



IMPLEMENTATION PROTOCOL GUIDE

Draft

1 June 2006

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1. Introduction

The Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005 – “the IGR Act”) establishes a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations, and to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes.

Chapter 3 of the IGR Act provides for organs of state¹ to enter into an implementation protocol as an Agreement where the implementation of a policy, the exercise of a statutory power, the performance of a statutory function or the provision of a service depends on the participation of organs of state in different spheres of government².

In November 2005, the Cabinet approved a Framework for Managing Joint Programmes in the Public Service (“the Framework”). The Cabinet also approved that the Framework be incorporated into the regulations and guidelines that may be issued in terms of Chapter 5 of the IGR Act.

The Framework further extends the principles of participation and co-ordination between organs of state in the different spheres of government, in terms of the IGR Act, to also include integration, participation and co-ordination of joint programmes within a particular sphere of government. The Framework defines joint programmes as “Those programmes that transcend the conventional organisational boundaries in planning, budgeting and implementation resulting in a number of departments/agencies/ministries responsible for one aspect of the programme, although none is responsible for it in its entirety”.

At the January 2006 Cabinet Lekgotla, the Cabinet approved the development of templates for interdepartmental protocols to further strengthen the frameworks for intergovernmental relations.

2. Purpose of the Guide

Section 35(2) of the IGR Act specifies that an implementation protocol must be considered when -

- (a) the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service has been identified as a national priority;
- (b) an implementation protocol will materially assist the national government or a provincial government in complying with its constitutional obligations to support the local sphere of government or to build capacity in that sphere;

¹ Organ of state means an organ of state as defined in section 239 of the Constitution.

² Spheres of Government means the National, Provincial and Local spheres of government.

- (c) an implementation protocol will materially assist the organs of state participating in the provision of a service in a specific area to co-ordinate their actions in that area; or
- (d) an organ of state to which primary responsibility for the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service has been assigned lacks the necessary capacity.

Section 25(3) of the IGR Act also specifies the aspects that must be covered in an implementation protocol. These aspects are incorporated into the Guide.

The Framework labelled joint programmes as having the following characteristics:

- (a) Programmes that require a cross-departmental involvement in the planning, budgeting and delivery of services.
- (b) A number of departments are often responsible for a specific aspect of the programme, but none is responsible for it in its entirety.
- (c) Programmes that require integration rather than mere coordination.

The purpose of the Guide is to consolidate the requirements in terms of the IGR Act and the Framework into a single document that could be practically applied when organs of state enter into an implementation protocol. The Guide is a generic tool that should be adapted for each protocol being prepared.

3. Definition and Purpose

An implementation protocol (“Protocol”) is a document constituting a formal agreement between Parties. It also represents a code of conduct for the Parties to the Protocol. An implementation protocol is sometimes also referred to as a memorandum of understanding.

A Protocol aims to promote good conduct, integration, participation, co-operation and co-ordination between Parties and includes, but is not limited, to aspects such as policy development and implementation, the exercise of statutory powers, the performance of a statutory function, the development and provision of a service or product, the implementation of a government programme, or managing a joint programme or project. Without digressing from the requirements set out in the IGR Act or the Framework and to broaden the scope of application for practical reasons, the general purpose of a Protocol is – **To conclude an agreement between organs of state in or between spheres of government regarding any matter to achieve a government objective.**

Any organ of state may initiate the process for the conclusion of an implementation protocol after consultation with the other affected organs of state (Section 35(5) of the IGR Act).

4. Commonly Included Clauses in a Protocol

Consistently, institutions are faced with the challenge of developing Protocols that adequately address the needs of a variety of stakeholders. This section of the Guide describes the commonly included clauses that are necessary to prepare Protocols.

The commonly included clauses mentioned below are divided into two subsections as far as possible. The details outlined in the **Instruction** portion provide the specific information to be addressed in that particular section. The information provided in the **Guidance** portion is provided to promote understanding of the topic and its usefulness.

Annexure A contains an Implementation Protocol Template.

4.1 Preamble

Instruction. Identify and state any challenges that may be experienced and state how these challenges are to be addressed.

