municipal council is dissolved; and 5
  - (c) may not be inconsistent or allow interference—
    - (i) in the case of an intervention step contemplated in section 13(2)(c), with the powers and functions of the accounting officer, or accounting authority of the affected provincial department or provincial public entity; and 10
    - (ii) in the case of an intervention step contemplated in section 42(2)(e), 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. 15
- (4) Anything done by an administrator, the national or provincial executive in terms of the mandate and terms of reference is legally binding.

### **Report of administrator, national or provincial executive representative**

- 72.** (1) When an intervention in terms of section 100 or 139 of the Constitution ends, the administrator, national or provincial executive representative appointed for the intervention must within 14 days submit to the national executive or the provincial executive a report on the intervention. 20
- (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. 25

## **CHAPTER 7 MISCELLANEOUS**

### **Costs of intervention**

- 73.** (1) The intervening national department is responsible for any costs arising from the appointment of an administrator or national executive representative for purposes of an intervention in a province or a municipality in the stead of a province, including the remuneration and benefits of the administrator, national or provincial executive representative, but must recover those costs to the extent that they are reasonable from the provincial department. 30 35
- (2) The intervening provincial government is, through its responsible departments, responsible for any costs arising from the appointment of an administrator or provincial executive representative for purposes of an intervention in a municipality, including the remuneration and benefits of the administrator, national or provincial representative, but must recover those costs to the extent that they are reasonable from the relevant municipality. 40

### **Offences and penalties**

- 74.** (1) A person is guilty of an offence if that person wilfully interferes with, hinders or obstructs—
- (a) the national executive in the implementation of an intervention in the relevant province in terms of section 100 of the Constitution; 45
  - (b) a national department or public entity in the exercise of its powers or the performance of its duties or functions in terms of this Act; or
  - (c) a national executive representative or provincial executive representative exercise of their powers or the performance of their duties or functions in terms of this Act. 50
- (2) Any person 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; 55

- (b) an administrator, department or public entity appointed in terms of section 46(1)(a) or (b), 49(3)(b) or 68(1) in the performance of their duties; or
  - (c) a person designated in terms of section 49(3)(a) in the exercise of their powers or the performance of their duties or functions in terms of this Act; or
  - (d) the national executive representative or provincial executive representative in the exercise of their powers or the performance of their duties or functions in terms of this Act. 5
- (3) Any person is guilty of an offence if that person wilfully interferes with, hinders or obstructs the implementation of an intervention by—
- (a) refusing to hand over information in that person's possession or under their control that relates to the intervention; 10
  - (b) instructing any person or official to refuse to cooperate or to hand over information or documentation in their possession or under their control in relation to the performance of executive obligations by a province or municipality; 15
  - (c) preventing any person or official from cooperating with any person implementing an intervention;
  - (d) mobilising any person to disrupt or unlawfully act against the intervention;
  - (e) preventing or hindering an investigation concerning the intervention or the causes thereof; 20
  - (f) destroying or concealing any information or document relevant to an intervention or the execution of executive obligations of a province or municipality;
  - (g) providing and furnishing false or inaccurate information in relation to an intervention; or 25
  - (h) threatening, intimidating, inducing, or influencing any person from working in the province or municipality that is subjected to an intervention in terms of section 100 or 139 of the Constitution.
- (4) A person who commits an offence in terms of subsection (1), (2) or (3) is liable on conviction to a fine or imprisonment for a period not exceeding ten years, or to both such a fine and imprisonment. 30

#### **Chairpersonship and secretariat of national and provincial coordinating committees**

- 75.** (1) The Minister chairs the meetings of the national coordinating committee established in terms of section 3(1). 35
- (2) The Department responsible for cooperative governance is responsible for providing administrative and other support services to the national coordinating committee.
- (3) The MEC responsible for local government and MEC responsible for finance in a province co-chair the meetings of the provincial coordinating committee established in terms of section 3(4). 40
- (4) The relevant provincial department responsible for local government is responsible for providing administrative and other support services to the provincial coordinating committee.

#### **Memorandum of understanding 45**

- 76.** (1) Any national executive member appointed by the national executive in terms of section 4 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 provide for any matter that is referred to subsection (2). 50
- (2) The memorandum of understanding—
- (a) must provide for any matter that may be prescribed in terms of this Act;
  - (b) may be coordinated by the national coordinating committee, or appropriate intergovernmental forum;
  - (c) must 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 55

- (d) 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 indicate how these challenges are to be addressed.

