

# **NATIONAL COUNCIL OF PROVINCES**

Induction Manual for Permanent Delegates  
May 2019



**6<sup>th</sup>**  
**DEMOCRATIC  
PARLIAMENT**



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## **1. Introduction**

### **The Aim of this Booklet**

At the start of every term of Parliament the National Council of Provinces (NCOP) conducts an induction training programme for its permanent delegates. The aim of the programme is to capacitate delegates to fulfil their duties optimally by equipping them with required information and providing the opportunity to share experiences and best practices. This booklet is intended to accompany presentations made during the course of the induction training programme and to serve as an easy reference guide in future. As such, it covers critical information on specific topics, but it is by no means an exhaustive guide on said topics.

### **A Brief History of the National Council of Provinces**

Negotiations prior to South Africa's first democratic elections in 1994 led to the adoption of an Interim Constitution, which made provision for two houses of Parliament, the National Assembly (NA) and the Senate. However, the view was that the Senate was unable to meet the needs of the new system of cooperative government and intergovernmental relations. Following extensive research, consultation, and negotiation, the National Council of Provinces (NCOP) was established to replace the Senate after the signing into law of the country's new Constitution on 10 December 1996. Today, South Africa has a bicameral Parliament (two Houses) supported by a joint administration. The National Assembly (NA) is the House directly elected by the voters, while the National Council of Provinces (NCOP) is constituted by delegates designated by provincial legislatures. The first sitting of the NCOP took place on 6 February 1997.

### **The mandate of the NCOP**

In terms of section 42(4) of the Constitution, through participation in the national legislative process and by providing a national forum for consideration of issues affecting provinces, the NCOP is constitutionally mandated to ensure that provincial interests are taken into account in the national sphere of government.



Because of its ability to bring the three spheres together and to counterbalance their exercise of power, the NCOP also plays a unique role in overseeing adherence to the principles of Cooperative Government and Intergovernmental Relations provided for in Chapter 3 of the Constitution. It ensures that the three spheres of government work together in performing their functions in terms of the Constitution and that in doing so, they do not encroach on each other's area of competence. It further cultivates synergy between the spheres on matters of concurrent competence.



## **2. Composition of the NCOP**

In terms of section 60 of the Constitution, the NCOP consists of 90 provincial delegates. This means that each province is equally represented by 10 delegates in the NCOP, collectively referred to as provincial delegations. The ten delegates constitute a single delegation irrespective of the political parties each delegate represents.

During their first sittings after elections, each provincial legislature appoints permanent delegates to the NCOP in accordance with the nominations of political parties represented in that provincial legislature.

In terms of section 61 of the Constitution of the Republic of South Africa (1996), parties represented in the provincial legislature are entitled to delegates in the province's delegation in proportion of their representation in the provincial legislature. The formula to determine the number of delegates (permanent and special) each party represented in the legislature is entitled to, is set out in Part B of Schedule 3. Provincial legislatures determine how many of each party's delegates will be permanent delegates and how many will be special delegates.

A provincial delegation consists of six permanent delegates and four special delegates. The permanent delegates are appointed by the nine provincial legislatures. The four special delegates consist of the Premier of the province and three other special delegates assigned from members of the provincial legislature. They are selected by each province from Members of the Provincial Legislature (MPLs) and are rotated depending on the subject matter being considered by the NCOP. The Premier of a province is the head of the province's delegation but he or she can delegate any other delegate to lead the delegation in his or her absence.

Each provincial delegation has a Provincial Whip who is responsible for co-ordination of the work of the provincial delegations in the NCOP. The Chief Whip of the NCOP co-ordinates the business of the House and oversees the duties of the provincial whips, while each province has a provincial whip who represents the Premier as leader of the delegation in the normal course of events.





Organized local government is also represented in the NCOP through the South African Local Government Association (SALGA). SALGA is entitled to 10 representatives who may participate in the debates and other activities of the NCOP and its committees, but may not vote.

### 3. The First Sitting of the NCOP after a National Election

The first sitting is convened by the Secretary in consultation with the Chief Justice. The Order of proceedings is normally as follows

- the swearing-in of Members;
- the election of the Chairperson;
- the election of the Deputy Chairperson;
- the election of other Presiding Officers (the House Chairpersons); and
- the election of the Chief Whip.

#### The Symbol of Authority

The symbol of the authority of the Officer Presiding is the Black Rod. It is carried by the Usher of the Black Rod. When the Black Rod is placed upright on the right hand side (or left hand side (normally during joint sittings) of the Officer Presiding, it symbolises that the House is formally in session. Its removal by the Usher symbolises adjournment of the proceedings of House.

#### The meaning of different elements of the Black Rod

The Black Rod is the embodiment of the new democratic order. It was designed at the time when there was a call to transform Parliament, together with its symbols, to reflect an African identity. Different elements carry the following meaning:

- the shape of the Black Rod is in the form of a knobkierie, an Africa symbol of defence, of authority and leadership;
- the Protea, at the head of the Black Rod, is South Africa's national flower, and symbolises national pride;
- the Protea is made up of two rows of nine leaves, each representing one of the nine provinces;
- lower down from the Protea is a section of beadwork, reflecting on South Africa's diverse people and its rich cultural heritage;
- the clasping hands in gold symbolises freedom, peace and cooperation; and the Black Rod stands in a drum when the NCOP is sitting;





- the drum is an expression of the African tradition of drum calling people to gather and speak. This is also symbolic of our achievement of democracy through dialogue.
- on the drum is a band of silver decorated with the following elements of the various provincial coats of arms:
  - The Red Aloe: Eastern Cape
  - A cluster of blossoms of Orange River Lily: Free State
  - The chemical symbol for Iron: Gauteng
  - Floral emblem: KwaZulu-Natal
  - The Baobab Tree: Limpopo
  - The Red Barberton Daisy: Mpumalanga
  - The Thorn Tree: Northern Cape
  - The Calabash Gourd: North West
  - The bunch of Grapes: Western Cape

### **Unlawful Removal of the Black Rod**

Only the Usher of the Black Rod is allowed to carry or remove the Black Rod. An attempt to seize or actual seizure of the Black Rod by any other person would amount to gross disorderly conduct. In our Parliament we have yet to experience such a transgression.

During a parliamentary debate in the National Assembly of Lesotho a Member seized the ceremonial mace and walked out, forcing adjournment of business. This was sparked by a debate on constitutional amendments regarding the powers of the Prime Minister to prorogue Parliament. As a fierce debate on the matter ensued, a Member left his seat, took the Mace, and walked out, forcing the session into an unexpected break. The National Assembly's Serjeant-at-Arms later returned the Mace to its rightful place. The Deputy Speaker of the National Assembly ordered the Member to immediately withdraw from the House, ruling that his action had demeaned the Speaker's authority.

In Nigeria, during the sitting of the Senate, three men burst into the Chamber and snatched the legislature's ceremonial mace in an incident the body's spokesperson blamed on a lawmaker who had been suspended. The Upper



House of Parliament resumed 15 minutes later, after replacing the mace with a spare one.

### **Swearing in of Permanent Delegates**

Only permanent delegates are sworn in as permanent delegates to the NCOP. Permanent delegates are not members of the provincial legislature. In terms of section 62(3) a person who is a member of a provincial legislature ceases to be a member of the provincial legislature once appointed as a permanent delegate. They may however attend and participate in the proceedings of the provincial legislature and its committees but may not vote (section 113 of the Constitution).

Since special delegates are members of the provincial legislatures, they are sworn in as members of the provincial legislature by that provincial legislature. In terms of section 62(6) of the Constitution, before permanent delegates begin to perform their functions in the National Council of Provinces, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

They may do so in the language of his or her choice. By the following oath or affirmation, the permanent delegate undertakes to respect and obey the Constitution and all other laws of the Republic:

I, A.B., swear/solemnly affirm that I will be faithful to the: Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I solemnly promise to perform my functions as a permanent delegate to the National Council of Provinces to the best of my ability. (In the case of an oath: So help me God.)

The oath or affirmation is binding on the conscience of the permanent delegate.



Delegates will either when their names are called out, or when they appear as part of the provincial delegation to take their places in front of the Table, take the oath or make the solemn affirmation<sup>1</sup>.