Guidance. Wording that typically could be used to state the challenges and how they are to be addressed are:

1. “Having regard to” - previous events or circumstances that are being honoured (esteemed or respected or well regarded), feelings of friendship and esteem, close connection, an attitude of admiration or co-operation.
2. “Desiring to” - fulfil particular expectations or to change an unsatisfied state, and with strong intention within a framework of co-operation amongst the Parties.
3. “Recognising the” - to know and accept that something is legal, true or important.

4.2 Definitions

(Clause 1 of the Implementation Protocol Template – Annexure A)

Instruction. Provide definitions to describe acronyms, abbreviations or terms used in the Protocol.

4.3 Purpose of Protocol

(Clause 2 of the Implementation Protocol Template – Annexure A)

Instruction. State the aims and objectives that the Protocol should achieve and give an outline of the priorities.

Guidance.

1. “Aims” means the broad, long-term goals of the Protocol.

2. “Objective” means a concrete statement describing what the Protocol intends to achieve. The objective should be written at a low level so that it can be evaluated at the conclusion of a project to see whether it was achieved or not. A well-worded objective will be specific, measurable, attainable/ achievable, realistic and timebound.
3. “Priority” refers to the relative importance of the outcomes in order of importance or urgency.
4. If necessary, this clause of the Protocol could also provide for terms and conditions that should apply or principles (e.g. principles of co-operation) that Parties should observe to achieve the desired aims and outcomes.

4.4 Parties to Protocol

(Clause 3 of the Implementation Protocol Template – Annexure A)

Instruction. State all the Parties to the Protocol.

Guidance. At this stage it is important to state the authorised signatories to the Protocol.

4.5 Roles and Responsibilities

(Clause 4 of the Implementation Protocol Template – Annexure A)

Instruction.

1. State the role and responsibilities of the political principal.
2. State the role and responsibilities of the principal department.
3. State the role and responsibilities of each Party to the Protocol.
4. If necessary, state the role and responsibilities of other key stakeholders.

Guidance.

1. A political principal would promote, facilitate and co-ordinate aspects of a political nature that may be required in terms of the Protocol and to support the work of the various intergovernmental forums established in terms of the IGR Act. An example would be cases where policy is jointly developed in a particular area and a political principal (Cabinet Minister) would promote and lead particular aspects in the relevant Cabinet Committee and the Cabinet. A political principal may not necessarily be a signatory to the Protocol but still has an important role to play to promote aspects pertaining to the Protocol.
2. The principal department would be responsible for overall co-ordination and facilitation of the Protocol. An example would be the department leading a particular Directors-General Cluster or a component of Government’s Programme of Action. This department should preferably be a department within the portfolio of the political principal to ensure appropriate support to the political principal.
3. A key stakeholder is not a signatory to the Protocol but may have an important role to play to promote aspects pertaining to the Protocol. The Parties may not have direct control/influence over key stakeholders or their

decision-making, which could lead to delays in implementing the Protocol. Key stakeholders are included in this clause to ensure that the Parties can manage their involvement. An example would be participation of the Parties in the relevant intergovernmental forum or consultation with organised Labour to promote a particular policy.

4.6 Workplan

(Clause 5 of the Implementation Protocol Template – Annexure A)

Instruction. The Parties must agree on a workplan to implement the Protocol. The Workplan is an instrument to measure the effective implementation of the Protocol. The Workplan must state the following minimum information:

1. Objectives.
2. Measurable Indicators.
3. Outcomes and/or Outputs.
4. Allocated Responsibilities.
5. Timelines.
6. Budget.

Guidance: It is not the intention to unnecessarily include project management principles in this guide, but rather for Parties to agree on the definitions and terminology used in the workplan:

1. “Objective” means a concrete statement describing what the Protocol aim(s) are trying to achieve. The objectives should be written at a low level so that it can be evaluated at the conclusion of a project to see whether it was achieved or not. A well-worded objective will be specific, measurable, attainable/achievable, realistic and timebound.
2. A “Measurable Indicator” indicates progress (or lack thereof) towards a result. It is a specific, observable, and measurable characteristic that shows the progress toward achieving a specified objective.
3. “Outcome” means the result or the effect that the objective intends to achieve.
4. “Output” means the desired or anticipated measurable product or result that is normally tangible.
5. “Responsibility” means the department responsible for the stated outcome or output.
6. “Timeline” means the end date on which the stated outcome or output should be achieved.
7. “Budget” means the amount committed to achieve the stated outcome or output.
8. The Workplan, duly initialised by the Parties, should be attached to the Agreement.
9. The Parties should also supplement the Workplan with their individual departmental workplans.

