

South Africa

Protection from Harassment Act, 2011

## Protection from Harassment Regulations, 2013

Government Notice R274 of 2013

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## South Africa

### Protection from Harassment Act, 2011

## Protection from Harassment Regulations, 2013

### Government Notice R274 of 2013

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**Commenced on 27 April 2013**

*[This is the version of this document from 12 April 2013.]*

The Minister of Justice and Constitutional Development has under section 19 of the Protection from Harassment Act, 2011 ([Act No. 17 of 2011](#)), made the regulations in the Schedule.

#### 1. Definitions

In these regulations, any word or expression to which a meaning has been assigned in the Act, bears that meaning and, unless the context otherwise indicates—

“the Act” means the Protection from Harassment Act, 2011 ([Act No. 17 of 2011](#)).

#### 2. Manner in which clerk of court must inform complainant or person not represented by legal representative (Section 2(2))

For purposes of section 2(2) of the Act, the clerk of the court must, if the complainant or person referred to in section 2(3)(a) of the Act is not represented by a legal representative and before the complainant or such person applies for a protection order—

- (a) hand a form which corresponds substantially with Form 1 of the Annexure to the complainant or such person which must, if reasonably possible, be in the official language of the complainant's or such person's choice;
- (b) read out or cause Form 1 of the Annexure to be read out to the complainant or such person if the complainant or such person is unable to read the notice;
- (c) inquire from the complainant or such person whether he or she understands the contents of Form 1 of the Annexure;
- (d) further explain, to the best of his or her ability, to the complainant or such person on request any part of Form 1 of the Annexure which the complainant or such person does not understand; and
- (e) obtain a written acknowledgement from the complainant or such person that there has been compliance with this regulation.

#### 3. Manner of applying for protection order (Section 2(1))

A complainant or person on behalf of a complainant must in writing, in the form of an affidavit which must correspond substantially with Form 2 of the Annexure, apply for a protection order.

#### 4. Issuing of interim protection order and manner of service (Section 3(2) and (3))

- (1) An interim protection order in terms of section 3(2) of the Act must correspond substantially with Form 3 of the Annexure.
- (2) The interim protection order must be served on the respondent in the manner prescribed by regulation 28.

**5. Notice to show cause and manner of service of notice, certified copies of application and supporting affidavits (Section 3(4))**

- (1) The notice in terms of section 3(4) of the Act must correspond substantially with Form 4 of the Annexure.
- (2) The notice and certified copies of the application and supporting affidavits must be served on the respondent in the manner prescribed by regulation 28.

**6. Manner of service of interim protection order and warrant of arrest on complainant (Section 3(7))**

The certified copies of the interim protection order and original warrant of arrest must be served on the complainant in the manner prescribed by regulation 28.

**7. Form of direction directing electronic communications service provider to furnish information to court and manner of service (Section 4(1)(b) and (2))**

- (1) A direction in terms of section 4(1)(b) of the Act must correspond substantially with Form 5 of the Annexure.
- (2) The direction must be served by the clerk of the court on the electronic communications service provider in the manner prescribed by regulation 29.
- (3) After the service of the direction has been effected in terms of subregulation (2), the clerk of the court must file the documents contemplated in regulation 29(3) on the court file.

**8. Manner in which electronic communications service provider must furnish information to court and form of affidavit to furnish particulars to court (Section 4(1)(b))**

- (1) On receipt of a direction, an electronic communications service provider must complete the affidavit contemplated in subregulation (3) and file the affidavit with the clerk of the court in the manner prescribed by regulation 29.
- (2) The clerk of the court who receives the affidavit must file the affidavit on the court file.
- (3) An affidavit in terms of section 4(1)(b) of the Act must be in a form which corresponds substantially with Form 6 of the Annexure.

**9. Application by electronic communications service provider for extension of period within which information must be provided to court or cancellation of direction and form of affidavit (Section 4(3)(b))**

- (1) An application by an electronic communications service provider for the extension of the period within which the information must be provided to the court or for the cancellation of the direction, in terms of section 4(3)(b) of the Act, must be made in the form of an affidavit which corresponds substantially with Form 7 of the Annexure.
- (2) The application must be filed with the clerk of the court in the manner prescribed by regulation 29.
- (3) The clerk of the court must on receipt of the application submit it to the magistrate for consideration.