### Regulations

- 77.** The Minister may make regulations not inconsistent with this Act, 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— 5
- (a) any matter that may be prescribed in terms of this Act; 5
  - (b) sources of information for provincial monitoring systems; 10
  - (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 appointment as administrator, national or provincial representative referred to in section 69; 15
  - (f) qualifications, scales of remuneration, benefits and other terms and conditions of the appointment of persons in private sector appointed as administrator, national or provincial representative; 20
  - (g) 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
  - (h) any matter required or permitted to be prescribed under this Act or which it is necessary or expedient for the implementation of this Act. 25

### Short title and commencement

**78.** This Act is called the Intergovernmental Monitoring, Support and Interventions Act, 2025, and takes effect on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE  
INTERGOVERNMENTAL MONITORING, SUPPORT AND  
INTERVENTIONS BILL, 2025**

**1. INTRODUCTION**

- 1.1** Chapter 3 of the Constitution of the Republic of South Africa, 1996 (“Constitution”), establishes a system of co-operative government in the Republic, constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. In terms of the principles of co-operative government set out in the Constitution, all spheres of government and all organs of state within each sphere must, amongst others, respect the constitutional status, institutions, powers and functions of government in the other spheres. They 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. They 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.
- 1.2** In this regard, section 125(3) of the Constitution obliges the national government, by legislative and other measures, to assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions. In terms of this section, a province has executive authority only to the extent that the province has the administrative capacity to assume effective responsibility. Similarly, section 154(1) obliges both the national and the provincial governments, by legislative and other measures, to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers, and to perform their functions.
- 1.3** 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 interventions by one sphere of government to another in circumstances where a province, or a municipality fails to fulfil their obligations in terms of the Constitution or legislation. These intervention processes are provided for in terms of sections 100 and 139 of the Constitution.
- 1.4** Section 100 of the Constitution stipulates that when a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation. Similarly, section 139 of the Constitution provides that when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation. To give effect to the constitutional-induced interventions, the Constitution requires legislation that will assist in the implementation of the interventions. In short, section 100(3) of the Constitution requires that national legislation may regulate the processes established by section 100(1) of the Constitution. On the other hand, section 139(8) of the Constitution provides that national legislation may regulate the implementation of this section, including the processes established by section 139 of the Constitution.
- 1.5** Currently, there is no national legislation regulating interventions in provinces in terms of section 100 of the Constitution. In the case of municipalities, Chapter 13 of the Local Government: Municipal Finance Management Act, 2003 (MFMA), regulates mandatory interventions in terms of section 139 of the Constitution, but only where the cause of the interventions is triggered by financial challenges the municipalities find themselves in. In this regard, there is no legislation dealing with discretionary interventions in municipalities in terms of section 139 of the Constitu-

tion. The Intergovernmental Monitoring, Support and Interventions Bill (“Bill”) has therefore been developed in compliance with these two constitutional provisions.

- 1.6 The Bill is intended to fill this void and to regulate interventions in terms of sections 100 and 139 of the Constitution. The Bill will also complement the provisions of the MFMA in relation to discretionary financial interventions and mandatory interventions in terms of section 139(4) and (5) of the Constitution, only to the extent that the provisions of the Bill are not inconsistent with the prescripts of the MFMA.

## **2. ANALYSIS OF PROVISIONS OF BILL**

### **2.1 OBJECTIVES OF BILL**

- 2.1.1 The general purpose of the Bill is to provide for the monitoring and support of provinces and municipalities. Monitoring will entail monitoring of the provinces and municipalities as to whether they fulfil their executive obligations in terms of the Constitution or legislation. Should the provinces and municipalities require targeted support to fulfil their executive obligations, then support envisaged in the Bill, must be provided in terms of sections 125(3) and 154(1) of the Constitution. Targeted support, as provided for in the Bill, is additional to the “normal” support provided to provinces and municipalities to enable them to manage their affairs and exercise their powers and functions. Should monitoring diagnose the failure by the provinces or municipalities to exercise the executive obligations in terms of the Constitution or legislation, and even after targeted support had been provided, the Bill provides for processes and measures to institute interventions in terms of sections 100 and 139 of the Constitution.
- 2.1.2 The aim of the Bill is to ensure fulfilment of the executive obligation that 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 provides in clause 1 for the definitions of key concepts in the Bill such as—“Administrator”; “national or provincial executive representative”; “executive obligation”; “intervention step”; and so on.
- 2.2.2 Chapter 1 also states the purpose, application and scope of the Bill. The purpose of the Bill is to monitor whether provinces and municipalities fulfil their constitutional and statutory obligations; to provide additional support to provinces and municipalities to enable them to fulfil their constitutional and statutory obligations; and to regulate the processes required in terms of sections 100 and 139 of the Constitution.
- 2.2.3 Clause 3 provides for the establishment of the national and provincial coordinating committees (NCC and PCC respectively), as standing committees coordinating the interventions invoked in terms of sections 100 and 139 of the Constitution, respectively. The NCC is established as a standing committee to coordinate national interventions. It is constituted of the Minister; the national executive members responsible for finance; for public service and administration; and any other national executive member appointed by the

national executive. It also establishes a PCC in each province as a standing committee to coordinate provincial interventions. A PCC is constituted of the MECs responsible for local government, and the MECs for finance, and may include any other MEC that may be appointed by the relevant provincial executive.