- Permanent delegates are sworn in by the Chief Justice (CJ) of the Republic of South Africa, or by a judge designated by the Chief Justice, during the first sitting of the NCOP.
- The Chief Justice must request permanent delegates to read the oath/solemn affirmation in the language of their choice. An Oath ends with the permanent delegate raising a right hand and uttering the words “so help me God”.
- The swearing in takes place in terms of the Rules determined by the Chief Justice.
- Members are called per province to take the oath or solemn affirmation.
- They then sign their certificates.
- After the swearing in, delegates elect office bearers, such as the Chairperson, Deputy Chairperson, and Chief Whip of the Council.

### **Election of Chairperson and Deputy Chairpersons of the NCOP**

Once permanent delegates have been sworn in, the Chief Justice proceeds to the election of the Chairperson of the NCOP by the permanent delegates. The election takes place in terms of the Rules determined by the Chief Justice.

### **Nomination**

The Chief Justice will call for nomination(s) of a permanent delegate(s) to serve as Chairperson of the NCOP. Any permanent delegate qualifies to be nominated as the Chairperson of the NCOP. A delegate wishing to nominate a permanent delegate for the position of a Chairperson must complete a Nomination Form (the Form). The Form must be signed by the nominator and seconder. The nominee must also sign the Form to accept the nomination.

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<sup>1</sup> The space between the Presiding Officer and the delegates, where the Procedural Staff is seated, is referred to as “the table”.



When called upon to nominate by the Chief Justice, a permanent delegate rises and says (*standing*):

*“Chief Justice, I nominate \_\_\_\_\_ for election as Chairperson of the National Council of Provinces.”*

Upon nomination, the Chief Justice calls for a seconder and confirm with the nominee whether he or she accepts the nomination. The Form will be presented to the Chief Justice. Should the Chief Justice be satisfied with the completeness of the information contained in the nomination form, he or she will announce:

**“I have satisfied myself that the nomination Form has been properly completed.”**

The Chief Justice then calls for further nominations, if any. In the absence of further nominations, the Chief Justice then declares the nominated candidate as being duly as the Chairperson of the NCOP.

In the event of further nominations, the Chief Justice must declare that an election will take place. The vote is taken by secret ballot. In terms of section 65(1) of the Constitution each provincial delegation has one vote. The votes are cast in accordance with the authority conferred by the provincial legislatures (mandates). Provincial delegations may not vote against the authority conferred on them by the provincial legislature irrespective of the political affiliation of the provincial delegation. The person who receives the majority of votes is declared elected.

At this stage, the Chief Justice leaves the Chair and invites the Chairperson of the NCOP to take the Chair.

### **Election of Deputy Chairperson, other Presiding Officers and the Chief Whip of the NCOP**

The Chairperson of the NCOP presides over the election of the Deputy Chairperson and other Presiding Officers. Other Presiding Officers are the other Deputy Chairperson and House Chairpersons. Unlike a Chief Whip of a



party, the Chief Whip of the NCOP is elected. The Rules of the NCOP apply to the election of the Deputy Chairpersons, other Presiding Officers and Chief Whip.

### **Term of office of Presiding Officer**

Presiding Officers hold office for five years unless their terms as delegates expire earlier. The other Deputy Chairperson is elected for a term of one year.

### **The Roles of Presiding Officers**

#### **The functions of the Chairperson of the NCOP**

The main function of the Chairperson and other Presiding Officers is to preside over the proceedings of the NCOP and joint sittings. In addition, the Chairperson of the NCOP is responsible for:

- providing strategic direction and political leadership to the House;
- acting as spokesperson for the House in its relations with authorities or persons outside Parliament;
- directing and managing the overall business of the House;
- chairing Rules and Programme Committees;
- co-chairing the Joint Rules and Joint Programme Committees
- ensuring an effective and efficient relationship with the National Assembly, the Executive, the Provinces, and Local Government.

#### **The functions of the Deputy Chairperson and other Presiding Officers**

The Deputy and other Presiding Officers assist the Chairperson of the NCOP in carrying out the functions of the Office of the Chairperson. The Deputy Chairperson of the Council performs the functions of the Chairperson whenever the Chairperson of the Council is absent or unable to perform the functions of Office of the Chairperson, or during a vacancy in the Office of Chairperson. In the absence of the Deputy Chairperson, the other Presiding Officers perform the functions of the Office of the Chairperson. Any Officer performing the functions of the Office of the Chairperson has all the responsibilities, powers,



and functions of the Chairperson. Other functions of the Presiding Officers are provided for in the Rules.

### **The Whippery in the Council**

There is a structure known as the Whippery. The Whippery is headed by the Chief Whip of the NCOP. The Whippery consists of the Chief Whip, Provincial Whips, Programming Whip and party representatives.

### **Functions of the Whippery and party representatives**

The Chief Whip, the Provincial Whips and Party Representatives assist the Presiding Officers with political management and co-ordination of the programmes of the NCOP. The Provincial Whips are responsible for liaison between the NCOP and their respective provincial legislatures ensuring the synchronisation of the programmes of the NCOP and those of the provincial legislatures. Party representatives, on the other hand, serve as a link between their parties and the NCOP.

### **Function of the Programming Whip**

The Programming Whip is responsible for compiling the Programme of the NCOP – ensuring that the activities of the NCOP are programmed. These include sittings, committee activities and overall programmes like taking Parliament to the People, Local Government Week and Provincial Week.

### **Delegated Whips**

Delegated Whips assist the Chief Whip in facilitating and managing the daily operations of the NCOP. Delegated Whips are assigned specific functions such as accommodation and the processing of leave applications.

### **Sources of Parliamentary Law/Procedure**

Parliamentary Law is derived from a number of sources:

- Constitution, 1996





- Determination of Delegates (National Council of Provinces) Act, 1998 (Act No. 69 of 1998)
- Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act, 2004 (Act No. 4 of 2004)
- Mandating Procedure of Provinces Act, 2008 (Act No. 52 of 2008)
- Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No. 10 of 2009)
- Money Bills Amendment Procedure and Related Matters Amendment Act, 2009 (Act No. 9 of 2009)
- Rules of the NCOP/ NA
- Joint Rules of Parliament
- Rulings by Officers Presiding
- Practice
- Convention



#### **4. Debates and Decorum in the NCOP**

Just imagine if there were no rules governing the conduct of the Members in the House/Committees.

Parliamentary rules are those regulations that have been adopted by a deliberative legislative body to control its business and proceedings. Parliamentary rules are also commonly referred to as parliamentary law. The purpose of the Rules of the House in general, is to ensure:

- debates are conducted in a free and civil manner;
- the decorum/integrity of the House is maintained;
- differing viewpoints are expressed in a respectable manner;
- worthwhile debate can take place; and
- an approved and uniform method of conducting meetings in a fair, orderly, and expeditious manner.

#### **Rules of debate and freedom of speech**

The conduct of delegates in the House is regulated by the Rules. Delegates have freedom of speech in the House and its committees. They do not incur any criminal or civil liability for anything said or produced in the House or its committees.

The officer presiding cannot police what delegates post on social media. The Chair should not be expected to rule on any incident that might arise from something said on social media by a delegate of the House. Delegates need to know that what they say on social media is not protected by parliamentary privilege (see NCOP Rule 30).

Freedom of speech does not mean freedom to:

- converse aloud during the proceedings (Rule 32);
- engage in irrelevant or repetitive arguments (Rule 33);
- interrupt other delegates during debates (Rule 36);
- speak as long as they want during a debate (Rule 45);
- use offensive and unbecoming language (Rule 46);



- reflect on the merits of matters pending before the courts (sub judice) (Rule 48);
- defame other delegates; or speak at any time (Rule 53).

Much of our parliamentary procedure has developed through continued use and is not written in the Rules.

Other key aspects of contemporary parliamentary practice which ensure business is conducted in a decent and orderly manner go well beyond the rules of debate and rules concerning the conduct of members, and include:

- Delegates do not refer to one another by their names but rather by title or position (Hon. President; Hon. Deputy President; Hon. Chairperson; Hon. Deputy Chairperson; Hon. House Chairperson; Hon. Chief Whip).
- Delegates may refresh themselves with glasses of water during debate, but the consumption of any other beverage or food is not allowed.
- The maiden speeches should be relatively uncontroversial and the delegate should not be interrupted when delivering his/her speech.
- Delegates should bow to the officer presiding when entering or leaving the Chamber.
- Delegates coming into the Chamber must take their seats promptly and not remain in the aisles.

