



the dr&pw

Department:
Roads and Public Works
NORTHERN CAPE PROVINCE
REPUBLIC OF SOUTH AFRICA

DEPARTMENTAL POLICY ON THE MANAGEMENT OF UNAUTHORISED EXPENDITURE

Version 2
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1. DEFINITIONS AND ACRONYMS

CFO	Chief Financial Officer.
Department	Refers to the Department of Roads and Public Works (DR&PW), Northern Cape Province.
FMC	Financial Misconduct Committee.
HOD	Head of Department, who is also the Accounting Officer (AO) in terms of the PFMA.
SCOPA	Standing Committee on Public Accounts.
Unauthorised Expenditure	<p>In relation to the PFMA; a) overspending of approved budget items; b) spending not in line with the original approved purpose of the budget item; and c) expenditure incurred without the appropriate approval.</p> <p>Unauthorised spending is expenditure that has not been budgeted, expenditure that is not in terms of the conditions of an allocation received from another sphere of government, municipality or organ of state and expenditure in the form of a grant that is not permitted in terms of the Public Finance Management Act (PFMA), Act No.1 of 1999, as amended.</p>

2. POLICY STATEMENT

This is a policy directive on unauthorised expenditure and how to manage cases which are considered to be financial misconduct under the Public Finance Management Act, No. 1 of 1999, Section 38.

The main purpose of the policy is to:

- a) outline procedures with regards to the management of unauthorised expenditure; and
- b) familiarise employees with the consequences of committing such acts, e.g. overspending.

3. INTRODUCTION AND BACKGROUND

Section 38 of the PFMA, 1999 (as amended) requires that the "Accounting Authority" of the Department must, *inter alia*, take effective and appropriate steps to prevent:

- unauthorised expenditure;
- irregular expenditure;
- fruitless and wasteful expenditure;
- losses resulting from criminal conduct; and
- expenditure not complying with its operational policies.

In order for the Department to address the above, all processes and procedures relating to expenditure control and management must be complied with by all officials concerned and be continuously reviewed and monitored; and these include:

- budget;
- procurement; as well as
- payment, accounting and reporting.

4. REGULATORY FRAMEWORK

- 4.1. The Constitution of the Republic of South Africa Act, Act No. 108 of 1996, sections 215 and 217.
 - 4.2. Section 38 of the Public Finance Management Act, Act No.1 of 1999 (as amended by Act No. 29 of 1999), dealing with general responsibilities of Accounting Officers and specifically the following subsections:
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Subsection	Detail
38 (1)(a)(i),	The AO must ensure: that a Department has and maintains effective, efficient and transparent systems of financial and risk management and internal control and;
38 (1)(a)(iii),	an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective and;
38 (1)(a)(iv),	system for properly evaluating all major capital projects prior to a final decision on the project;
38(1)(b)	responsible for the effective, efficient, economical and transparent use of the resources of the Department, trading entity or constitutional institution;
38(1)(c)(ii),	take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct;
38(1)(f)	must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;
38(1)(g)	on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;
38(1)(h)(ii)	must take effective and appropriate disciplinary steps against any official makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure.

4.3. Section 44 of the PFMA, 1999 (as amended by Act no 29 of 1999) dealing with the assignment of powers and duties (delegations) by an Accounting Officer:

Subsection	Detail
44(1)	The Accounting Officer may:
44(1)(a)	in writing delegate any of the powers entrusted or delegated to him/her in terms of this Act, to an official in the Department;
44(1)(b)	instruct any official in that Department to perform any of the duties assigned to him/her in terms of this Act.

4.4. Section 45 of the Public Finance Management Act (PFMA), Act No.1 of 1999 (as amended by Act No 29 of 1999) dealing with the responsibilities of other officials and specifically subsections:

Subsection	Detail
45(a)	An official: must ensure that the system of financial management and internal control established for that Department, trading entity or constitutional institution is carried out within the area of responsibility of that official and;
45(b)	is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility and;
45(c)	must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and;
45(d)	must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44.