**2.2.4** Clause 4 requires that the national executive must exercise powers and perform duties and functions in relation to national and provincial interventions in terms of the provisions of the Bill, and may delegate to the NCC or to any National Executive Member (NEM) any of the powers, duties or functions of the national executive in terms of a provision of the Bill, including the power to implement a national intervention.

**2.2.5** Clause 5 requires that the provincial executive must exercise powers and perform duties and functions in terms of the provisions of the Bill and may delegate same to the MEC responsible for local government; the MEC responsible for finance; or to the PCC.

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

**2.3.1** Clause 6 provides that the province has the primary responsibility for ensuring that it fulfils its executive obligations in terms of the Constitution and legislation. If the province encounters signs of an impending non-fulfilment of an executive obligation or cannot or does not 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.

**2.3.2** Clause 7 requires the Minister of public service and administration, through the Office of Standards and Compliance, to establish a system to monitor compliance by provinces in executing their executive obligations. The monitoring system must include 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 to report this to the NCC and other relevant NEMs.

**2.3.3** Clause 8 provides that any provincial department in need of support must submit to the relevant Office of the Premier a written motivation to request support from the relevant NEM. The Premier may submit the request to the relevant national department for approval by the relevant NEM. The relevant department must, after consultation with the province, prepare a detailed additional support initiative that includes the critical functional areas for which the support is needed.

**2.3.4** Clause 9 provides that the relevant NEM may provide various types of support to a province.

**2.3.5** Clause 10 stipulates that the relevant NEM, must, if alerted to an impending or actual failure by a province to fulfil any of its executive obligations by the monitoring system, establish the extent, seriousness and cause of the impending or actual failure and whether the province is considering or has taken any remedial steps to prevent an impending failure from occurring, or to deal with the consequences of actual failure.

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

**2.4.1** Clause 11 which provides for determining whether intervention is appropriate, requires the relevant NEM or the NEM responsible for implementing the relevant national norms and standards, to submit a request to the NCC for consideration of an intervention in terms of



section 100 of the Constitution, prior to submission to Cabinet for approval by the NCC. The NCC must consider the notice and may recommend to Cabinet whether to approve the intervention invoked in terms of section 100 of the Constitution. A determination by the NCC as to whether an executive obligation has been fulfilled, must be made after considering information provided by the NEM responsible for implementing any relevant national norms and standards. The national executive must, having regard to the recommendation of the NCC, decide whether to approve the intervention.

- 2.4.2** Clause 12 deals with the alternative steps to ensure provinces fulfil their executive obligations and provides that the national executive may, instead of intervening in terms of section 100(1) of the Constitution, take any other step to ensure that a province fulfils an executive obligation.
- 2.4.3** Clause 13 provides that if the national executive approves an intervention in terms of section 100 of the Constitution, it must determine an appropriate intervention step to ensure the fulfilment of an executive obligation. The intervention in terms of section 100 of the Constitution is incremental as the Cabinet has to (or must) first issue a directive before assumption of responsibility as a next step.
- 2.4.4** Clause 14 requires that the national executive must consider the recommendations of the NCC when determining whether a specific intervention step considered will be appropriate. When making a recommendation to the national executive, the NCC must consider, amongst other matters, the nature of the executive obligation which the province cannot or does not fulfil.
- 2.4.5** Clause 15 provides for the relevant NEM to, amongst others, designate a national department, or national public entity, or an appropriate adviser to implement measures contemplated in section 13(2)(c).
- 2.4.6** Clause 16 provides that if the national executive issues a directive, that directive must describe the extent of the failure to fulfil an executive obligation by the province which gave rise to the issuing of the directive and state the steps and any timeframes within which those steps must be taken.
- 2.4.7** Clause 17 provides for the national executive to appoint a National Executive Representative (NER) or national organ of state to fulfil the assumed executive obligation on behalf of national executive. Any decision by the NCC to appoint a NER, or to appoint a national department or national public entity, must be taken in consultation with the NEM responsible for the concurrent functional area in which the assumed obligation falls. The NER must exercise the powers, duties and functions of office in terms of Chapter 6 and must exercise the powers or perform the duties and functions of the province necessary for fulfilling the assumed obligation. The provincial executive member responsible for the intervened portfolio, may not participate in any decision regarding the intervened executive obligation and the NEM may delegate such powers to the Deputy Minister of that portfolio, or to the NER to act on behalf of the national executive.
- 2.4.8** Clause 18 provides that if the national executive assumes responsibility for an executive obligation of a province, the intervening NEM, or the NER or national department or public entity appointed to fulfil the obligation on behalf of the national executive, may exercise any of the powers or perform any of the duties or functions of an official

of the province necessary to fulfil the assumed obligation and comply with section 100(1)(b) of the Constitution. The relevant NEM may recover from the province any necessary expenses incurred in assuming responsibility for the fulfilment of the executive obligation.