### **Role of officer presiding**

- The officer presiding is responsible for maintaining order in the House, calling delegates to speak, ruling on points of order, and ensuring adherence to the Rules.

### **Points of order and Question of Privilege**

- During the debate, the terms “point of order” and “question of privilege” are sometimes used interchangeably.
- It is important to differentiate between the two. A question of privilege arises when there is an alleged breach of the powers, rights or immunities of the Council, a committee or a delegate – what we refer to as parliamentary privilege. Questions of privilege affecting the Council may include matters of comfort, amplification, or safety. For example, it



may be difficult to hear the member speaking due to high noise level emanating from outside the House. In this case, a question of privilege could be raised to close the doors and windows. Such questions have precedence over questions of personal privilege should they conflict.

- Privilege affecting a single member is called a question of personal privilege. An example is when a member needs to be excused for illness or personal emergency. The member rises immediately and without waiting to be recognized states, "Hon Chairperson, I rise on a question of personal privilege". If the member has interrupted a member speaking, the chair must determine if the matter is so urgent that it demands immediate attention; otherwise, the member will have the floor immediately after the other member has finished speaking.
- A point of order, on the other hand, relates strictly to procedural issues – the internal proceedings of the Council or a committee – and arises when there may have been a departure from the Rules of the Council, established procedure or customary practice.
- A delegate shall not raise a point of order to ask for information; or to explain his position.

### **Rulings**

- As the arbiter of House proceedings, the Chairperson's duty is to preserve order and the decorum of the House and to decide on any matters of procedure that may arise.
- When a decision on a matter of procedure, a point of order or question of privilege is raised, the Chair will make a ruling on the matter.
- The Chair may rule on the matter immediately or in the next sitting of the House.
- The Chair's ruling on a point of order / privilege is final and binding, and may not be challenged or questioned in the House. However, an aggrieved member may submit in writing a substantive motion to the Chairperson challenging the ruling.



## **Breach of rules**

A breach of Rules carries the following penalties:

- an order to leave the House for the remainder of the day for being in contempt of the authority of the Chair or gross disorder (*Rule 37*),
- an order to leave the precincts if the order to leave the House is insufficient (*Rule 38(1)*); and
- suspension of the offending member(s) if the order to leave is insufficient (*Rule 38(2)*). See *Speaker of the National Assembly vs De Lille*, where the Supreme Court of Appeal held that the National Assembly had no constitutional authority to punish De Lille for making a speech by means of an order suspending her from the proceedings of the House.

## **Acting for Absent Member**

If the member in charge of a motion or an order of the day is absent from the Council, another member authorized by the absent member may take charge of the motion or order.



## **5. Bills**

### **What is a bill?**

A bill is a proposed legislation introduced in Parliament for consideration.

### **Introduction of bill**

A bill may be introduced in either the NCOP or NA, depending on its nature. Only a Minister or a member or a committee may introduce a bill in the NA. Since Ministers are not members of the NCOP, they may not introduce bills in the NCOP. Only a delegate or a committee may introduce a bill in the NCOP.

### **Where may a bill be introduced?**

In terms of section 73(1) of the Constitution any bill may be introduced in the NA. Only bills affecting provinces, except the Division of Revenue Bill, may be introduced in the NCOP.

### **Who may introduce a bill in the NA?**

In terms of section 73(2) only a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, may introduce a Bill in the Assembly. Only the Cabinet member responsible for national financial matters may introduce a money bill (e.g. Appropriation Bill) or a Division of Revenue Bill (section 214 bill).

### **Who may introduce a bill in the NCOP?**

In terms of section 73(4) only a member or committee of the National Council of Provinces may introduce a Bill in the Council.

### **Pre-introduction Requirements**

Some legislation and the Rules provide that certain requirements should be met before introduction of a bill (pre-introduction requirements). For example, section 74(4) - (9) provides for the legislative procedure for amending the Constitution (NA Rules 295 - 304; NCOP Rules 85, 215 - 228 and Joint Rules 172 -180).





It requires that proposed amendments must:

- be published for comment in the Government Gazette at least 30 days before introduction;
- be submitted to the provincial legislatures for views; and
- be submitted to the NCOP for public debate (if the Bill does not have to be passed by the NCOP).

### **Classification/types of bills**

Every bill that is introduced is classified either as a bill amending the Constitution (section 74) or ordinary bill not affecting provinces (section 75) or ordinary bill not affecting provinces (section 75) or a money bill (section 77). Each section prescribes the procedure to be followed in dealing with a bill.

### **Who classifies bills?**

Bills in Parliament are classified by the Chairperson of the NCOP, Deputy Chairperson, Speaker of the National Assembly and Deputy Speaker. They are collectively referred to as the Joint Tagging Mechanism. While the State Law Advisors may propose classification of a bill, the final decision of how a bill is classified is that of the Joint Tagging Mechanism.

### **When must a bill be classified?**

A bill may be classified immediately after it has been introduced or if it was introduced in the NA, before a Portfolio Committee reports on the bill.

### **The criterion/test of classifying a bill**

Bills are classified according to whether they amend the constitution (section 74) or they do not affect (section 75) or affect provinces (section 76) or they are appropriate money or impose taxes (money bills) (section 77). The classification of the bill determines the constitutional procedure to be followed in dealing with that bill. It is therefore necessary for a committee dealing with a bill to determine the extent to which the content of the bill affects provincial interests. To ask whether a bill deals with matter of national or concurrent competence may not necessarily be useful to determine whether it affects or it





does not affect provinces. A bill which on the face of it does not affect provinces, may when dealing with its substance turn out to affect provinces.

The test for classification of bills was set out in the case of *Tongoane and Others V National Minister for Agriculture and Land Affairs and Others*. The Constitutional Court held that any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. While the main subject-matter of a Bill (a key factor in determining legislative competence) may not affect provinces, some of its provisions may nevertheless have a substantial impact on the interests of provinces. The test for the tagging of Bills must be informed by the need to ensure that the provinces exercise their appropriate role, fully and effectively, in the process of considering national legislation that substantially affects them.

### **Consequences of incorrect classification a bill**

Incorrect classification of a bill leads into following a wrong constitutional procedure in passing that bill. If a bill is passed following a wrong procedure, that will result in the subsequent law being declared unconstitutional. For instance, Local Government: Municipal Systems Amendment Bill was dealt with as a bill not affecting provinces (section 75). The subsequent Local Government: Municipal Systems Act was declared unconstitutional because it was classified and dealt with as a bill not affecting provinces instead of as a bill affecting provinces (*South African Municipal Workers' Union v Minister of Co-operative Government and Traditional Affairs and Others*).

### **The power of the NCOP in the legislative process**

In terms of the Constitution, the NCOP has the legislative powers to consider, pass, amend bills affecting provinces (section 76).

### **Bills not affecting provinces**

The NCOP does not have the power to amend (make changes to) bills not affecting provinces (section 75) and money bills (section 77). The NCOP may either pass a bill as referred to it by the NA or it may propose amendments to a bill. If the NCOP pass a bill without proposing amendments, the bill will be sent to the President. The President may sign a bill into law. If the President is



not satisfied with the constitutionality of a bill, the President may refer it to the NA for reconsideration. For a bill to be passed, it must be supported by the majority of permanent delegates present in the House. In this instance each delegate has the right to vote.

If the NA amends a bill, the proposed amendments together with a bill must be submitted to the NA for consideration. The NA may either agree with or reject the amendments proposed by the NA. If the NA rejects the amendments, it may pass the bill without amendments. If it agrees with the amendments, it may pass the bill with amendments.

### **Bills affecting provinces (section 76)**

The NCOP has the power to amend (change) a bill affecting provinces. If a bill was introduced in the NA, the NCOP may pass the bill as referred to it by the NA. If the NCOP passes a bill without amendments, the bill will be sent to the President. The President may assent to and sign a bill into law. If the President is not satisfied with the constitutionality of a bill, the President may refer it to the NA for reconsideration. For a bill to be passed, it must be supported by at least five provincial delegations. If it is a bill amending the Constitution, it must be supported by at least six provincial delegations. Each delegation has one vote.

If the NCOP amends the bill, the amended bill must be submitted to the NA. The NA may either agree with or reject the amended. If the NA passes the amended bill, the bill must be submitted to the President for signature and assent. If the NA rejects the amended bill, the amended bill must be submitted for mediation.