4.5. Treasury Regulations issued in March 2005 and specifically:

Subsection	Detail
TR 9.1.1	The Accounting Officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.
TR 9.1.2	When an official of an institution discovers unauthorised, irregular or fruitless and wasteful expenditure, that official must immediately report such expenditure to the Accounting Officer. In the case of a Department, such expenditure must also be reported in the monthly report, as required by section 40(4)(b) of the Act. Irregular expenditure incurred by a Department in contravention of tender procedures must also be brought to the notice of the relevant tender board or procurement authority, whichever applicable.
TR 9.1.3	When an Accounting Officer determines the appropriateness of disciplinary steps against an

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Subsection	Detail
	<p>official in terms of section 38(1)(g) of the Act, the Accounting Officer must take into account –</p> <ul style="list-style-type: none"> (a) the circumstances of the transgression; (b) the extent of the expenditure involved; and (c) the nature and seriousness of the transgression.
TR 9.1.4	<p>The recovery of losses or damages resulting from unauthorised, irregular or fruitless and wasteful expenditure must be dealt with in accordance with regulation 12.</p>
TR 9.1.5	<p>The amount of the unauthorised, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.</p>
TR 11.4.1	<p>An Accounting Officer may only write off debts owed to the State if he or she is satisfied that –</p> <ul style="list-style-type: none"> (a) all reasonable steps have been taken to recover the debt and the debt is irrecoverable, or, (b) he or she is convinced that – <ul style="list-style-type: none"> (i) recovery of the debt would be uneconomical; (ii) recovery would cause undue hardship to the debtor or his or her dependants; or (iii) it would be to the advantage of the state to effect a settlement of its claim or to waive the claim.
TR 11.4.2	<p>An Accounting Officer must ensure that all debts written off are done in accordance with a write off policy determined by the Accounting Officer.</p>
TR 11.4.3	<p>All debts written off must be disclosed in the annual financial statements, indicating the policy in terms of which the debt was written off.</p>
TR 12.7.1	<p>Losses or damages suffered by an institution because of an act committed or omitted by an official, must be recovered from such an official if that official is liable in law.</p>
TR 12.7.2	<p>The Accounting Officer must determine the amount of the loss or damage and, in writing, request that official to pay the amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter must be handed to the State Attorney for the recovery of the loss or damage.</p>
TR 12.7.3	<p>A claim against an official must be waived if the conditions in paragraph 12.2.1(a) to (g) are not applicable.</p>
TR 12.7.4	<p>If in doubt, the Accounting Officer of the institution must consult the State Attorney on questions of law in the implementation of</p>

Subsection	Detail
	paragraphs 12.7.1 and 12.7.3.

- 4.6. Part 2 (Management Arrangements), section 4, dealing with financial misconduct.
- 4.7. Part 4 (Revenue and expenditure management), section 8, dealing with expenditure management and section 9 dealing with unauthorized, irregular, fruitless and wasteful expenditure.
- 4.8. Part 6 (Frameworks), section 16A dealing with Supply Chain Management.
- 4.9. The Public Service Act, Act No. 103 of 1994 which has financial implications for a department.
- 4.10. The Public Service Amendment Act, Act No. 13 of 1996 which has financial implications for a Department.
- 4.11. The Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004, aims to prevent and fight corruption in the Government and in the Public Sector.

5. OBJECTIVE AND SCOPE

The main objectives of this policy are:

- 5.1. to emphasize and to enhance the accountability of Departmental employees with regards to the utilization of DR&PW resources;
 - 5.2. to ensure adherence to the PFMA, treasury regulations and relevant Northern Cape Provincial Administration (Provincial Treasury) provisions on unauthorised expenditure.
 - 5.3. to ensure timely detection, processing and recording of unauthorised expenditure by the Department;
 - 5.4. outline the procedures that must be followed by staff members with regards to unauthorised expenditure; and
 - 5.5. to provide guidance as to the accounting treatment, reporting and disclosures regarding unauthorised expenditure.
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6. PRINCIPLES, VALUES AND PHILOSOPHY