**10. Manner of requesting additional evidence by way of affidavit from electronic communications service provider and form of affidavit by electronic communications service provider (Section 4(4)(b))**

- (1) A request for additional evidence referred to in section 4(4)(b) of the Act must correspond substantially with Form 8 of the Annexure.
- (2) The request must be served by the clerk of the court identified by the court on an electronic communications service provider in the manner prescribed by regulation 29.
- (3) After the service of the request has been effected in terms of subregulation (2), the clerk of the court must file the documents contemplated in regulation 29(3) on the court file.
- (4) On receipt of a request, the electronic communications service provider must furnish the requested evidence by way of an affidavit in a form which corresponds substantially with Form 9 of the Annexure, which must be filed with the clerk of the court in the manner prescribed by regulation 29.
- (5) The clerk of the court must on receipt of the requested additional evidence submit it to the magistrate for consideration.

**11. Form and manner of informing electronic communications service provider of outcome of application (Section 4(4)(d))**

- (1) The court must inform the electronic communications service provider of the outcome of an application in terms of section 4(4)(d) of the Act on a form which corresponds substantially with Form 10 of the Annexure.
- (2) The completed Form 10 must be served by the clerk of the court identified by the court on an electronic communications service provider in the manner prescribed by regulation 29.
- (3) After the service of Form 10 has been effected in terms of subregulation (2), the clerk of the court must file the documents contemplated in regulation 29(3) on the court file.

**12. Manner in which electronic communications service providers must bring change of particulars to the attention of Director-General and list of electronic communications service providers (Section 4(7)(b) and (c))**

- (1) An electronic communications service provider must, in writing to the Director-General: Justice and Constitutional Development, bring any change of particulars referred to in section 4(7)(a) of the Act to his or her attention.
- (2) The list referred to in section 4(7) of the Act, and any subsequent amendments made thereto, must be—
  - (a) made available on the internal website of the Department of Justice and Constitutional Development; and
  - (b) brought to the attention of all courts by means of a Departmental communication.

**13. Form of direction directing station commander to determine name and address or other information of respondent and manner of service (Section 5(1)(b) and (2))**

- (1) A direction in terms of section 5(1)(b) of the Act must correspond substantially with Form 11 of the Annexure.
- (2) The direction must be completed in duplicate and the original must be served by the clerk of the court or sheriff identified by the court in terms of regulation 28.

- (3) After the service of the direction has been effected in terms of subregulation (2), paragraph 9 on the duplicate original of Form 11 must be completed, as the circumstances require—
  - (a) by the clerk of the court who must file the form on the court file; or
  - (b) by the sheriff who must hand the form to the clerk of the court, who must file the form on the court file.

**14. Form of affidavit by member of South African Police Service and manner to furnish particulars to court (Section 5(3)(a))**

- (1) An affidavit in terms of section 5(3)(a) of the Act must correspond substantially with Form 12 of the Annexure.
- (2) The affidavit referred to in subregulation (1) must be filed with the clerk of the court by delivering the affidavit in duplicate to him or her personally.
- (3) The clerk of the court must acknowledge receipt on the duplicate original of the affidavit and hand such duplicate original back to the person who filed the affidavit with the clerk of the court.
- (4) The clerk of the court who receives the affidavit must file the affidavit on the court file.

**15. Application by station commander for extension of period within which information must be provided to court or cancellation of direction and form of affidavit (Section 5(3)(b))**

- (1) An application by a station commander for the extension of the period within which the information must be provided to the court or for the cancellation of the direction, in terms of section 5(3)(b) of the Act, must be made in the form of an affidavit which corresponds substantially with Form 13 of the Annexure.
- (2) The application must be filed with the clerk of the court—
  - (a) by delivering the application to the clerk of the court personally; or
  - (b) by filing the application in the manner prescribed by regulation 29 with the clerk of the court identified in the direction.
- (3) If the application is filed with the clerk of the court in terms of subregulation (2)(a), the clerk of the court must acknowledge receipt on the duplicate original of the affidavit and hand such duplicate original back to the person who filed the affidavit with the clerk of the court.
- (4) The clerk of the court must on receipt of the application submit it to the magistrate for consideration.