The two Houses will then form a Mediation Committee consisting of 18 members (9 members from the NA and 9 members from the NCOP). The Mediation Committee is deadlock-breaking mechanism. The Mediation Committee may either agree on the bill as passed by the NA or an amended bill passed by the NCOP or a completely new bill.



## **Mandating process**

Bills affecting provinces require mandates. A mandate is the authority conferred by the province on the delegation to act on behalf of the province. This process is governed by the Mandating Procedure of Provincial Legislatures Act.

### **Three types of mandates**

- 1. Negotiating mandate:** (power to negotiate for a particular position in the Select Committee when dealing with a bill). This mandate is conferred by a committee of a provincial legislature. This mandate is applicable at committee stage.
- 2. Final mandate:** (power to vote in favour, against or abstain when the Select Committee finalises a bill). This mandate is conferred in a sitting of a provincial legislature (House). This mandate is applicable both at committee stage and voting stage in the House.
- 3. Voting mandate:** (the power to vote in favour, against or abstain when the sitting of the NCOP vote on a bill). This mandate is only applicable at voting stage in the House.

Where a position of a province does not change after the final mandate stage, the final mandate becomes the voting mandate. Then the final mandate is used as a voting mandate.

### **When are mandates required?**

The following require mandates:

- voting for the Chairperson of the NCOP (section 64 of the Constitution)
- bills amending the Constitution (section 74 of the Constitution)
- bills affecting provinces (section 76 of the Constitution)
- voting in the Mediation Committee (section 78 of the Constitution)



## **Format of mandates**

A mandate must comply with the format prescribed by the Mandating Procedure of Provincial Legislatures Act. It must reflect:

- Signature of a chairperson of committee in case of negotiating mandate and that of a Speaker of a provincial legislature in case of a final or voting mandate;
- Name of Bill;
- Number of Bill;
- Date of deliberation
- Vote of the Legislature (whether a provincial legislature votes in favour, against or abstains from voting)

## **Six-week cycle applicable to section 76 legislation**

The minimum period the NCOP takes to process a bill affecting provinces is six weeks. This in the Rules is referred to as a 6-week cycle. In terms of the Rules the Chairperson has the power to extend the period on request either by a Select Committee or a provincial legislature. The Select Committee or a provincial legislature that requests extension must provide reasons for the request.

The aim of the cycle is to allow provinces the opportunity and time required to process the legislation in terms of the Constitution and their rules.

### **Week 1**

The Minister or department initiating the Bill briefs the Select Committee on the principles and content of the bill. This is to enable permanent delegates to in turn brief their provincial legislatures. Special delegates may opt to attend the briefing meetings.

### **Week 2**

During this week permanent delegates are then expected to go to their provinces to brief the relevant provincial committees on the bill.





### **Week 3**

It is during this week that the NCOP and provincial legislatures must facilitate public involvement through public hearings or oral or written submissions or a combination of all these. At minimum, the NCOP and the provincial legislatures must give the public sufficient time to participate in the law-making process. (See practice note on the LAMOSJA Judgement on page 44.)

### **Week 4**

Once a committee of a provincial legislature has formulated its position on the bill, it gives the authority to its delegation to negotiate on its behalf (negotiating mandate). The delegations are required to report to the committees in the provincial legislatures who in turn must formulate the final position of the province and report this position to a provincial legislature.

### **Week 5**

This constitutes the final stage of consideration of a bill by a Select Committee. The Select Committee considers the final positions of the provinces on the basis of the final mandates conferred by the provincial legislature. The position of a province is binding on its delegation. During this stage the delegates may either vote against or in favour or abstain from voting. The Select Committee must then report a bill back to the House for consideration and adoption.

### **Week 6**

This is the final stage in the life of a bill where the NCOP considers a bill together with the report of a Select Committee. A bill will be adopted if at least five provinces support a bill. At this stage, the NCOP may decide to refer a bill back to a Select Committee for reconsideration and report to the House.

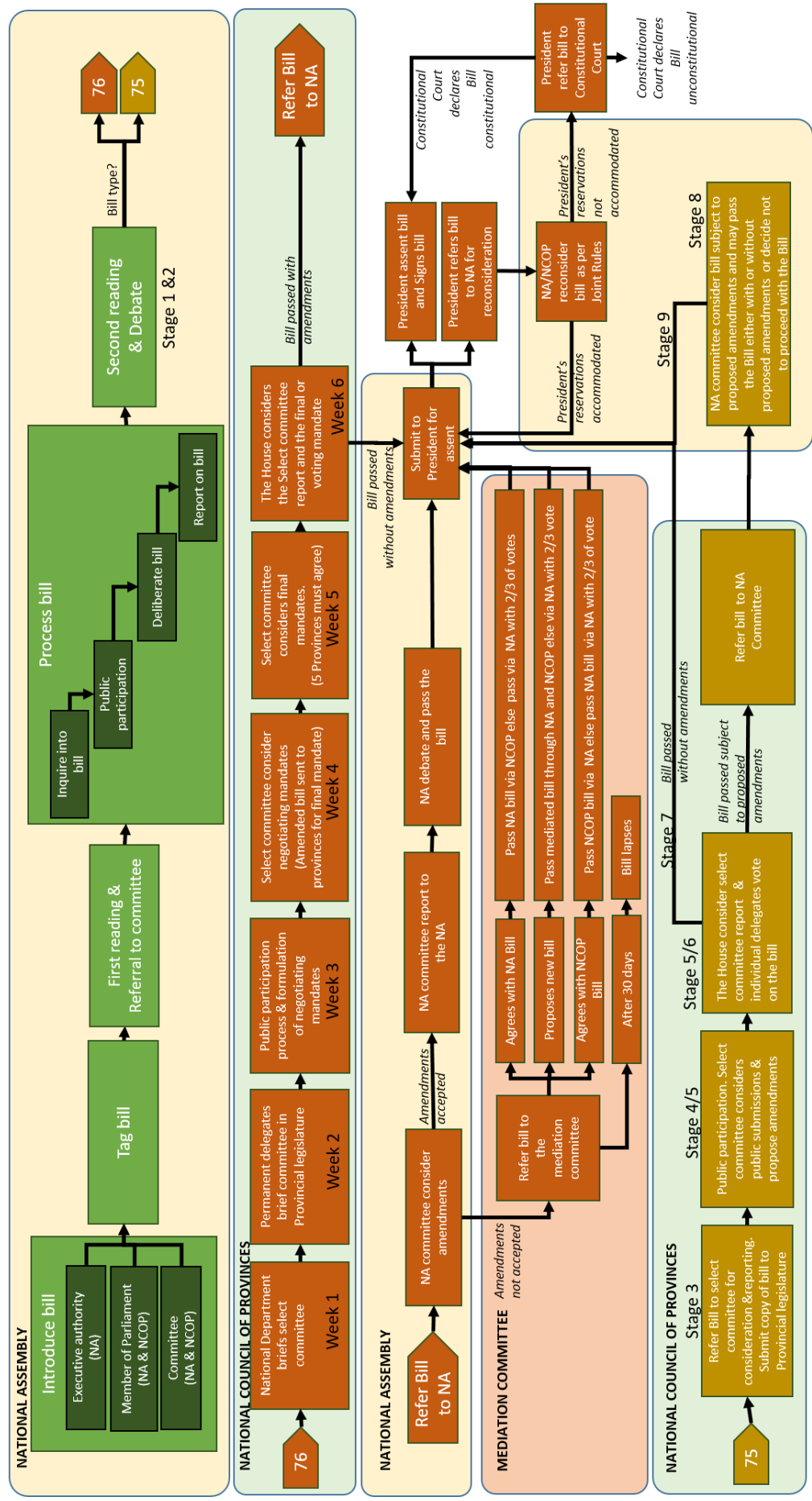


## Six-week cycle





## Law-making process







## Cover page

REPUBLIC OF SOUTH AFRICA

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**FINANCIAL MANAGEMENT OF  
PARLIAMENT AMENDMENT BILL**

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*(As amended by the Select Committee on Finance (National Council of Provinces)  
(The English text is the official text of the Bill))*

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(STANDING COMMITTEE ON FINANCE)

[B 1B—2014] ISBN 978-1-4850-0138-6

No. of copies printed ..... 1 000

which country does this Bill belong to?