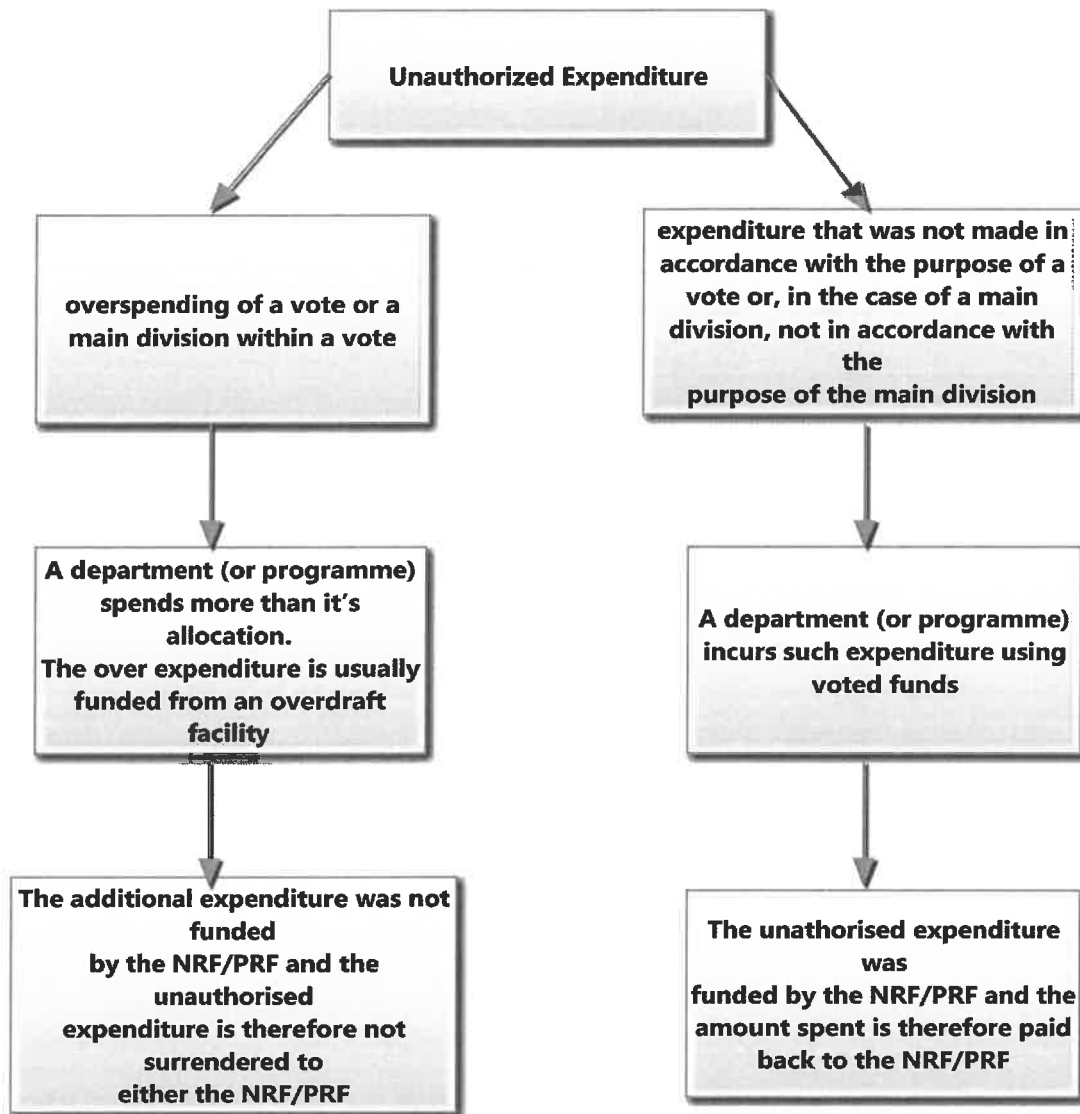
This policy is intended to reflect the Department's commitment to the principles, goals and ideals described in the Departmental vision and core values. It shall apply to all employees of the DR&PW, appointed in terms of the Public Service Act, 1994, as amended, and other relevant Acts.

7. PROCEDURES

The procedures for reporting are set-out in the paragraphs that follow, and cover issues such as reporting, investigation, disciplinary action; legal action and grievance procedures.

7.1. Guidance

As indicated below there are two types of unauthorised expenditure:



7.2. The Accounting Treatment

Unauthorised expenditure is accounted for as an expense in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

7.2.1. Accounting Policies

Revenue Recognition

If the amounts recovered as a result of unauthorised expenditure are material a revenue recognition accounting policy will be required in the annual financial statements.

The accounting policy for revenue recognition should include the following:

➤ **Revenue from non-exchange transactions**

Revenue from the recovery of unauthorised expenditure is based on legislated procedures including those set out in the Public Finance Management Act, Act No.1 of 1999 and is recognised when the recovery thereof from the responsible Member of the Executive Council (MEC) or officials is virtually certain.

➤ **Mandatory accounting policy notes required in the Annual Financial Statements**

7.3. Procedures for the Management of Unauthorised Expenditure

It is of paramount importance that all purchases of goods and services must be correctly and appropriately authorized. If this is not done, the Department may hold the individual concerned personally responsible for payment of the expenditure that was not properly authorized.

Such actions should be investigated and could result in the instigation of disciplinary procedures against the person concerned, especially if there is an indication of fraudulent activity.

Any employee of the Department who discovers or suspects the occurrence of unauthorised expenditure to be taking place should immediately notify (report) the Accounting Officer or his / her delegate. The details of the transgression (unauthorised expenditure) should be recorded in the unauthorised expenditure register.

An investigation must be instituted to determine whether the alleged expenditure meets the criteria for the definition of unauthorised expenditure and to identify the individual concerned.