Annexure B contains an example of a Workplan.

4.7 Contributing Resources

(Clause 6 of the Implementation Protocol Template – Annexure A)

Instruction. The Parties must determine, agree on and state the financial and non-financial resources and associated costs each will contribute in terms of the Protocol.

Each Party must ensure that its financial contribution is authorised for the purpose of implementing the Protocol.

Guidance. The following types of resources could be considered:

1. Personnel and human resource management matters.
2. Funding, service and operating costs and financial arrangements. The Parties should be clear how the costs of the co-operation should be borne by the Parties through contributions by the Parties. This part of the Protocol should include information describing the costs for services, identifying the methods to be used to allocate the costs of services and operating costs, providing a detailed description of the payment system and identifying the cost-sharing methods for all partners.
3. Procurement of services and service providers (consultants). Individual departments should be responsible for procuring service providers.
4. Assets such as facilities, equipment, property and supplies.
5. Accommodation and travel arrangements.
6. Legal expertise.
7. Rent.

4.8 Managing the Protocol

(Clause 7 of the Implementation Protocol Template – Annexure A)

Instruction. The Parties must determine, agree on and state the institutional mechanisms, including their composition and functions that are necessary for the effective management and implementation of the Protocol.

Guidance. The following institutional and management instruments could be considered:

1. Oversight mechanisms and procedures to monitor and review the effective implementation of the Protocol. Measures to annually review multi-year Workplans or the Protocol.
2. Decision-making mechanisms and procedures.
3. Standard operating mechanisms and procedures. These include technical committees, liaison, consultation and communication required or permitted under the Protocol.

4. Project management mechanisms and procedures. These include developing and managing time-schedules, reporting, secretarial services, data collection, record keeping and document management.
5. The appropriate intergovernmental forum may co-ordinate the implementation of the Protocol (Section 35(6) of the IGR Act).

4.9 Good Faith and Reasonableness

(Clause 8 of the Implementation Protocol Template – Annexure A)

Instruction. The Parties must undertake to act in good faith and reasonably and warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the powers or functions of each other.

4.10 Dispute Resolution

(Clause 9 of the Implementation Protocol Template – Annexure A)

Instruction. In the spirit if the IGR Act, the Parties have a duty to avoid disputes and to settle disputes without resorting to judicial proceedings. The Protocol must specify dispute-settlement mechanisms and procedures should disagreement or dispute arise in the:

1. Implementation of the Agreement.
2. Interpretation of the Agreement.
3. Non-compliance with the Agreement.
4. Exercising statutory powers or performing statutory functions.

The Protocol does not prohibit any Party from declaring and settling an intergovernmental dispute in terms of Chapter 4 of the IGR Act.

Guidance. It is suggested that the following aspects be considered to settle disagreement or disputes:

1. The Parties must initially make all reasonable efforts to settle any such difference or dispute through consultation and negotiation. A disagreement or dispute must be initiated in writing.
2. If the difference remains unresolved, any Party may refer it for arbitration by an arbitrator agreed to by the Parties.
3. The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality.
4. The arbitrator's determination is final and binding on the Parties
5. The Parties to the disagreement/dispute must share the costs of the arbitration equally.

4.11 Confidentiality

(Clause 10 of the Implementation Protocol Template – Annexure A)

Instruction. All Parties must treat information furnished by any other Party or another person for purposes of the execution of the Protocol, as confidential.

4.12 Duration, Execution and Amending the Agreement

(Clause 11 of the Implementation Protocol Template – Annexure A)

Instruction. The Protocol must specify:

1. The date of its commencement.
2. The duration of the Protocol.
3. That it will remain in effect until a date stipulated in the Protocol or terminated through mutual agreement of all the Parties, in writing.
4. That the Protocol constitutes the whole agreement.
5. The Protocol may be amended in terms of an Addendum to the Protocol.
6. An Addendum to the Protocol must be in writing and signed by all the Parties.