Title of the Bill (see the last clause for the correct short title)

Legislative process / Language of the official text

Who introduced the Bill? (Executive, Committee, Private Member)

Bill number in Parliament – given after introduction

## General Structure of a Bill

- Long title: short summary of the content of the law – used to determine the purpose of an Act.
- “To....; and to provide for matters connected therewith.”
- “To amend the (name) Act, (year), so as to...; and to...”
- Preamble: sets out the background to the law, reasons for its adoption and objectives to be achieved. Not a requirement that laws have preambles.



- Note: Usually Amendment Bills do not have preambles - unless explanation will assist the reader. Preamble in Amendment Act does NOT form part of the principle Act.

“WHEREAS every child has the rights set out in section 28 of the Constitution; AND whereas the State must respect, promote, protect and fulfil those rights; BE IT therefore enacted....”

- Enacting provision – follows the preamble, if any. Provides for the power under which the law is made.
- “BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:”

### **Arrangement of sections**

A table of contents is not always found in legislation, but is recommended for inclusion in long, new principal Acts to assist readers in locating topics easily. It must reflect the changes and headings of clauses correctly. Amendment(s) to arrangement of sections is always at the end of a Bill.

- Clauses of the Bill – deal with actual content of the Bill.
- Short title and commencement
- Name of the Act - must be sufficient to identify the law and distinguish it from other laws; Acts of same name passed in same year are distinguished numerically e.g. Taxation Laws Second Amendment Act, 2011
- On publication / Date determined / Retrospective operation

### **Types of Clauses**

#### **Definitions**

Definitions are listed in alphabetical order and are not numbered. Only words used in the bill to which a specific meaning is ascribed need to be defined, and meaning of words may be extended or limited. Each definition should be a complete concept in itself.

- Offences and penalties
- Ensure that every contravention has a sanction



## **Regulations**

- Delegate the authority to make regulations (subordinate/delegated legislation) to other bodies.
- Process for making regulations (eg. to publish draft regulations for comment)

## **Savings**

- Function is to preserve/save a law, right or an obligation which would otherwise be repealed or cease to have effect.
- Cannot create new rights or obligations.

## **Transitional provisions**

- To make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force.

## **Schedules**

- can contain lists, descriptions, prescribed forms, transitional arrangements, repealed legislation, etc

## **Other requirements**

### **Memorandum on the objects of the Bill**

- Required by NA Rule 279(1)(c) and NCOP Rules 178 and 182 for purposes of introducing a Bill
- These rules set out what the memo must contain, namely the proposed classification of the Bill, explanation of the objects of the Bill, financial implications of the Bill for the State, list of persons and stakeholders consulted. Sometimes also includes any constitutional implications, implications relating to personnel, etc.

### **Amendment Bills**

- Amends either one Act or more than one Act
- An explanatory note is applicable to amendment Bills:



## GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

       Words underlined with a solid line indicate insertions in existing enactments.

- Style of the principal Act to be retained. For example, if principal Act used the word “shall” then amendment Bill must do so too;
- Structure of Bill: will also have a long title, enacting provision, clauses stipulating the amendments or insertions of new clauses, and short title and commencement date;
- Clause headings will identify which section of the principal Act is being amended, and will also refer to all previous amendments that were made to that section of the Act (if any);

### **Sequence of amendments**

- Sections of the Act being amended
- Short title of Act
- Schedule to Act
- Arrangement of sections
- Long title of Act (This can be an Annexure)

## **6. Oversight and Accountability**

The Constitution requires Parliament to oversee the exercise of power by the Executive. This is commonly referred to as oversight and accountability. Oversight and accountability can be exercised over how a department and government entities like Eskom has delivered services to the public. This is measured against priorities of government and the budget allocated to the department or entity for a particular financial year. In addition, Parliament is required to ensure that laws that it has passed are implemented. Parliament must therefore ensure that money allocated to departments and government entities in terms of the Appropriations Act is used for public good.



In overseeing the performance by department and government entities, permanent delegates have the power to call members of the Executive; Heads of Departments, Chief Executive Officers of government entities or any other person to provide reports and answer questions on the performance of the department or government entities.

Delegates may use the following as platforms for oversight and accountability:

### **1. Committee meetings**

Committee meetings are normally used for the departments and their entities to provide reports and answer questions on performance information as well as financial management. In the spirit of the principles of co-operative governance and intergovernmental relations, committees also have the power to call all three spheres of government to account on matters of common interest.

Committees are often referred to as engine rooms of the House because a lot of work is done in committees before they are reported to the House. The recommendations from committees, if adopted, they become resolutions of the House. Departments and government entities are required to implement these resolutions.

### **2. Site visits**

Committees may arrange visits to the site in order to verify instances of service delivery. These may be from the Annual Performance Plan, reports by departments or undertakings by a member of the Executive made during a debate or committee meeting or outreach programme. Committees report to the House on these matters for it to take a decision. If the report is adopted by the House, the recommendations in the report become the resolutions of the House.

In the spirit of the principles of co-operative government and intergovernmental relations, site visits are conducted either with or after consultation with the provincial legislatures and municipal councils. This is to ensure that the



interests of both the local and provincial spheres of government are taken into consideration in the national sphere of government.

### **3. Motions**

Motions are moved in the House. Although not all motions are intended for oversight and accountability, motions calling upon the House to condemn a department for failure to deliver services or calling upon a member of the Executive to deliver services, are used for oversight purposes. Once adopted, a motion becomes a resolution of the House which must be implemented by the members of the Executive. (See below for a full discussion on Motions)

### **4. Questions to the Executive (Ministers, President and Deputy President)**

Questions are used to extract answers or responses from members of the Executive on matters relating to their portfolio. Through questions, members of the Executive are called upon to account for service delivery in their departments and government entities. (See below for full discussion on questions).

### **5. Debates**

Delegates may call for debates on any matter including matters of public importance relating to delivery of services by departments. Although these kinds of debates do not result in decisions by the House, but do draw attention of the department and public to service delivery matters. They may result in a department or government entity attending to matters raised in the debate.

### **6. Executive Undertakings**

When responding to questions or during public hearings or sittings of the House Members of the Executive sometimes make a commitment, a promise, or an assurance to right a wrong or to deliver a particular service to a particular community. These are referred to as Executive Undertakings. To ensure that the promises are realised, delegates may put questions to the member of the Executive who made that undertaking or may call upon that member of the



Executive to attend a committee meeting in order to account. The Chairperson normally also communicates the undertaking to and requests the said member of the Executive concerned to respond within a certain period.



## Motions

### Definition of a motion

A motion can be defined as a proposal made by a member to the House that:

- the House do something;
- order something to be done;
- express an opinion with regard to something; or
- that the House discuss something,

Some motions are just political statements.

### Types of motions

The Rules provide for two kinds of motions, namely a motion on notice (*notice of a motion*) and a *motion without notice*.

#### Notice of a motion (motions on notice)

A Notice of a Motion is a proposal that the Council debate a matter or note a particular matter *without taking a decision on it*. This type of a motion requires a delegate to give a notice to other delegates. The notice is a request to the House to debate a particular matter in the next sitting. The notice is either reading it in the House or submitting to the Office of the Secretary.

The purpose of a notice is to enable the delegates to prepare for the debate. There is no decision required from the House at the time of the request. In other words, the Officer Presiding does not have to ask “whether a motion be agreed to”. The request is granted if in the next sitting the matter is placed on the Order Paper for debate. The number of notices given or requests made in one sitting makes it impossible to debate all the motions for which notices might have been given. The notice is normally in the following words:

“Honourable Chairperson I give notice that in the next sitting that the House debates the status of education in the province of the Eastern Cape.”





## **Motions without notice**

A Motion without notice calls on the House *to take a decision* (without debate). These motions do not require a notice to be given to other delegates. They require immediate decision from the House. The motion is normally in the following words:

“Honourable Chairperson I move without notice that the House congratulates Banyana Banyana for qualifying for Women Soccer World Cup, 2020.”

Once the motion has been moved, the Officer Presiding puts a question “whether the motion be agreed to.” If there is no objection, the motion is then agreed to. If agreed to, the message is then conveyed to Banyana Banyana. If any of the delegates objects to the motion, it will not be proceeded with. In parliamentary terms, the motion will be defeated. This motion is then converted as a motion on notice.

## **Procedural motions**

There are however other motions which are not intended for oversight and accountability. These motions deal with the procedures in the House and are normally moved by the Chief of the NCOP. These are referred to as procedural motions. For this kind of a motion to be agreed to, it must be supported by at least five provinces. The following is an example of a procedural motion.

