

South Africa

Disaster Management Act, 2002

Directions to address, prevent and combat the spread of COVID-19 in all courts, court precincts and justice service points

Government Notice R418 of 2020

Legislation as at 26 March 2020

FRBR URI: /akn/za/act/gn/2020/r418/eng@2020-03-26

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PDF created on 21 February 2024 at 23:26.

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Directions to address, prevent and combat the spread of COVID-19 in all courts, court precincts and justice service points

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Government Notice R418 of 2020

Published in Government Gazette 43167 on 26 March 2020

Commenced on 26 March 2020

[This is the version of this document from 26 March 2020.]

[Repealed by Directions to address, prevent and combat the spread of COVID-19 in all courts, court precincts and justice service points (Government Notice R440 of 2020) on 31 March 2020]

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services, after consultation with the Chief Justice and in terms of section 27(2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)), read with regulation 10(2) of the Regulations published by Government Notice No. 318 of 18 March 2020, and Regulations published by Government Notice No. 43148 of 25 March 2020, issue the directions in the Schedule to address, prevent and combat the spread of COVID-19 in all courts, court precincts and justice service points in the Republic of South Africa.

Unless circumstances otherwise dictate, the directions will apply during the period of lockdown as announced by the President from midnight on Thursday 26 March 2020 until midnight on Thursday 16 April 2020, and may be varied as circumstances require.

1. Definitions

"**certificate**" means a certificate issued in terms of Regulation 11B(3) by the head of an institution as defined in Chapter 2 of the Amended Regulations issued in terms of section 27(2) of the Disaster Management Act under gazette Number 11062 on 25 March 2020 ("the amended Regulations");

"**court**" means a court room or an office in which court proceedings are conducted and includes judges' chambers, magistrates' chambers and an audio-visual remand centre;

"**court precinct**" means an area of a court demarcated as such with or without a fence or a wall;

"**Administration of Estates Act**" means the Administration of Estates Act, 1965 ([Act No. 66 of 1965](#)), as amended;

"**Criminal Procedure Act**" means the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), as amended;

"**essential services**" means a service as defined in Regulation 11A of the amended Regulations and for the purposes of this directive is a service as defined in Annexure B clause 16 to the Regulations;

"**head of institution**" means the head of an institution as defined in the amended Regulations, and for the purposes of these directions means the Director of a Provincial Legal Council established in terms of section 23 of the Legal Practice Act, or her or his delegated authority as the case may be;

"**Legal Practice Act**" means Legal Practice Act, 2014 ([Act No. 28 of 2014](#));

"**legal practitioner**" means a person as defined in the Legal Practice Act, 2014;

"**justice service points**" means the centres and offices of the Masters of the High Court and Offices of the Family Advocate;

"lockdown" means from midnight on Thursday 26 March 2020 until midnight on Thursday 16 April 2020; and

"permit" means a certificate issued in terms of these directives;

"provincial director" means the director of a provincial council established in terms of section 23 of the Legal Practice Act;

"provincial legal council" means a provincial council as established in terms of section 23 of the Legal Practice Act; and

"matter" means an urgent or essential court application and hearing including a bail application in case of first appearance of an accused person, or a matter which if not enrolled during the lockdown, will lead to substantial injustice.

2. Restricted access to the court precinct and all justice service points

- (a) Persons with a material interest in a case such as, litigants, accused, witnesses, those who may be needed to provide support such as those accompanying children, victims of domestic violence or sexual abuse and persons with disabilities, family members, and members of the media will be permitted to enter the court precinct, provided that the judicial officer concerned must order that the number of persons in a room be reduced to comply with safety measures and social distancing requirements.
- (b) Entry into the courts and court precinct shall only be allowed in respect of urgent and essential matters.
- (c) The number of persons entering courts, court precincts or justice service points will be limited by court management and security officials for purposes of enforcing acceptable social distancing.
- (d) Persons from outside the borders of the Republic who entered the Republic a week before, during or after the declaration of the National State of Disaster, will not be allowed to enter the court precinct or justice service point during the lockdown, unless the matter is urgent or essential, and they have been screened and found not to be infected with COVID-19.
- (e) Persons who have been in contact with or exposed to persons who are from high risk countries will not be allowed to enter a court precinct or justice service point during the lockdown.
- (f) Persons who have been in contact with or exposed to persons who have tested positive for COVID-19 will not be allowed to enter the court precinct or justice service point.
- (g) Foreign language interpreters, where required during the lockdown, must be sourced from within the Province in which the case is heard and where an interpreter is not available within the Province alternative arrangements for audio-visual interpretation must be made.