Once the investigation has been completed and it is determined that the expenditure was not valid and therefore constitute unauthorised spending, the Accounting Officer must immediately report this, in writing, in terms of section 38 (1) (g) of the PFMA to the Provincial Treasury. Unauthorised expenditure must also be reported in the monthly report as per the requirement of Treasury regulations 9.1.5.

The Accounting Officer must immediately take effective and appropriate steps to recover the amount from the person concerned; if he / she has been identified in accordance with section 38 (1) (h) and TR 9.1.3.

7.3.1. The Standing Committee on Public Accounts (SCOPA)

The Provincial Treasury, working together with the Department's Budget Office submit to the Office of the Auditor General a report in the Department's annual financial statements on all unauthorised expenditure which gets tabled at the Standing Committee on Public Accounts for consideration (approval / non-approval).

The Standing Committee on Public Accounts will recommend to the Provincial Legislature, either:

- 1) The unauthorised expenditure is not approved and will become an additional charge against the funds allocated for the next or future financial years under the Department's vote in terms of section 34(2) of the Public Finance Management Act; **OR**
- 2) The unauthorised expenditure be approved.
- 3) The Provincial Treasury Budget Office then submits a request to the Provincial Legislature to authorize the unauthorised expenditure as per the recommendation of SCOPA.
- 4) Once authorized by the Provincial Legislature then the Provincial Treasury will transfer the required funds to off-set the unauthorised expenditure to Department's bank account. (A journal entry must be prepared.)

This register must be kept up to date to track all unauthorised expenditure and for purposes of internal and external audit.

7.3.2. Criteria for approval of unauthorised expenditure by the Provincial Legislature (SCOPA)

- a) Effective and appropriate disciplinary steps against officials who made or permitted an unauthorised expenditure.
- b) Funds in excess of appropriation were spend in accordance with the programme descriptions of the Department on essential services which could not be avoided (value for money).
- c) Remedial steps taken by the Accounting Officer to prevent further occurrence of unauthorised expenditure.
- d) Funds not spent in accordance with the purpose of a main division or a vote but related to the objectives of the Department (technical transgression).
- e) No fraudulent / corrupt activities present in making or permitting the expenditure.

7.3.3. Criteria for non-approval of unauthorised expenditure by the Provincial Legislature (SCOPA)

- a) No disciplinary steps were taken against officials responsible for or permitted an unauthorised expenditure.
- b) Funds spent in excess of the vote on non-essential services (wasteful).
- c) Funds not spent in accordance with the purpose of a main division or a vote and which are unrelated to the objectives of the Department.
- d) Unauthorised expenditure where fraudulent / corrupt activities were present.

7.4. Disciplinary Action

The Accounting Officer of the Department is empowered in terms of the PFMA to effect disciplinary actions against any individual within the Department who is found to have committed acts of financial misconduct that could result in the financial loss or damage to the Department and the provisions of the Act are quoted verbatim below as follows:

"The Accounting Officer must take effective and appropriate disciplinary steps against any official in the service of the Department, who:

- a) *Contravenes or fails to comply with a provision of the Public Finance Management Act, Act 1 of 1999 as amended.*
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- b) Commits an Act which undermines the financial management and internal control systems of the Department.*
- c) Makes or permits an unauthorised expenditure.*
- d) Collect all revenue which has accrued to the Department.”*

When disciplinary action is being considered, Departments are advised to contact the Directorate Human Capital Management (Human Resources Management and Labour Relations) to ensure compliance with collective bargaining agreements and Department of Roads and Public Work Human Resources policies.

Human Resources Management (HRM) must be informed of any disciplinary action being considered to also ensure that employee's rights related to compensation and benefits are protected and reasonable employee relations are maintained. It is also advisable that Departmental employees from regional and district offices should regularly discuss cases of financial misconduct amongst themselves.

Should an official act in any way that infringes the terms of this policy, such an official may face disciplinary action. In cases of serious violations involving deception, this may lead to the matter being dealt with through the Department's formal grievance and disputes procedure.

Failure to take disciplinary action where required under this policy shall itself be a breach of financial discipline under this policy.

7.5. Legal Action

The Department shall investigate allegations of unauthorised expenditure against any political office bearer, the Accounting Officer, the chief financial officer, a senior manager or other official of the Department.

If the investigation warrants such a step, institute disciplinary proceedings against the political office bearer, the Accounting Officer, chief financial officer or that senior manager or other official in accordance with the PFMA and PSA.

7.6. Grievance Management

If you consider that this policy has not been applied fairly or correctly, you should raise the matter initially with your immediate supervisor. If you subsequently remain dissatisfied by any response you receive, you may take up this matter with your employee representative, the human capital management Department, or any member of senior management. Serious grievances may also ultimately be handled through the Department's formal grievance and disputes procedure.