Draft resolution (Chief Whip of the Council): That Rule 239(1) which provides, *inter alia*, that the consideration of a bill may not commence before at least three working days have lapsed since the committee’s report was tabled, be suspended for the purpose of consideration of the following bills on Wednesday, 2 June 2014:

- Division of Revenue Bill [Bill 5 – 2014]
- State Attorney Amendment Bill [B 49B – 2013]

## **An example of a subsidiary / ancillary motion (amendment motion):**

Draft resolution (name of the mover): That the Council amend the motion adopted by the House on scholar transport on 4<sup>th</sup> June 2014, by the deletion of



the third sentence and the insertion of the following words “.....” in the last sentence.

### **Time allocated for Motions**

The total time allocated for all motions is 20 minutes per sitting. Each motion is allocated 1 minute and 30 seconds. However, the Presiding Officer has the discretion to allow motions beyond the allocated time.

### **Questions to the Executive**

Parliamentary Questions are an important mechanism to hold Members of the Executive accountable. Questions can be put for oral or written reply only to the President, the Deputy President, and Cabinet Ministers on matters for which they are responsible. Delegates may not ask each other questions. While questions for oral reply are responded to in the House during a sitting for that purpose, questions for written reply require a reply in writing and are published on the Question Paper.

Questions afford delegates the opportunity to question Members of the Executive on service delivery, policy, implementation of laws and other executive actions on behalf of both their political parties and the electorate.

### **Purpose**

The purpose of Parliamentary Questions is to obtain information and press for executive action

### **Types of Questions**

There are two types of Questions:

- Questions for Written Reply; and
- Questions for Oral reply

### **Questions for Written Reply**

Questions should be submitted to the Questions Office on or before every Tuesday by 12:00 during the term. Questions submitted after 12h00 may be



dealt in the next questions session. Each delegate may ask three questions per week. Each question should be submitted separately and signed by the Delegate.

A question for written reply may have 15 subdivisions, but may not have more than five paragraphs. Where necessary, delegates are encouraged to submit supporting documentation referred to in a question. The number of questions permitted for written reply per Minister is unlimited.

### **Questions for Oral Reply**

Questions for oral reply are put to the Minister in terms of the clusters of departments. These are Peace and Security, Social Services, Governance, Economics. The Clusters respond to questions on a rotational basis.

The deadline for submission of questions for oral reply is at 12h00 on the day that the Questions Office gives notice. Questions can be submitted on any day after notice has been given. Questions for oral reply submitted after 12h00 of the closing date are to be dealt with in the next question date. Each question must be signed, submitted separately, and be marked clearly “for oral reply”. Unsigned questions cannot be processed and are returned to the delegate.

Each delegate may ask four questions per question day. Each Minister may take a maximum of six questions per question day. Questions must be addressed to the Minister in the relevant cluster that is scheduled for a specific question day. Four supplementary questions are allowed for each question. A supplementary question must be related to the original question. Questions asking about matters of a political nature and/or matters before the courts or a Committee of Parliament are not allowed.

### **Questions for Oral Reply to the President and the Deputy President**

Each Delegate is permitted two questions per questions day, and the President and the Deputy President (DP) take a maximum of six questions per question day. Questions to the President and the DP should be on broad policy matters regarding national and international issues within the scope of their



responsibilities, or, in the case of the DP, on matters assigned to him/her by the President. Questions falling within the line function of members of Cabinet are redirected to those departments.



## **Types of Question Papers**

Questions are printed on the Question Paper and distributed to delegates. There are different types of Question Papers

### **Internal Question Paper (IQP) (questions for written reply or oral reply)**

The IQP is a record of all questions for written reply or oral reply published in full, followed by an updated, summarised record of all questions not replied to. It is from the IQP that questions that comply with the Rules are selected for publication in the Question Paper. The IQP for questions for written reply is normally published on Fridays. The IQP for questions for oral reply is comprised of all questions submitted for oral reply and is normally published three days after the deadline for such questions.

### **Question Paper**

A Question Paper consists of only questions that comply with the Rules. A Question Paper for questions for oral reply is published three (3) days before day on which oral questions are dealt with in the House (question session or day). Questions transferred from written to oral reply are placed at the end of each Minister's questions, while questions in excess of the quota are summarised at the back of the Question Paper.

### **Replies to Questions**

Replies to questions are drafted by the member of the Executive concerned. Members of the Executive are required to reply to questions for written reply within 10 working days after they were published.

In the case of questions for oral reply, members of the Executive should reply by 12:00 on the day following the question day (session/time). A report detailing overdue replies to questions is submitted to the LOGB for Cabinet use on a quarterly basis, while the Chairperson of the NCOP informs Ministers regarding questions not replied to.



New questions and replies are submitted to the Questions Office via e-mail address to [ncopquestions@parliament.gov.za](mailto:ncopquestions@parliament.gov.za).

## **Petitions**

### **Petitions process in the NCOP**

#### **Introduction**

In terms of section 17 of the Constitution everyone has the right to present petitions. The NCOP has the power to receive petitions, representations, or submissions from interested persons or institutions. Petitioning Parliament is seen as one of the most ancient and fundamental rights of the citizens of a country. It is a tool used by citizens to raise grievances and concerns to Parliament.

For this purpose, the NCOP has established a Select Committee on Petitions and Executive Undertakings.

#### **What is a petition?**

A petition is a written request, complaint, or representation addressed to the Chairperson of the Council by an individual or group after having exhausted all other available avenues. Petitioning must therefore be used as a last resort.

Matters before a court of law or tribunal or which have already been dealt with by the NCOP may not be the subject of a petition.

A petition which has been finalised by the Council cannot be reopened in the absence of compelling evidence. Furthermore, that evidence must be new; it must not be evidence that was available when the petition was first heard but which the petitioner or the petitioner's advisers decided not to use. A claim that new evidence exists must be substantiated to the Chairperson of the Council's satisfaction before a similar

#### **Requirements for a petition**

For a petition to be valid, it must



- be addressed to the Chairperson of the Council;
- be in one of official the languages. Petitions in braille will also be accepted.
- be signed by the petitioner. Petitioners who are unable to write must make their mark on the petition in the presence of two witnesses, who must sign the petition. In the event that a group or organisation have lodged a petition, a person sometimes known as the principal or chief petitioner should take responsibility for attending to the formal requirements involved in petitioning the Council.
- have the name, surname, contact details, and address of the petitioner.
- seek assistance from the NCOP to do something or take action that is within its powers.

### **Lodging and approval**

Each petition must be deposited for at least one day with the Secretary, who must submit it to the Chairperson of the Council for approval before it is tabled in the Council. All petitions received by the Secretary are perused for compliance with the Council's Rules and practices. If a petition does not fully comply with these rules it may be possible for the petitioner to correct any defect. An endeavour is always made to assist petitioners in this respect.

Subsequent to the advice by the Secretary, if the Chairperson approves the petition it must be tabled in the House for approval. Once approved, the Chairperson must refer the petition to the Select Committee on Petitions and Executive Undertakings for consideration and report.

The Chairperson of the Council may rule a petition out of order even after it has been formally presented to the House.

Petitions that are outside the purview of the NCOP are referred to the relevant state institutions, and those that do not meet the requirements for a valid petition, in terms of the Rules and practices are returned to the petitioner concerned.



## **Consideration by Select Committee**

The committee is required to consider the petition and report to the Council. The extent of the consideration is at the discretion of the committee.

The committee cannot refuse jurisdiction on a petition that has been referred to it, but it can recommend to the Council that a petition be redirected to another committee that it considers more appropriate to examine the petition. At the conclusion of the committee's deliberations on a petition, a report is prepared and adopted for presentation to the House<sup>2</sup>. The committee may recommend to the House any course of action it deems fit and proper.

## **Consideration by the House**

Reports on petitions are presented in the same way as any other select committee report. Once adopted by the House, the resolution of the House is communicated to the petitioner and to the relevant affected institutions.

## **Lapse of petitions**

Currently the rules do not address the lapsing of petitions. It is common knowledge that there are always petitions which have been referred to the committee but which, due to lack of time, have not been considered and reported back on to the House by the end of the parliamentary term.

## **Proposal**

At the end of a parliamentary term, petitions that are before the committee lapses until such time they have been reinstated by the next Parliament.