3. Postponements of criminal cases and related matters

- (a) Audio-visual remand centres in Correctional Centres linked to Magistrates' Courts must be used for purposes of the postponement of cases where accused persons are in custody.
- (b) All criminal trials enrolled during the lockdown are to be postponed to dates after this period, save for trials where the interests of justice dictate otherwise or where special arrangements have been made with the judicial officers involved.
- (c) Awaiting trial detainees held in Correctional Centres and police holding cells shall not be brought to any court or court precinct, unless for first appearance, bail applications and matters where special arrangements have been made with the judicial officers involved in the matters.
- (d) All matters where children are detained in Child and Youth Care Centres must be remanded in absentia.

- (e) An accused person arrested for a petty offence must be released and warned to appear in court on a future date.
- (f) Police officials and prosecutors must where necessary fix bail in terms of sections 59 (1) and 59 A (1) of the Criminal Procedure Act and where necessary release accused on warning in terms of section 56(1) of the said Act.
- (g) All criminal court cases where accused persons are not incarcerated shall not be placed on the court roll during the lockdown and summonses will be issued for new trial dates.

4. Social distancing

The Court Manager or his or her designee shall ensure that the social distance standard of at least one (1) square meter is maintained in all court rooms and the court precinct.

5. Civil cases

- (a) Cases that are not identified as urgent and essential services shall not be placed on the court roll for the duration of the period of lockdown, provided that Heads of Court shall retain the discretion to authorise the hearing of matters through teleconference or videoconference or any other electronic mode, which dispenses with the necessity to be physically present in a courtroom.
- (b) The Chief Registrar or Clerk of the Court, as the case may be, must inform the parties and their legal representatives of the new court date in writing.
- (c) All time limits imposed by any rule of court shall be suspended and shall recommence after the termination or lapsing of the period of the National State of Disaster, unless specific orders are granted by judicial officers in urgent and essential cases.
- (d) Where the return date of an application, excluding those mentioned in 8(c) below, falls during the lockdown, such date shall be extended up to one month after the end of the lockdown.
- (e) Service of process and execution of writs by sheriffs shall be limited to cases which are urgent and essential, including:
 - (i) Service and execution of Court orders relating to COVID-19;
 - (ii) Service of domestic violence protection orders;
 - (iii) Service of protection from harassment orders;
 - (iv) Service of process relating to claims prescribing;
 - (v) Service of urgent court process relating to court hearings scheduled during lockdown;
 - (vi) Service of urgent court process in family law matters as determined in these directions; and
 - (vii) Service and execution of other process as directed by the Department of Justice and Constitutional Development, the South African Board for Sheriffs or Heads of Courts.
- (f) All evictions and execution of attachment orders, both movable and immovable, including the removal of movable assets and sales in execution is suspended with immediate effect for the duration of the lockdown.

6. Legal aid

The provision of legal aid by Legal Aid South Africa will be limited to urgent and essential cases during the lockdown.

7. Services of offices of the Master

Only the following services in terms of the Administration of Estates Act, 1965 will be rendered:

- (a) Payments to natural guardians, tutors and curators, or for and on behalf of minors and persons under curatorship:
 - (i) where payments in respect of maintenance and education which have been approved and payments are made electronically, these payments will continue to be made electronically; and
 - (ii) only applications for payment, if the quarterly payments have not already been received, for the benefit of child-headed house-holds; orphans and the elderly, will be attended.
- (b) Other services in respect of the Administration of Estates Act:
 - (i) only documentation required for the burial of a deceased person will be processed; and
 - (ii) only urgent appointment of curators will be processed during the lockdown.