- 2.4.9** Clause 19 provides that the NCC may suspend an official from office, including the head of department of a province or provincial public entity if the official was responsible for serious maladministration leading to the intervention or wilfully interferes with, hinders or obstructs the implementation of the intervention, and the continued presence of the official in office threatens to prevent, delay or ultimately undermine the success of the intervention. If the NCC suspends a provincial official, 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 NER to initiate or institute disciplinary proceedings. Furthermore, any powers, duties and functions of the suspended official excluded from the mandate and terms of reference, vest in the NEM who may delegate any of those powers, duties and functions to any official of the province.
- 2.4.10** Clause 20 provides that if an official of a provincial department or provincial public entity is suspended, the affected provincial department must provide such staff and other resources and render such other assistance as may be necessary and within its means and approve a budget to enable any person appointed as NER to exercise the powers or perform the duties and functions of the suspended official effectively. The province remains responsible for budgeting and funding the exercise by the NER of the powers, duties and functions of the suspended official.
- 2.4.11** Clause 21 provides that if the national executive intervenes in a province in terms of section 100 of the Constitution, the province must assist the NEM to achieve the objectives of the intervention, and to bring the intervention to a successful conclusion as speedily as possible. The province must ensure that there is continuity in terms of already availed resources.
- 2.4.12** Clause 22 requires that the accounting officer or authority of a provincial department or public entity, respectively, continue to be responsible during the intervention in their capacity, as provided for in the Public Finance Management Act, 1999.
- 2.4.13** Clause 23 provides that the National Treasury may, in terms of section 36(3) 37 or 49(3) of the Public Finance Management Act (PFMA), designate a person identified by it, as the accounting officer of a provincial department, or it may designate a person as accounting authority of a provincial public entity only in instances where the post is vacant, or has been suspended, or the national executive has assumed an executive obligation of the province that embraces the whole or a material part of the functional area of that institution. The person designated to act as accounting officer or accounting authority includes an official of the affected institution, an official of any other provincial department or provincial public entity, an official of any national department or national public entity or an official or person appointed as NER for purposes of the intervention.
- 2.4.14** Clause 24 provides that if the National Treasury has not replaced the accounting officer, it may designate a person identified by it to exercise any specific powers, duties or functions in terms of the PFMA. Where the national executive has assumed in terms of an intervention step the responsibility for an executive obligation of a

province, the National Treasury may designate a person during the intervention, to exercise any specific powers, duties or functions.

- 2.4.15** Clause 25 requires that when an intervention is approved by the Minister, the Minister must notify the province of the intervention by serving a notice of intervention on the province and submit a written notice of the intervention to the National Council of Provinces (NCOP) within 14 days after the date that has been prescribed.
- 2.4.16** Clause 26 requires the Minister to attach to the notice to the NCOP copies of all documents submitted by the NEM to the affected province. The intervention must end if the NCOP disapproves the intervention within 180 days after the intervention began, or by the end of that period the NCOP had not approved the intervention.
- 2.4.17** Clause 27 requires the NEM to regularly, but at least every three months, review an intervention, including the effectiveness of an intervention step implemented in terms of the Bill, and submit a report to the NCC. The national executive, after considering the outcome of the review of the intervention, may amend the intervention notice, revise the intervention or terminate the intervention.
- 2.4.18** Clause 28 requires the intervening NEM, after a review, to amend a notice of intervention in any way appropriate to the intervention step implemented by the notice, whereafter the Minister must submit a copy of the amended notice of intervention to all prescribed organs of state.
- 2.4.19** Clause 29 provides that the intervening NEM may, within 14 days after conclusion of the review, 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, whereafter the NEM must submit a copy of the revised notice of intervention to the prescribed organs of state. The NEM must afford the province an opportunity to comment on the review, amendments, or revised intervention.
- 2.4.20** Clause 30 provides for the intervening NEM to issue a notice of termination of intervention to the province within 14 days after the intervention ends in terms of section 100(2)(b) of the Constitution. The NEM must, after a review, terminate an intervention implemented in terms of section 100 of the Constitution if the objective of the intervention has been met. The NEM must submit a copy of the notice of termination of intervention to the prescribed organs of state.
- 2.4.21** Clause 31 requires the intervening NEM to submit to the NCOP such information concerning an intervention in a province as the NCOP may require. The NCOP must, while the intervention continues, review the intervention at least on a quarterly basis and may make any appropriate recommendations to the NEM.
- 2.4.22** Clause 32 provides for the intervening NEM and any NER, national department or public entity appointed to fulfil the executive obligation to have access to such information, records and documents of the province, as may be necessary, for executing the intervention.
- 2.4.23** Clause 33 requires the intervening NEM to, within 30 days after the intervention ended, submit a report on the intervention to the relevant Premier and the affected MEC.
- 2.4.24** Clause 34 provides that the provincial executive must function in terms of the Constitution and relevant legislation, subject to any

terms of the notice of an intervention. The provincial executive may not take any decision which is likely to prevent, delay or ultimately undermine the success of an intervention implemented by the national executive.