## **Interventions**

As set out in Chapter 7 of the Constitution, 1996, government in the Republic of South Africa is constituted of national, provincial, and local spheres. Although distinct from each other, these spheres are interrelated and interdependent. To reinforce the distinctive nature of these spheres, the Constitution prescribes the

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<sup>2</sup> The report is published in the Announcements, Tablings and Committee Reports (ATC)





functional areas of each. The Constitution enjoins the spheres to refrain from intruding into each other's terrain in the exercise of their powers and the performance of their functions.<sup>3</sup>

In terms of section 100 of the Constitution, 1996, despite their being distinctive, the Constitution authorizes national government to supervise provincial government<sup>4</sup> and, in turn the latter to supervise local government.<sup>5</sup> This is ordinarily referred to as intervention. To ensure that the intervention is not arbitrary, its outer rings and inner circles are constitutionally prescribed. The Constitution requires that there be a rational connection between the intervention and the purpose or reasons proffered to validate it. To travel beyond the borders of constitutionally prescribed limits may render the intervention invalid.

### **Analysis**

Interventions are authorized by sections 100 and 139 of the Constitution. Whereas section 100 permits the national executive to intervene in provincial administration, section 139 authorizes provincial administration to intervene in local government. Intervention may be triggered by failure by either the provincial administration or municipality to fulfil executive obligations in terms of the Constitution or legislation.

### **Requirements**

Both section 100 and 139 prescribe procedural and substantive requirements. Whereas substantive requirements go to the reasons for the intervention; procedural requirements strike at the very heart of the manner in which the intervention is conducted. Because of the textual differences between sections 100 and 139, their requirements are dealt with separately.

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<sup>3</sup> See Chapter 3 of the Constitution dealing with co-operative government.

<sup>4</sup> See section 100 of the Constitution

<sup>5</sup> See section 139 of the Constitution



## **The inquiry**

### **General**

Before any of the authorities can intervene, the threshold question should be whether the authority on whose administration it is sought to intervene has failed to perform its executive functions. If yes, the second question is whether such failure is in contravention of the Constitution or legislation. If the answer to the first question is in the negative, that is the end of the inquiry. It is only when the answer to the threshold question is in the affirmative that the inquiry will proceed to the second stage. Likewise, if the answer to the second question is in the negative, the inquiry ends there. The intervention stands and falls by this inquiry.

Failure to fulfil a function other than an executive function alone can therefore never found an intervention. This implies that the executive must proffer the reasons to validate the intervention. The notice of the intervention must explain the executive function that the authority has failed to comply with and the basis on which it is said that such authority failed to comply with the executive function. It must further state the provision of the Constitution or legislation that imposes the executive function which the authority has breached. This may be referred to as the substantive requirement.

### **Procedural requirements**

#### **Interventions in provincial administration**

The following protocol must be observed in the event of an intervention in provincial administration:

- the intervention must be by the national executive (the intervening authority). No other authority qualifies to evoke the provisions of section 100;
- the intervening authority must issue a directive to the provincial government in which it seeks to intervene;



- the directive must describe the extent of the failure to fulfil obligations and the steps required to be taken in order to fulfil the obligations;
- if the provincial administration fails to remedy failure to fulfil executive obligations the intervening authority must assume responsibility for the fulfilment of the obligations to the extent required by the Constitution;
- if the intervening authority assumes the responsibility for the fulfilment of the obligations, it must submit a written notice of intervention to the National Council of Provinces (NCOP) within **14 days after the intervention has begun**.<sup>6</sup> It appears that failure by the intervening authority to submit a notice of the intervention to the NCOP within 14 days of the intervention is fatal.

The NCOP must either approve or disapprove the intervention within **180 days after the intervention began** (see section 100(2)(b)). Approval by the NCOP keeps the intervention alive. Disapproval brings it to an end. Failure by the NCOP to act within 180 of the intervention has the same effect. It automatically brings the intervention to an end.

### **Intervention in local government**

The following protocol must be observed in the event of an intervention in local government:

- the intervention must be by the provincial executive (the intervening authority). No other authority qualifies to evoke the provisions of section 139;
- the intervening authority must issue a directive to the municipality government in which it seeks to intervene;
- the directive must describe the extent of the failure to fulfil obligations and the steps required to be taken in order to fulfil the obligations;
- if a municipality fails to remedy failure to carry out executive obligations the intervening authority must assume responsibility for the fulfilment of the obligations to the extent required by the Constitution or dissolve the Municipal Council and appoint an administrator;

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<sup>6</sup> See section 100(2)(a)



- if the intervening authority assumes the responsibility for the fulfilment of the obligations, it must submit a written notice of intervention to the Cabinet member responsible for local government affairs, the relevant provincial legislature and the NCOP within **14 days after the intervention began**,<sup>7</sup>
- the intervention must end either if the Cabinet member responsible for local government affairs disapproves or omits to approve the intervention within **28 days** after it has begun; or
- the NCOP approves, disapproves or omits to approve the intervention within **180 days** after it has begun.<sup>8</sup>
- if the intervening authority dissolves the Municipal Council it must **immediately** submit the notice of dissolution to the Cabinet member responsible for local government affairs, the relevant provincial legislature and the NCOP;
- the dissolution takes effect within **14 days** from the date of receipt of notice by the NCOP. It comes to an end if the Cabinet member or the NCOP disapproves it before the expiry of 14 days.
- If the intervention is as a result of failure by the municipality to approve budget or raise revenue or serious or persistent material breach to provide basic services or to meet its financial obligations, the intervening authority must submit a notice of the intervention to the Cabinet member responsible for local government affairs, the relevant provincial legislature and the NCOP within **seven days** of the intervention

### **Substantive requirement**

For the intervention to be valid it must comply with the following substantive requirement:

- the provincial or local government must have failed to fulfil an executive function imposed by the Constitution or legislation. Failure to fulfil any

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<sup>7</sup> See section 139(2)(a)

<sup>8</sup> Section 139(2)(b)



other function is not sufficient to warrant an intervention. This may be as a result of a failure to approve a budget; pass legislation or to provide services as required by the Constitution or legislation.

### **The role of the NCOP on receipt of the notice of the intervention**

On receipt of the notice of intervention, the Chairperson of the NCOP must within cause the notice to be published in the ATC and refer notice to the relevant select committee, currently the Select Committee on Local government (the Committee).

The Committee must first satisfy itself that all procedural requirements have been complied with. The Committee must inquire:

- whether the intervention is in the provincial or local government;
- if it is in the provincial administration, whether the provincial executive was notified of its failure to fulfil executive functions, the extent of such failure and the steps required to remedy the failure;
- if the national executive assumed responsibility for the fulfilment of the functions referred to above,
- whether the extent to which the national executive assumed responsibility is within the constraints of the Constitution; and
- whether a notice of intervention was submitted to the NCOP within 14 days after the intervention began;
- if the intervention is in local government, whether the municipality was notified of its failure to fulfil executive functions, the extent of such failure and the steps required to remedy the failure;
- if the provincial executive assumed responsibility for the fulfilment of the functions referred to above, whether the extent of assumption is as prescribed by the Constitution;
- whether the notice of intervention was submitted to the Cabinet member responsible for local government, the relevant provincial legislature and the NCOP within 14 days of the intervention;
- whether a period of 28 days has expired since the notice of the intervention was submitted to the Cabinet member responsible for local



government. If it has, whether such Cabinet member has approved or disapproved the intervention. The intervention will persist if it has been approved. It will end if it has been disapproved or a period of 28 days has elapsed since its notice was submitted to the Cabinet member and it has not been approved;

- if the Municipal Council has been dissolved, whether the notice of dissolution was immediately submitted to the Cabinet member responsible for local government, the relevant provincial legislature and the NCOP;
- whether the dissolution has taken effect or has been set aside by the Cabinet member concerned or the NCOP before it took effect. Dissolution takes effect 14 days after the NCOP has received a notice thereof;
- if the intervention was occasioned by a municipality's failure to approve budget or raise revenue, or serious or persistent material breach of its obligations to provide basic services, whether the Cabinet member responsible for local government, the relevant provincial legislature and the NCOP were notified within seven days of the intervention.

Once the Committee has satisfied itself that procedural requirements have been complied with, it must proceed to the question whether there are valid reasons for the intervention. The inquiry may include the following:

- the reasons why it is said that the authority in whose administration it is intervened has failed to fulfil executive obligation;
- whether the said obligations amount to executive obligations imposed by the Constitution or legislation (passing bye-laws, approving a budget; providing basic services are some of executive obligations imposed on municipality);
- whether the intervention was occasioned by failure to approve the budget or any revenue-raising measure necessary to give effect to the budget;
- whether the intervention was occasioned by a financial crisis which results in a serious or persistent material breach to provide basic services.