8. Family law services

- (1) Only the following family law services will be dealt with:
 - (a) Orders of court falling due or required to be made during the period of lockdown in the following matters:
 - (i) foster care;
 - (ii) adoption;
 - (iii) removal of children in need of care and protection;
 - (iv) placement of children in child and youth care centres;
 - (v) international child abduction cases;
 - (b) Maintenance matters
 - (i) first time applications for maintenance will only be allowed if complete information is supplied in respect of required names, surname, telephone or cellular phone number, employment or business address, banking details of the respondent; and
 - (ii) applications in respect of enforcement of maintenance orders.
 - (c) Protection Orders
 - (i) Applications for interim domestic violence protection orders; and
 - (ii) Applications for interim protection against harassment.
- (2) Arrangements where a child is to move from one parent to another in terms of a parenting plan must be attended to.

9. Travel by officers of court during period of lockdown

Enforcement officers must allow Judges, Magistrates, legal practitioners and sheriffs to commute between their places of residence and the court within their area of jurisdiction for purposes of performing essential services upon presentation of proof of appointment to such office.

10. The issuing of certificates to perform essential service

(a) Legal Practitioners

- (i) Legal practitioners who are engaged in litigation processes during the lockdown must seek a certificate authorising them to do so from the Provincial Director of the relevant Provincial Legal Council.
- (ii) The certificate so issued constitutes a permit to perform an essential service under Regulation 11A(B) 16 and can be issued only to practicing legal practitioners as defined in sections 24 and 30 of the Legal Practice Act.
- (iii) The legal practitioner may only be issued with the abovementioned certificate if he or she is appearing in a matter enrolled for hearing and is classified as urgent in terms of these directions.
- (iv) A practitioner can only utilise a permit in conjunction with a form of identification. Such identification includes confirmation by the relevant Provincial Director signing the certificate that the practitioner is on the Council's list of practicing legal practitioners.
- (v) The abovementioned identification must be presented when the permit is used, failing which the practitioner seeking to rely on the permit shall return to her or his residence in accordance with Regulation 11 B(1)(a)(i) for the duration of the lockdown.

(b) All other persons required to perform essential services

All other persons required to perform essential services must at all times have in their possession a certificate to perform an essential service, as issued by an authorised.

11. Safety measures at courts, court precincts and justice service points during period of lockdown

The following safety measures must be adhered to in addition to the safety measures that have been issued by the Minister of Health to minimise the spread of the virus. These measures are:

- (a) Deep cleaning and sanitizing public spaces as directed by the head of office.
- (b) All members of the public entering a court, court precinct or justice service point must report at the security station set up for purposes of controlling access to the court, court precinct or justice service point where such person must complete a form and have his or her hands sanitised.
- (c) The form referred to in paragraph (b) above must have the following questions:
 - (i) Names and contact details of person wishing to access the court, court precinct or justice service point;
 - (ii) Whether the person travelled overseas within the last three weeks;
 - (iii) Whether the person displays COVID-19 symptoms such as fever, dry cough, and tiredness;
 - (iv) Whether the person has been in contact with any person diagnosed with COVID-19; and
 - (v) Whether the person has been tested for COVID-19 and the results are pending, have been received;

If a person answers "yes" to questions (ii) - (v) as mentioned in 11(c) above, that person must be taken to a designated area, set apart for isolation and the Head of Office must be informed immediately and he or she must decide whether access should be granted or refused.

- (d) Display dispensers of alcohol-based hand sanitiser prominently in public areas.
- (e) Arrange seating so as to ensure that attendees are seated at least one (1) square meter apart.

- (f) Open windows and doors whenever possible to make sure the venue is well ventilated.
- (g) Office managers and heads of courts must ensure that the number of persons at any time in any room is limited with due regard to social distancing and other safety measures.

12. Exclusion

A judicial officer who presides in any matter in court, may order that the application of any provision in these Directions may be deviated from where the interests of justice so require.