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

- 2.5.1** Clause 35 provides that a municipality has primary responsibility to fulfil its obligations in terms of section 152 of the Constitution and legislation. A municipality must have an early warning monitoring and reporting system, to alert itself, the relevant province and the Minister, of any impending non-fulfilment of an executive obligation. The national and provincial governments must monitor municipalities in terms of Chapter 10 of the Municipal Systems Act, 2000, and section 5 and Chapter 13 of the MFMA.
- 2.5.2** Clause 36 provides that any municipality that is in need of support to exercise its powers, duties and functions and to manage its own affairs, may submit a detailed written motivation for such support to the Minister, stating the critical functional areas for which support is needed. If the request is approved, the relevant department, or the relevant MEC, as the case may be, must after consultation with the municipality, prepare a detailed support initiative stating the critical functional areas for which support is needed. The request for support in relation to a matter outside the competence of a province, must be made through the office of the MEC responsible for local government to the national department responsible for the relevant function for consideration.
- 2.5.3** Clause 37 provides that the support which the relevant NEM or PEM or department may provide to a municipality identified for support may, subject to available resources of the national or provincial department, include provision of professional, technical or administrative guidance and advice, and the temporary secondment of key specialist personnel.
- 2.5.4** Clause 38 provides that if the provincial executive is alerted through the provincial monitoring system, of an 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 impending or actual failure, and whether the municipality is considering or has taken any remedial steps to prevent an impending failure from occurring or to deal with the consequences of an actual failure. 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 in a province must determine whether the municipality has the capacity to take remedial steps to avert non-fulfilment of the obligation, or to deal with the consequences should non-fulfilment occur. If the municipality does not have the capacity to take those remedial steps, the MEC must immediately inform the Minister.
- 2.5.5** Clause 39 provides that any NEM, if alerted to an impending or actual failure by a municipality to fulfil an executive obligation, must request the relevant province to submit a report as prescribed within 30 days. If the relevant executive obligation is contained in national legislation within the portfolio of another NEM, the support must be implemented by that other NEM. The Minister must immediately take steps and consult with the relevant Premier and MEC responsible for local government if the Minister becomes aware that

a municipality is failing to fulfil its executive obligations in terms of the Constitution or legislation.

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

- 2.6.1** Clause 40 provides that whenever an MEC considers an intervention in terms of section 139(1) of the Constitution, the relevant MEC may determine whether an executive obligation has not been fulfilled. The MEC needs to also consider the non-fulfilment against section 11(3) of the Systems Act, and section 137 of the MFMA, and check whether section 41 of the Constitution should first be applied.
- 2.6.2** Clause 41 provides that the provincial executive may, instead of intervening in terms of section 139(1) of the Constitution, utilise other mechanisms established by the Intergovernmental Relations Framework Act, 2003, invoke relevant provisions in the MFMA; provide additional support to the municipality; or approach a court for an order instructing the municipality to fulfil an executive obligation. The relevant MEC is also required to consult the National Treasury before the provincial executive decides to intervene.
- 2.6.3** Clause 42 requires the relevant MEC to determine the intervention step or combination of intervention steps it intends to take to ensure fulfilment of the executive obligation. These steps include—
- (a) imposition of measures aimed at assisting the municipality in fulfilling the executive obligation;
  - (b) issuing of a directive in terms of section 139(1)(a) of the Constitution;
  - (c) assumption of the responsibility for the executive obligation;
  - (d) imposition of measures regulating Chapter 3 of the MFMA;
  - (e) dissolution of the municipal council; and
  - (f) appointment of person/s to act as senior managers.
- 2.6.4** Clause 43 requires the provincial executive to consider various factors when deciding on the appropriate intervention step, including the interests of the municipality with due regard to the principles of co-operative government.
- 2.6.5** Clause 44 provides that the provincial executive may implement any reasonable measure to give effect to an intervention step, including designating the district municipality, department or public entity, or an adviser, with whom the municipality must consult, in relation to the executive obligation which the municipality cannot or does not fulfil.
- 2.6.6** Contents of the directive are provided in clause 45 and must include a description of the extent of the failure, and must state the steps which the municipality must take to ensure fulfilment of the executive obligation.
- 2.6.7** When the provincial executive assumes responsibility for the relevant executive obligation in the municipality, as contemplated in section 139(1)(b) of the Constitution, clause 46 requires the provincial executive to appoint a PER to fulfil the relevant executive obligation. The PER may include an official from a national or provincial department, provincial public entity or municipality in the province, or a person in the private sector.
- 2.6.8** Clause 47 requires the PER, national department or public entity to exercise any of the powers or perform the duties and functions of the municipal official to fulfil the executive obligation, and to comply with section 139(1)(b)(i), (ii) and (iii) of the Constitution. The

municipality must continue to provide the required staff, funds and resources to ensure fulfilment of the executive obligation.