To determine whether the financial problems are so serious as to found an intervention, the Committee may have regard to the following factors referred to in section 137 of the Local Government: Municipal Finance Management Act:

- the municipality has failed to make payments as and when due;
- the municipality has defaulted on financial obligations for financial reasons;
- the actual current expenditure of the municipality has exceeded the sum of its actual current revenue plus available surpluses for at least two consecutive financial years;
- the municipality had an operating deficit in excess of five per cent of revenue in most recent financial year for which financial information is available;
- the municipality is more than 60 days late in submitting its annual financial statements to the Auditor-General in accordance with section 126;
- the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the municipality, or has issued an opinion which identifies a serious financial problem in the municipality;
- any of the above conditions exists in a municipal entity under the municipality's sole control, or in a municipal entity for whose debts the municipality may be responsible, and the municipality has failed to intervene effectively; or
- any other material condition exists which indicated that the municipality, or a municipal entity under the municipality's sole control, is likely to be unable for financial reasons to meet its obligations.

Any one of the following factors referred to in section 140 the Local Government: Municipal Finance Management Act may indicate that the municipality is in serious or persistent breach of its financial obligations:

- the municipality has failed to make any payment to a lender or investor as and when due;



- the municipality has failed to meet a contractual obligation which provides security in terms of section 48;
- the municipality has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two per cent of the municipality's budgeted operating expenditure;
- the municipality's failure to meet its financial commitments has impacted, or is likely to impact, on the availability or price of credit to other municipalities;
- recurring or continuous failure by a municipality to meet its financial commitments which substantially impairs the municipality's ability to procure goods, services or credit on usual commercial terms.

In order to satisfy itself, the Committee may visit the affected province or municipality, whichever the case may be, to interview interested parties like the Director-General, the Premier, and other affected parties, if the intervention is in the provincial administration or the mayor, municipal manager, councillors, and other affected parties, if the intervention is in a municipality. The Committee may also have access to the books of the municipality.

Once this has been done, the Committee must report to the House with recommendation either to approve or disapprove the intervention. This must be done before the expiry of 180 since the intervention begun. The decision of the House to approve or disapprove the intervention must be communicated to the intervening authority, the relevant provincial legislature and the municipality on whose affairs it has been intervened.

### **The role of the NCOP after the intervention is initiated**

While the intervention continues, the NCOP is enjoined to review it (the intervention) on a regular basis. This implies that the NCOP must continuously satisfy itself that the intervention is still justified. The NCOP may, pursuant to such review, make any appropriate recommendations to the intervening





authority. The recommendations must be based on the terms of the intervention.<sup>9</sup>

If upon review, the NCOP concludes that the terms of the intervention as contained in the notice have been complied with or that the cause thereof (*causus belli*) has been removed, the NCOP must recommend its termination to the intervening authority.

## **Other oversight, accountability and public involvement programmes**

### **Taking Parliament to the People**

In 2002 the NCOP initiated the annual Taking Parliament to the People (TPTTP) Programme to conduct oversight and to facilitate public participation in Parliament's processes. During the Programme, delegations consisting of members of Parliament, Provincial Legislatures, relevant government departments and municipalities visit sites related to the theme. The programme is implemented in three phases i.e. preliminary visit before the main visit, a main visit, and a report-back visit a year later.

#### **Preliminary visit phase**

This is the preparatory phase for the main visit where delegations interrogate issues facing members of the public with an objective to elicit their inputs. This is done in a form of site visits and public hearings. The information acquired during this phase are compiled into a report that is submitted to the Executive in all three spheres of government to allow assessments and interventions prior to the main visit. The idea is for the Executive to prepare responses that would be given to the community and address some of the issues that they can prior to the main session.

#### **Main visit phase**

This phase consists of a week-long engagement with member of the public in a targeted municipality. The visit culminates with an NCOP plenary with is also

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<sup>9</sup> See sections 100(2)(c) and 139(2)(c)



the Address by the President or Deputy President of the Republic of South Africa. During this phase. Themed public hearings are conducted simultaneously with site visits. Public hearings' panel members consist of members of Parliament, members of the legislature of the hosting province, members of the executive from national provincial and local government spheres as well as representatives from relevant organisations.

A report is compiled and considered in NCOP Plenary. Once adopted, the report is referred to all relevant stakeholders for consideration of issues raised and implementation of recommendations. Formal follow up on progress made is conducted in preparation for the Report-Back phase.

### **Report-back phase**

The Report-Back Session is scheduled within twelve months after the main visit. The purpose of this phase is to ensure that the undertakings made by the Executive are implemented. During this phase, delegations return to sites visited during the main visit to ascertain or confirm progress made and report-back to members of the public in a form of public hearings.

A report of the Report-Back visit phase is considered by the House and referred to relevant stakeholders.

### **Theme of the Programme**

The theme of the TPTTP Programme changes annually and is identified based on a matter of importance in the province being visited. For example, the theme for 2018 TPTTP in Gauteng was “*The impact of migration on service delivery: Deepening co-operative governance for accelerated service delivery*”.

### **Governance**

For every TPTTP, a Political Steering Committee, chaired by the Chairperson of the NCOP, is established. It includes include the NCOP Deputy Chairperson, House Chairpersons, NCOP Chief Whip, Provincial Whip of the host province, Programming Whip and any other member that the Steering Committee may appoint.



The purpose of the Political Steering Committee is to provide political leadership, direction, and guidance.

### **Provincial week**

Once a year a week is set aside for the permanent delegates to return to their home provinces in order to identify specific concerns to be raised in the national sphere of government. This is referred to as the provincial Week. Provincial Week is conducted under a specific theme every year.

### **Local Government week**

It is the responsibility of the National Council of Provinces to ensure that the spheres of government plan together in a co-ordinated way and that no sphere of government assumes the functions of the other beyond constitutionally permissible borders.

In the spirit of co-operative governance and intergovernmental relations, Local Government Week intends to bring together the two Houses of Parliament, provincial and local spheres of government to debate matters affecting local sphere of government and to propose solutions to challenges affecting that sphere of government.

### **Aims of the Local Government Week**

The aims of the Local Government Week are:

- to provide a platform for the debate on matters affecting local government in the national sphere of government;
- to allow a focussed attention on the challenges confronting the local sphere of government;
- propose solutions thereto including proposing amendment to laws that negatively impact on service delivery as well as those that result in over-regulation; and
- to engender the principles of co-operative governance and intergovernmental relations in dealing with matters affecting the local sphere of government.





## **7. Conclusion**

This Guide document offers a broad overview of the work and workings of the NCOP, and is by no means intended to be a complete compendium of the processes, procedures, and conventions of the NCOP. It should be read in conjunction with the Constitution, the Rules, the Rulings, the Annexures hereto and other documents governing the Council's work.



## 8. List of Acronyms

**APP** Annual Performance Plan

**BCM** Budget Cycle Model

**BIMS** Budget Information Matrices

**FIS** Focused Intervention Studies

**IGR** Intergovernmental Relations

**LAMOS** Land Access Movement of South Africa

**MTSF** Medium Term Strategic Framework

**NA** National Assembly

**NAR** National Assembly Rules

**NCOPR** National Council of Provinces Rules

**NCOP** National Council of Provinces

**NDP** National Development Plan

**O&A** Oversight & Accountability

**PO(s)** Presiding Officer(s)

**PFMA** Public Finance Management *Amendment Act*

**PSOM** Public Sector Oversight Model

**SADC** Southern African Development Community

**SALGA** South African Local Government Association

**SDGs** Sustainable Development Goals

**SONA** State of the Nation Address

**TPTTP** Taking Parliament to the People Programme

**PDO** Parliamentary Democracy Offices

**PPP** Public Participation for Parliament

**FFC** Financial and Fiscal Commission

**MPL** Member of the Provincial Legislature

**PPIPPLA** Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act, 2004 (Act No. 4 of 2004)

**MPPA** Mandating Procedure of Provinces Act, 2008 (Act No. 52 of 2008)

**FMPPLA** Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No. 10 of 2009)

**JR** Joint Rules of Parliament

**JTM** Joint Tagging Mechanism



## **JPC** Joint Programme Committee