Guidance. It is suggested that the following aspects be considered as part of the wording contained in the Protocol:

1. The Protocol should commence on the date of its signing and will remain in effect until a date stipulated in the Protocol or terminated by all the Parties in writing.
2. The Protocol constitutes the whole agreement between the Parties relating to the subject matter of the Protocol.
3. The Parties should agree that there are no other conditions, representations, whether oral or written and whether expressed or implied, applicable to the Protocol, save for those contained in the Protocol.
4. No amendment, alteration, addition or variation of the Protocol should be of any force or effect unless reduced to writing and signed by the Parties.

4.13 Domicilium

(Clause 12 of the Implementation Protocol Template – Annexure A)

Instruction.

1. Parties must state their physical addresses as their *domicilia citandi et executandi* for all purposes under the Protocol.
2. Notice of change of address must be given in writing by the Party concerned and delivered by registered mail to the other Party(s).

4.14 Miscellaneous Provisions

(Clause 13 of the Implementation Protocol Template – Annexure A)

Instruction. Other provisions that are important to the success of implementing the Protocol that do not fall under one of the other headings already discussed should be included in the miscellaneous clause of the Protocol.

4.15 Legal Certification

Instruction.

1. The head of legal services of each Party must ensure that the Protocol is consistent with the exercise of statutory powers or the performance of statutory functions of that Party.
2. The head of legal services, or his/her duly authorised representative, of the Principal Department, after consultation with the heads of legal services of the other Parties must certify in the Protocol that the Protocol is consistent with the exercise of statutory powers or the performance of statutory functions of the Parties to the Protocol.

4.16 Signatures of the Parties

Instruction. The Protocol concludes with the signature page. The duly authorised persons representing the Parties must confirm their acceptance of its terms by signing the Protocol.

5. Conclusion

This Guide is intended to be a living document, which should be updated with the best practice experiences of departments and be shared by all. The Guide will be accessible online at http://www.dpsa.gov.za/mos_documents.asp. Departments are invited to share their best practice experiences with us and are welcome to contact us for further information. Contact particulars are as follows:

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Annexure A – Implementation Protocol Template



IMPLEMENTATION PROTOCOL

BETWEEN THE

(Type Name of Institution or Portfolio)
DEPARTMENT OF or
MINISTER/MEC OF...

AND THE

(Type Name of Institution or Portfolio)
DEPARTMENT OF or
MINISTER/MEC OF...

ON

SUBJECT

Date

Preamble

The Parties:

1.1 **Having regard to**

1.2 **Desiring to**

1.3 **Recognising the**

Now therefore the Parties agree as follows:

1. Definitions

For the purpose of this Protocol, unless the context indicates otherwise -

- (a) **"this Protocol "** means the agreement set out in this document and the Annexure/s attached hereto;
- (b) **"....."** means

2. Purpose of Protocol

2.1 The aims of this Protocol are -

- (a)
- (b); and
- (c)

2.2 The objectives and priorities of this Protocol are -

- (a)
- (b); and
- (c)

2.3 The Parties agree to act in common in pursuit of the aims and objectives of this Protocol which shall be implemented in accordance with the following terms and conditions / principles -

- (a)
- (b); and
- (c)

3. **Parties to Protocol**

The Parties to this Protocol are as follows -

- (a) the(*full name of department*)..... as represented by the(position or portfolio).....;
- (b) the(*full name of department*)..... as represented by the(position or portfolio).....; and
- (c) the

4. **Roles and Responsibilities**

4.1 The political principal concerning this Protocol is the(*name of political portfolio*)..... The role and responsibilities of the political principal are -

- (a)
- (b); and
- (c)

4.2 The role and responsibilities of the Parties are:

- (a) Name of principal department:
 - (i)
 - (ii); and
 - (iii)
- (b) Name of department:
 - (i)
 - (ii); and
 - (iii)
- (c) Name

4.3 The role and responsibilities of other key stakeholders are:

(a) Name of institution

(e.g., *Intergovernmental forum*)

(i)

(ii); and

(iii)

(b) Name of institution

(i)

(ii); and

(iii)

5. **Workplan**

5.1 The Parties agreed to the Workplan attached as Annexure A.

5.2 The Parties undertake to supplement the Workplan with their individual departmental workplans.

5.3 Individual departmental workplans are attached as Annexure B.

6. **Contributing Resources**

The Parties agree to contribute the financial and non-financial resources and associated costs as follows:

(a) Name of principal department

(i)

(ii); and

(iii)

(b) Name of department

(i)

(ii); and

(iii)

(c) Name

7. Managing Protocol

The Parties undertake to establish the following institutional mechanisms, including their composition and functions, for the effective management and implementation of this Protocol -

- (a)
- (b); and
- (c)

8. Good Faith and Reasonableness

8.1 In their dealings with each other for purposes of this Protocol, the Parties -

- (a) undertake to act in good faith and reasonably; and
- (b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the powers or functions of each other.