- 2.6.9** Clause 48 provides that the Municipal Council and the municipal administration must not take any decisions that may prevent, delay or ultimately undermine the success of the intervention implemented by the provincial or national executive. Furthermore, the provincial executive may require the PER to perform the powers of the municipal manager as provided for in section 55 of the Systems Act, and section 60 of the MFMA, and the powers of the executive mayor in terms of section 56 of the Structures Act. Importantly, the Municipal Council and the administration are accountable to the PER, subject to the mandate and terms of reference.
- 2.6.10** Clause 49 provides that the provincial executive may suspend an official from the municipality or an entity of the municipality if the official was responsible for serious maladministration leading to the intervention, or wilfully interferes with, hinders or obstructs, the implementation of the intervention. The provincial executive may also, in terms of applicable legislation, initiate or institute disciplinary proceedings against such official/s. Pursuant to such suspension, the provincial executive may designate another person or municipal official to be responsible for exercising duties of the suspended official. The provincial executive may also appoint an official from a provincial department or provincial public entity in the province, or a person in the private sector, as administrator or PER to exercise the responsibilities of the suspended official.
- 2.6.11** Clause 50 provides that the provincial executive must decide whether the seriousness, extent and cause of failure to fulfil the executive obligation constitutes exceptional circumstances warranting dissolution of the municipal council and the appointment of an administrator to ensure fulfilment of the executive obligation. Factors to be considered by the provincial executive include the extent to which the local community is affected, and various institutional governance challenges. Members of the Municipal Council cease to be councillors from the date on which the Municipal Council was dissolved.
- 2.6.12** Clause 51 requires the municipality to assist the provincial executive to achieve the objectives of the intervention and for an expeditious conclusion of the intervention. The municipality is also required to prevent internal functionaries from interfering in the intervention, and must continue to provide its staff, funds and other resources for the fulfilment of the relevant obligation.
- 2.6.13** Clause 52 provides that the accounting officer of a municipality or municipal entity continues in that capacity during the intervention and must manage the responsibilities of accounting officer in terms of the MFMA. Furthermore, the person referred to in sections 60 and 93 of the MFMA ceases to be the accounting officer for the duration of the intervention, and the Provincial Treasury may exercise its powers only after consultation with the National Treasury if the budget of the municipality exceeds R500 million, unless another amount is prescribed in terms of the MFMA.
- 2.6.14** Clause 53 provides for the designation of a person to exercise specific powers, duties or functions of accounting officer or accounting authority during intervention. The provincial treasury may designate a person determined by it to exercise, during the intervention, any specific powers or perform any specific duties or functions of the accounting officer or accounting authority of the municipality or municipal entity in terms of the MFMA if the provincial treasury has not replaced the accounting officer or accounting authority of the



municipality or municipal entity as so prescribed. The provincial treasury may designate a person to exercise, during the intervention, any specific powers, duties or functions of the accounting officer of a municipality or accounting officer of a municipal entity under the sole or shared control of the municipality, in any of the instances prescribed. If the provincial treasury designates a person, that person exercises the powers or performs the duties or functions necessary for the purpose of achieving the objective of the relevant intervention step, to the exclusion of the accounting officer or accounting authority of the municipality or municipal entity. The Provincial Treasury may exercise its powers only after consultation with the National Treasury, if the budget of the municipality exceeds R500 million, unless another amount is for purposes of this section prescribed in terms of the MFMA.

- 2.6.15** Clause 54 provides for the issuing of a notice of intervention in a municipality in terms of section 139(1), (4) or (5) of the Constitution, within 14 days after the provincial executive has taken a decision to intervene, and the publication of that notice in the *Gazette*. The notice of intervention must contain at least a statement that the provincial executive is intervening in the municipality in terms of section 139(1), (4) or (5) of the Constitution because of a failure by the municipality—
- (a) to fulfil an executive obligation;
  - (b) to approve a budget or revenue-raising measures to give effect to the budget; or
  - (c) as a result of a crisis in its financial affairs as contemplated in section 139 of the MFMA.
- 2.6.16** The provincial executive must also submit a copy of the notice of intervention, together with any attachments, to the Minister, the NCOP, and other key stakeholders. If a provincial executive is unable to implement section 139(4) or (5) of the Constitution, the Minister, in consultation with the NEM responsible for the functional area of the executive obligation may, after approval by the national executive, intervene in terms of section 139(1), (4) or (5) of the Constitution.
- 2.6.17** When the provincial executive intervenes in terms of section 139(1)(b) or (c), 139(4) or 139(5) of the Constitution, clause 55 requires that it must submit a notice referred to in section 139(2)(a), 139(3)(a) or 139(3)(6) of the Constitution to the Minister, the NCOP and the provincial legislature.
- 2.6.18** Clause 56 requires the relevant MEC or PCC to produce a review report every three months on the intervention and submit it to the provincial executive. On review of the report, the provincial executive may amend the intervention notice, revise the existing intervention step or terminate the intervention.
- 2.6.19** Clause 57 requires the provincial executive to notify the municipality in writing when the intervention notice is amended, and such amended notice must be submitted to the relevant stakeholders.
- 2.6.20** Clause 58 requires the provincial executive to, after a revision to the intervention notice, notify the municipality and relevant stakeholders.
- 2.6.21** Clause 59 provides for various instances in which an intervention is terminated and requires the provincial executive to submit a copy of the termination notice various stakeholders, and to publish a notice of termination in the *Gazette*.