8. ROLES AND RESPONSIBILITIES

8.1. The Executive Authority / Member of the Executive Council (MEC)

8.1.1. The Executive Authority must investigate allegations of financial misconduct against the Accounting Officer and if necessary institute disciplinary proceedings.

8.2. The Accounting Officer / Head of Department

8.2.1. In terms of section 38(1)(c)(iii) of the PFMA; The Accounting Officer for a Department, trading entity or constitutional institution must take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct.

8.2.2. The Accounting Officer must investigate allegations of financial misconduct and if necessary institute disciplinary proceedings.

8.2.3. Sections 81 - 86 of the PFMA also make provisions for sanctions against non-compliance. Persons who are found responsible for non-compliance are liable to a charge of financial misconduct which may lead to a dismissal or suspension.

8.3. The Human Capital Management

8.3.1. Labour Relation Officer will issue reports to Head of Department.

8.3.2. The Human Resource section must consult with the Head of the Unit / Directorate when internal discipline involves suspension or termination of employee's service.

8.3.3. Assist in ensuring that any action conforms to collective bargaining agreements and Departmental policies, as well as informed on employee rights including those related to compensation and benefits.

8.3.4. The Financial Misconduct Committee

- a) A departmental Financial Misconduct Committee (FMC) shall be established.
- b) The FMC shall facilitate the development of the Department's procedures on managing cases of possible financial misconduct / losses or damages as a result of negligence.
- c) The FMC shall establish criteria for the evaluation of possible financial misconduct, losses or damages.
- d) The FMC shall evaluate all cases of possible financial misconduct, which may result in unauthorised expenditure.
- e) The FMC shall make recommendations to the HOD on appropriate control processes to be implemented to avoid future recurrence.
- f) The FMC shall make recommendations to the HOD on appropriate disciplinary action against an official/s who had committed financial misconduct, is responsible for a loss to the Agency or has caused damage to the Agency's property/ asset.
- g) The FMC shall establish whether appropriate processes were followed to determine liability on the part of the official.
- h) The FMC shall make recommendations to the HOD on the writing off of losses.

8.4. Employees

- 8.4.1. Staff members are encouraged to disclose any conflict of interest.
- 8.4.2. Where fraudulent activities are suspected, they should be reported immediately.
- 8.4.3. All staff members are encouraged to co-operate fully with the investigators during the course of the investigation.
- 8.4.4. During the course of the investigations, all staff members are required to treat the matter confidentially and to provide information to investigators only.

9. RESOURCE IMPLICATIONS

9.1. An Enabling Environment

- 9.1.1. Protection of whistle-blowers through the establishment of a whistle blowing policy in line with the Protected Disclosures Act, Act No. 6 of 2000.
 - 9.1.2. Political will in fighting corruption.
 - 9.1.3. Strengthening public / private discourse.
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- 9.1.4. Talking freely about issues relating to fraud, corruption and related activities.
- 9.1.5. Consider the establishment of well-publicized means; (i.e. fraud hotlines, government meet the people programmes) to receive and process information from the public on perceived irregularities.

9.2. Human Capital Requirements

- 9.2.1. Recruitment of suitably qualified financial misconduct investigators or re-training of inspectorate officials to deal with cases of financial misconduct.
- 9.2.2. Training of all departmental employees on issues relating to unauthorised expenditure, through the attendance workshops and seminars.
- 9.2.3. Induction of the Financial Misconduct Committee members.

9.3. Financial Resources

- 9.3.1. The CFO shall ensure that the Financial Misconduct Committee is adequately funded, with a dedicated budget to ensure the sustainability of the programme.

10. MONITORING AND EVALUATION

The effectiveness of the program will be monitored closely by the Financial Misconduct Committee, in conjunction with the departmental units such as Strategic Planning Management, Labour Relations, Legal Services, Finance and Inspectorate.

All reports that relates to the issues concerning financial misconduct will be dealt with confidentially by all relevant parties.

11. POLICY REVIEW

- 11.1 This policy will become effective and applicable after the approval by the Head of Department and is subject to review and amendment every five (5) years. In the event that the policy is amended, the amended policy or provisions thereof will supersede the previous one.
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- 11.2 This policy may be assessed before that time as necessary to reflect substantial organisational etc. changes at the Department or any change required by law.
- 11.3 Deviations from this policy must be approved by the Head of Department.

12. APPROVAL

This Policy is Approved / Not Approved

Comments:

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HEAD OF DEPARTMENT

5.3.19

DATE