**16. Manner of requesting additional evidence by way of affidavit from station commander and form of affidavit (Section 5(4)(b))**

- (1) A request for additional evidence in terms of section 5(4)(b) of the Act must correspond substantially with Form 14 of the Annexure.
- (2) The request must be completed in duplicate and the original must be served by the the clerk of the court or sheriff identified by the court in the manner prescribed by regulation 28.
- (3) After service of the request for additional evidence has been effected in terms of subregulation (2), paragraph 6 of the duplicate original of Form 14 must be completed, as the circumstances require—
  - (a) by the clerk of the court who must file the duplicate original of the request on the court file; or



- (b) by the sheriff who must hand the duplicate original of the request to the clerk of the court, who must file the form on the court file.
- (4) On receipt of the request, the station commander must furnish the requested evidence by way of an affidavit in a form which corresponds substantially with Form 15 of the Annexure, which must be filed with the clerk of the court—
  - (a) by delivering the affidavit to the clerk of the court personally; or
  - (b) by filing the affidavit in the manner prescribed by regulation 29 with the clerk of the court identified in the direction.
- (5) If the affidavit is filed with the clerk of the court in terms of subregulation (4)(a), the clerk of the court must acknowledge receipt on the duplicate original of the affidavit and hand the duplicate original back to the person who filed the affidavit with the clerk of the court.
- (6) The clerk of the court must on receipt of the requested additional evidence submit it to the magistrate for consideration.

**17. Form and manner of informing station commander of outcome of application (Section 5(4)(d))**

- (1) The court must inform the station commander of the outcome of an application in terms of section 5(3)(b) of the Act on a form which corresponds substantially with Form 16 of the Annexure.
- (2) The completed Form 16 must be served by the clerk of the court identified by the court on a station commander in the manner prescribed by regulation 29.
- (3) After the service of Form 16 has been effected in terms of subregulation (2), the clerk of the court must file the documents contemplated in regulation 29(3) on the court file.

**18. Form of affidavit by member of South African Police Service to provide information to court (Section 6(3)(b))**

- (1) An affidavit in terms of section 6(3)(b) of the Act must be in a form which corresponds substantially with Form 17 of the Annexure.
- (2) The affidavit must be filed with the clerk of the court by delivering the affidavit in duplicate to him or her personally, at the request of the complainant or clerk of the court, when the complainant or person applies for an interim protection order in terms of section 2 of the Act.
- (3) The clerk of the court must acknowledge receipt on the duplicate original of the affidavit and hand the duplicate original back to the person who delivered the affidavit to the clerk of the court.

**19. Subpoena of person as witness or to provide book, document or object (Section 7(1))**

- (1) A subpoena in terms of section 7(1) of the Act must correspond substantially with Form 18 of the Annexure.
- (2) After the court has issued the subpoena, the original of the subpoena must be served upon the person affected thereby in the manner prescribed by law for the service of process in Magistrates' Courts.
- (3) The court must identify and order a person to hand the subpoena to the person who is authorised to serve process.
- (4) The document which serves as proof of service must, together with the duplicate original subpoena, without delay be furnished to the clerk of the court who must file such documents on the court file.

**20. Form of final protection order and service (Section 9(1), (4) and (6))**

- (1) A final protection order in terms of section 9(1) or (4) of the Act must correspond substantially with Form 19 of the Annexure.
- (2) The service of—
  - (a) the original protection order on the respondent, in terms of section 9(6)(a) of the Act; and
  - (b) a certified copy of the protection order and the warrant of arrest on the complainant, in terms of section 9(6)(b) of the Act,must take place in the manner prescribed by regulation 28.

**21. Manner of forwarding protection order and warrant of arrest to police station (Section 9(7))**

- (1) In terms of section 9(7) of the Act certified copies of the protection order and warrant of arrest must be forwarded by the clerk of the court to the police station of the complainant's choice—
  - (a) in the manner prescribed by regulation 29; or
  - (b) by sending certified copies thereof by registered post.
- (2) If the forwarding of certified copies of the protection order and warrant of arrest have been effected—
  - (a) in terms of subregulation (1)(a), the clerk of the court must file the documents contemplated in regulation 29(3) on the court file; or
  - (b) in terms of subregulation (1)(b), the clerk of the court must—
    - (i) file a note to this effect on the court file; and
    - (ii) require that proof of receipt thereof be returned to him or her by the relevant postal authority.

**22. Form of warrant of arrest (Section 11(1)(a))**

The warrant of arrest in terms of section 11(1)(a) of the Act must correspond substantially with Form 20 of the Annexure.

**23. Form of affidavit for further warrant of arrest (Section 11(3))**

An affidavit in terms of section 11(3) of the Act for obtaining a second or further warrant of arrest must be in a form which corresponds substantially with Form 21 of the Annexure.