- 2.6.22** Clause 60 requires the provincial executive to invoke section 139(4) or (5) of the Constitution during an intervention in terms of section 139(1) of the Constitution if conditions for an intervention in terms of section 139(4) or (5) of the Constitution are met, and supersedes the existing intervention invoked in terms of section 139(1) of the Constitution, subject to section 139(3) of the MFMA. Before a provincial executive takes a decision on the dissolution of a Municipal Council in terms of 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 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.
- 2.6.23** Clause 61 provides for the Minister or the NCOP to review an intervention in terms of section 139(2)(a)(i) or 139(3)(a)(i) of the Constitution, and may thereafter indicate whether the intervention should be allowed to proceed, and to inform the provincial executive accordingly.
- 2.6.24** Clause 62 requires the provincial executive to submit progress reports, every three months, to the Minister and the NCOP on interventions made in terms of section 139(1). Progress reports done after conclusion of a review must also be submitted to the Minister and the NCOP within 14 days after such a review. A copy of each progress report must simultaneously be submitted to all relevant organs of state.
- 2.6.25** Clause 63 requires that the provincial executive must, on request by the Minister or the NCOP, submit to the Minister and the NCOP such information concerning an intervention in terms of section 139(1), (4) or (5) of the Constitution, as the Minister may require. The provincial executive must, on request by the NCOP or the provincial legislature, submit to the NCOP or the legislature such information concerning an intervention in a municipality in terms of section 139, as the NCOP or the legislature may require. The provincial executive, the Minister, the NCOP or the provincial legislature makes recommendations on any intervention in a municipality in terms of section 139(1) of the Constitution, which the provincial executive must consider. Reasons must be provided if the recommendations are not implemented.
- 2.6.26** Clause 64 requires municipalities to share information with MECs if such request is made to enable the MEC to take a decision in relation a section 139 intervention.
- 2.6.27** Clause 65 deals with capacity-building and the transfer of skills during interventions and requires the national executive and provincial executive to identify the capacity and skills needed and to prepare a plan of action setting out the ways and means to ensure that provinces and municipalities acquire the capacity and skills that they lack.
- 2.6.28** Clause 66 requires the provincial executive to, within 30 days after an intervention has ended, submit a report on the intervention to, amongst others, the Minister, the NCOP, and any relevant NEM.

## **2.7 CHAPTER 6: ADMINISTRATOR, NATIONAL AND PROVINCIAL EXECUTIVE REPRESENTATIVE**

- 2.7.1** Clause 67 requires the Minister to compile and publish in the Gazette, from time to time, a list of persons who may be appointed as an administrator, or as an NER or PER. These persons must have the minimum skills, expertise, competence and qualifications, be fit and proper persons and apply in the prescribed manner to be included in the list. This list excludes officials that are presently in the employ of a national or provincial department, or a municipality, or a national, provincial or municipal entity.
- 2.7.2** Clause 68 indicates that an administrator, NER or PER may be composed of more than one person acting collectively in terms of the directive of the national executive or provincial executive and must be appointed in terms of a written agreement.
- 2.7.3** Clause 69 deals with the appointment of the administrator, NER or PER, and provides that—
- (a) the provincial administration is accountable to the NER;
  - (b) the provincial executive must appoint a person as administrator or PER to manage the affairs of the municipality; and
  - (c) the municipal administration is accountable to the PER.
- 2.7.4** Clause 70 provides for the term of appointment of the administrator, and the NER or the PER, and which term may not be beyond the duration of the intervention, except to perform such transitional functions as may be agreed with the national or provincial executive. A person whose appointment was terminated by the national or provincial executive must be struck off from the list published by the Minister.
- 2.7.5** Clause 71 requires the relevant NEM to issue to the administrator or NER or PER a written mandate and the Terms of Reference authorising the administrator, NER or PER to perform their responsibilities in relation to the intervention. The provincial executive must issue to an administrator, NER or PER a written mandate or terms of reference authorising them to exercise the executive obligations in relation to the various types of intervention (139(1), 139(4)(a) or 139(5)(b)(i) of the Constitution.
- 2.7.6** Clause 72 requires the administrator or NER or PER to submit a report to the national or provincial executive, as the case may be, which report must include the results of the intervention and an indication as to whether the relevant province or municipality can sustainably fulfil the executive obligation that gave rise to the intervention.