8.2 This Protocol does not make any legal or otherwise enforceable commitments on behalf of any of the Parties, nor does it in any way limit any statutory powers and functions of the Parties.

9. Dispute Resolution

9.1 Any disagreement or dispute arising between the Parties with regard to implementation, application, interpretation or breach of this Protocol shall be settled as follows:

- (a) A disagreement or dispute must be initiated in writing.
- (b) The Parties must initially make all reasonable efforts to settle any such difference or dispute through consultation and negotiation.
- (c) If the difference remains unresolved, any Party may refer it for arbitration by an arbitrator agreed to by the Parties.
- (d) The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality.

- (e) The arbitrator's determination is final and binding on the Parties.
- (f) The Parties to the disagreement/dispute must share the costs of the arbitration equally.

9.2 The Protocol does not prohibit a Party to declare an intergovernmental dispute in terms of Chapter 4 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

10. **Confidentiality**

10.1 Any Party shall treat information furnished by another Party for purposes of the execution of this Protocol, as confidential.

10.2 Subject to this clause, the Party(ies) so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.

11. **Duration, Execution and Amending the Protocol**

11.1 This Protocol will commence on the date of its signing and will remain in effect until mutually terminated by all the Parties in writing.

11.2 This Protocol including the Annexure/s attached hereto constitutes the whole agreement between the Parties relating to the subject matter of this Protocol.

11.3 There are no other conditions, representations, whether oral or written and whether expressed or implied, applicable to this Protocol, save for those contained in this Protocol.

11.4 No amendment, alteration, addition or variation of this Protocol shall be of any force or effect unless reduced to writing and signed by the Parties. Such changes shall be incorporated as an Addendum to this Protocol.

12. Domicilium

12.1 The Parties choose the physical addresses set out hereunder as their *domicilia citandi et executandi* for all purposes under this Protocol:

(a) Name of Party:

Physical Address:

(b) Name of Party:

Physical Address:

(c)

12.2 Notice of change of address must be given in writing, by the Party concerned and delivered by registered mail to the other Parties.

13. Miscellaneous Provisions

The Parties agree to the following miscellaneous provisions:

13.1

13.2

Legal Certification

To the best of my knowledge, this Protocol adheres to acceptable legal rules and is consistent with the exercise of statutory powers or the performance of statutory functions of the Parties to this Protocol.

This Protocol is hereby certified and signed by of the Department of, in his/her capacity as the (having been duly authorised thereto) at on this day of 200....

.....

NAME:

DEPARTMENT OF

Signatures of the Parties

Thus done and signed by of the Department of
....., in his/her capacity as the
(having been duly authorised thereto) at on this day of
..... 200...

.....
NAME:
DEPARTMENT OF

As Witnesses:

- 1.
- 2.

Thus done and signed by of the Department of
....., in his/her capacity as the
(having been duly authorised thereto) at on this day of
..... 200...

.....
NAME:
DEPARTMENT OF

As Witnesses:

- 1.
- 2.

ANNEXURE B - EXAMPLE WORKPLAN

AIM¹:

Objective ²	Indicator ³	Outcome ⁴ / Output ⁵	Responsibility	Timelines	Budget

¹ Aim(s) means the broad, long-term goals of the Protocol.

² Objective means a concrete statement describing what the Protocol aim(s) is trying to achieve. The objective should be written at a low level so that it can be evaluated at the conclusion of a Protocol to see whether it was achieved or not. A well-worded objective will be specific, measurable, attainable/achievable, realistic and timebound.

³ An indicator indicates progress (or lack of) toward a result. It is a specific, observable, and measurable characteristic that shows the progress a program is making toward achieving a specified objective.

⁴ Outcome means the result or the effect that the objective intends to achieve.

⁵ Output means the desired or anticipated measurable product or result normally tangible.

Initials of Parties to this Protocol