**24. Form of affidavit regarding contravention of protection order (Section 11(4)(a))**

An affidavit referred to in section 11(4)(a) of the Act in which it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order must be in a form which corresponds substantially with Form 22 of the Annexure.

**25. Form of written notice to respondent to appear before court (Section 11(4)(c))**

The written notice in terms of section 11(4)(c) of the Act calling on the respondent to appear before a court on a charge of committing an offence referred to in section 18(1)(a) of the Act must correspond substantially with Form 23 of the Annexure.

**26. Application for variation or setting aside of protection order (Section 13(1))**

- (1) An application for the variation or setting aside of a protection order in terms of section 13(1) of the Act, must be made on a form which corresponds substantially with Form 24 of the Annexure.
- (2) The application in terms of subregulation (1) must be filed with the clerk of the court where the protection order was issued.
- (3) The application referred to in subregulation (1) must be served on the other party by the clerk of the court by registered post in accordance with regulation 28.

**27. Notice of variation or setting aside of protection order (Section 13(3))**

- (1) The notice of the variation or setting aside of a protection order in terms of section 13(3) of the Act must correspond substantially with Form 25 of the Annexure.
- (2) The notice referred to in subregulation (1) must be forwarded by the clerk of the court to the complainant and respondent by—
  - (a) registered post; or
  - (b) handing it to them personally.
- (3) If the notice was forwarded in terms of—
  - (a) subregulation (2)(a), the clerk of the court must—
    - (i) file a note to this effect on the court file; and
    - (ii) require that proof of receipt thereof be returned to him or her by the relevant postal authority; or
  - (b) subregulation (2)(b), the clerk of the court must—
    - (i) endorse a copy of the notice to this effect; and
    - (ii) obtain the signature of the person to whom the notice was handed on the copy of the notice contemplated in paragraph (b)(i).

**28. Service of documents**

- (1) Service of any document in terms of the Act or these regulations, except where the Act or regulations provide otherwise, must be effected immediately by—
  - (a) the clerk of the court by handing or presenting for handing over a certified copy of the document to the person on whom the document is to be served or by sending a certified copy of the document to that person by registered post and endorsing the original document to this effect;
  - (b) the sheriff in terms of the provisions of the Magistrates' Courts Act, 1944 ([Act No. 32 of 1944](#)), and rules published in terms of section 6 of the Rules Board for Courts of Law Act, 1985 ([Act No. 107 of 1985](#)); or
  - (c) a peace officer in terms of the provisions of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), relating to the service of subpoenas.
- (2) The clerk of the court sending a copy of the document by registered post in terms of subregulation (1)(a) to the person on whom the document is to be served, must require that proof of receipt thereof be returned to him or her by the relevant postal authority.
- (3) A person authorised to effect service in terms of subregulation (1), who is not a member of the South African Police Service, may, in any case where resistance to the service of a document is

encountered or is reasonably anticipated, request a member of the South African Police Service to assist him or her with the service of any document provided for in the Act and these regulations.

- (4) Where the court is satisfied that service cannot be effected in the manner prescribed by this regulation, or otherwise considers it necessary or expedient, it may make an order allowing service to be effected in a manner specified in such an order.

## **29. Service, filing or forwarding of documents by facsimile**

- (1) The service, filing or forwarding of a document by facsimile is effected by sending the document to a facsimile number of a person.
- (2) The person sending the document by facsimile to a person in terms of subregulation (1) must—
- (a) obtain a transmission verification report as to whether the document was successfully transmitted to the facsimile number of the other person;
  - (b) phone the person to which the document was sent by facsimile to enquire whether the facsimile was received by him or her; and
  - (c) complete a statement which corresponds substantially with Form 26 of the Annexure.
- (3) The document referred to in subregulation (1), the transmission verification report in terms of subregulation (2)(a) and the statement in subregulation (2)(c) must be kept as proof of service, filing or forwarding.
- (4) Where the court is satisfied that service, filing or forwarding of a document cannot be effected in the manner prescribed by this regulation, or otherwise considers it necessary or expedient, it may make an order allowing for the service, filing or forwarding of a document to be effected in a manner specified in such an order.

## **30. Short title and commencement**

These regulations are called the Protection from Harassment Regulations, 2013, and come into operation on 27 April 2013.

### **Annexure**

#### **Forms**

*[Editorial note: The forms have not been reproduced.]*