## **2.8 CHAPTER 7: MISCELLANEOUS**

- 2.8.1** Clause 73 provides that the intervening national department or intervening provincial department is responsible for any costs arising from the appointment of the administrator, NER or PER for purposes of an intervention in a province or a municipality. These costs must be recovered from the relevant provincial department or relevant municipality, where appropriate.
- 2.8.2** Clause 74 provides for offences and penalties for any person, or member, or provincial or municipal official in relation to interventions in terms of sections 100 and 139 of the Constitution, and indicates that a person who commits an offence, is liable on conviction to a fine or imprisonment for a period not exceeding 10 years, or to both such a fine and imprisonment.

- 2.8.3** Clause 75 provides that the Minister is the chairperson of the NCC, and the relevant department responsible for cooperative government is responsible for providing administrative and support services to the NCC. The relevant MEC responsible for local government and the relevant MEC responsible for finance co-chair the PCC, and the relevant provincial department responsible for local government is responsible for providing administrative and support services to the PCC.
- 2.8.4** Clause 76 provides for any NEM appointed by the national executive to conclude a Memorandum of Understanding with their counterpart MEC. Amongst other matters, the MOU—
- (a) must provide for any matter prescribed in the Act;
  - (b) may be coordinated by the NCC or other intergovernmental forum; and
  - (c) must describe the roles and responsibilities of each organ of state.
- 2.8.5** Clause 77 provides that the Minister may make regulations not inconsistent with the Act, and insofar as such matters relate to matters dealt with in the PFMA or the MFMA, do so in consultation with the Minister of Finance.
- 2.8.6** Clause 78 provides for the short title and commencement.

### **3. DEPARTMENTS/BODIES/PARTIES CONSULTED**

- 3.1 Since the development and completion of the draft Bill, the Department consulted with all national departments, provincial departments of Treasury and Cooperative Government, and South African Local Government Association (SALGA).
- 3.2 One-on-one engagements were held with the National Treasury, SALGA, 2018 North-West interventions section 100 Administrators, the Department of Public Service and Administration, and Department of Performance Monitoring and Evaluation (DPME) on the Bill.
- 3.3 On the other hand, consultative Roadshows were undertaken with MuniMECs/TROIKAs and office-bearers in all nine provinces. Furthermore, joint Interventions Roadshows were conducted led by the Deputy Ministers of Finance and COGTA on interventions procedures in all nine provinces.
- 3.4 The Bill was also consulted with CoGTA MINMEC; Transport MINMEC; Environmental Affairs MINMEC; and Human Settlement, Water and Sanitation Technical MINMEC. At the same time, the National Economic Development and Labour Council (NEDLAC) was engaged, where the union federations are represented (and these representations include those of the 3 Labour Unions operating in the local government space namely, SAMWU, IMATU and MATUSA.).

### **4. IMPLICATIONS FOR PROVINCES**

- 4.1 The provinces will be the primary implementors of the Bill once enacted into an Act of Parliament. The Bill will be a statutory guide to provinces when invoking interventions in terms of section 139 of the Constitution. The Bill is meant to guide the provinces on all substantive and procedural requirements provided for in the Constitution.
- 4.2 Provinces, in terms of the Bill, will have more latitude to request the national government for support as provided for in terms of section 125 of the Constitution, for the provinces to be able to execute their executive obligations.

## 5. FINANCIAL IMPLICATIONS FOR STATE

- 5.1 There are no structural or operational changes that will result from implementing the Bill.
- 5.2 The costs of the interventions may vary, depending on which executive obligations have not been executed, and what kind of resources would be required to mitigate against the challenges encountered by the implementing sphere of government.
- 5.3 The costs of interventions are not fixed, and they depend as to what the challenges are out of the diagnosis, and what resources and costs would be required.
- 5.4 The unanticipated costs associated with the interventions may occur when there is no budget left in the provincial department or the municipality of the obligation not being fulfilled, or when the provincial department responsible for municipalities not having sufficient budgets to deal with the implementation of interventions.

## 6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department are of the opinion that the Bill should be dealt with in terms of the procedure prescribed by section 76 of the Constitution since it deals with interventions in provinces and municipalities and thus its provisions affect the interest of provinces in substantial measure.
- 6.2 The Constitutional Court, in the case of *Tongoane v Minister for Agriculture and Land Affairs* (CCT100/09) [2010] ZACC 10; 2010 (6) SA 214 (CC); 2010 (8) BCLR 741 (CC) (11 May 2010), lays down the test for determining if a Bill ought to be tagged as either a section 75 or 76 Bill. The test is whether the provisions of the Bill fall within a functional area listed in Schedule 4 to the Constitution or whether the provisions, in substantial measure, affect the interests of provinces.
- 6.3 The State Law Advisers are of the opinion that it may be necessary for this Bill to be referred to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(ii) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since its provisions pertain to matters referred to in section 154(2) of the Constitution.