Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

NO. R. 440 **31 MARCH 2020**

DIRECTIONS ISSUED IN TERMS OF REGULATION 10 OF THE REGULATIONSUNDER THE DISASTER MANAGEMENT ACT, 2002

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services hereby, after consultation with the Chief Justice and in terms of regulation 10(2) of the Regulations published under Government *Gazette* No. 43107, Government Notice No. 318 of 18 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 are in force for the duration of the national state of disaster.

Issued on this 30th day of March 2020

R O Lamola, MP
Minister of Justice and Correctional Services

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

SCHEDULE

1. Definitions

In this Schedule, unless the context indicates otherwise—

'Administration of Estates Act' means the Administration of Estates Act, 1965 (Act No. 66 of 1965);

'permit' means a permit issued in terms of Regulation11B(3) by the head of an institution as defined in Chapter 2 of the 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;

'Criminal Procedure Act' means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

'essential services' means a service defined in Regulation 11A of the Regulations and for the purposes of these Directions means a service listed in item 16 of Part B of Annexure B to the Regulations;

'head of institution' means the head of an institution defined in regulation 1 of the 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 delegate as the case may be;

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

'Legal Practice Act' means Legal Practice Act, 2014 (Act No. 28 of 2014);

'legal Practitioner' means a legal practitioner defined in section 1 of the Legal Practice Act, 2014;

'lockdown' means the period from midnight on Thursday 26 March 2020 until midnight on Thursday 16 April 2020;

'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 state of disaster, will lead to substantial injustice;

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

"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 established in terms of section 23 of the Legal Practice Act;

'state of disaster' means the national state of disaster declared by the Minister of Cooperative Governance and Traditional Affairs on 15 March 2020; and

'**the Regulations**' means the regulations issued in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) and published in Government Gazette No. 43148, Government Notice No. R398 of 25 March 2020.

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

(a) Only persons with a material interest in a case such as, litigants, accused, witnesses, and persons accompanying, or persons who may be needed to provide support such as those accompanying children, victims of domestic violence or sexually abused persons 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 precincts may 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 authorised security officials for the purposes of enforcing acceptable social distancing.

(d) A person who entered the Republic a week before, during or after the declaration of the National State of Disaster, may not be allowed to enter the court, court precinct or justice service point during the state of disaster, unless the matter is urgent or essential, and the person has been screened and found not to be infected with COVID-19.

(e) A person who has been in contact with, or exposed to, persons who are from high risk countries may not be allowed to enter a court, a court precinct or a justice service point during the state of national disaster.

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

(f) A person who has been in contact with, or exposed to, persons who have tested positive for COVID-19 may not be allowed to enter a court, a court precinct or a justice service point during the state of national disaster.

(g) Foreign language interpreters, where required during the state of national disaster, must be sourced from within the province in which the case is heard. 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 a court must be used for purposes of the postponement of cases where accused persons are in custody.

(b) All criminal trials enrolled during the lockdown must be postponed to dates after the lockdown, save for trials where the interests of justice dictate otherwise or where special arrangements have been made with the judicial officers involved in the matter.

(c) No awaiting trial detainees held in Correctional Centres and police holding cells may be brought to any court or court precinct, unless for a first appearance, a bail application and a matter where special arrangements have been made with the judicial officers involved in the matter.

(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 an accused person on warning in terms of section 56(1) of the said Act.

(g) All criminal court cases where accused persons are not incarcerated may not be placed on the court roll during the lockdown and summonses will be issued for new trial dates.

4. Social distancing

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

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

5. Civil Cases

(a) Civil cases that are not identified as urgent and essential services may not be placed on the court roll for the duration of the period of lockdown. However, Heads of courts 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) Service of process and execution of writs by sheriffs must 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 which are prescribing;

(v) Service of urgent court process relating to court hearings scheduled during the period of lockdown;

(vi) Service of urgent court process in family law matters as determined in these Directions; and

(d) Service and execution of other process by Sheriffs, including evictions, are not essential,

and are suspended 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 period of lockdown.

7. Services of Offices of the Master

Only the following services in terms of the Administration of Estates Act will be rendered during the period of lockdown:

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

(a) Payments to natural guardians, tutors and curators, or for, and on behalf of, minors and persons under curatorship in the following instances:

(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.

8. Family Law Services

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; and

(v) international child abduction cases.

(b) Maintenance matters:

(i) First time applications for maintenance will only be allowed if the 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.

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

(d) Where the return date of an application for protection orders referred to under subparagraph (c) above falls on a date during lockdown, such date shall be extended up to one month after the end of the lockdown.

9. Travel by officers of court during lockdown

9.1 Legal Practitioners:

(a) Legal practitioners who are engaged in litigation processes during the lockdown must seek a permit authorising them to do so from the Provincial Director of the relevant Provincial Legal Council.

(b) A permit so issued constitutes a permit to perform an essential service referred to in Annexure B item B16 to the Regulations and may be issued only to practicing legal practitioners as defined in sections 24 and 30 of the Legal Practice Act.

(c) A legal practitioner may only be issued with the abovementioned permit if he or she is appearing in a matter enrolled for hearing and is classified as urgent in terms of these Directions.

(d) A legal practitioner may only utilise a permit in conjunction with a form of identification referred to in paragraph 9.2(b)(ii). Such identification includes confirmation by the relevant Provincial Director that the practitioner is on the Council's list of practicing legal practitioners.

(e) The identification referred to in subparagraph (d) must be presented when the permit is used, failing which the practitioner seeking to rely on the permit must return to her or his residence in accordance with Regulation11B(1)(a)(i) for the duration of the lockdown.

9.2 (a) Enforcement officers must allow Judges, Magistrates and sheriffs to commute during the lockdown for purposes of performing urgent and essential services, upon presentation of proof of appointment to such office.

(b) A Legal practitioner who is unable to obtain a permit referred to in paragraph 9.1(b) must be allowed to commute between his or her place of residence and the

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

court at which he or she is required to appear for purposes of attending to urgent and essential matters, upon presentation of the following documents:

(i) An original or certified copy of the practitioner's admission certificate;

(ii) proof of identification; and

(iii) confirmation from the registrar or clerk of the relevant court that the matter is on the court roll for that particular day, that the practitioner is on record as the official legal representative in the particular matter and that the matter is urgent or essential.

(c) A legal practitioner may only be allowed to commute from his or her place of residence to a police station for purposes of arranging for police bail if the investigating officer of the case concerned confirms that such arrangements for police bail have been made, and the provisions of paragraph 9.1(b) or 9.2 (b)(i) and (ii) above, are complied with.

(d) Sheriffs must be allowed to commute between their places of residence and the area of service of process at which they are required to appear for purposes of attending to urgent and essential matters, upon presentation of the following documents:

(i) an original or certified copy of their appointment certificate;

(ii) proof of identification; and

(iii) original document/s to be served.

10. The issuing of certificates to perform essential service

In addition to the officers of the court mentioned in paragraph 9 above, other persons who are 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 person.

11. Safety measures at courts, court precincts and justice service points during the period of the state of national disaster

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 COVID-19:

(a) Deep cleaning and sanitising 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

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

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 request the following information:

(i) Names and contact details of the 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 or have been received.

(d) If a person answers "yes" or "not sure" to questions (ii) - (v) as mentioned in paragraph (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.

(e) Dispensers of alcohol-based hand sanitiser must be displayed prominently in public areas for use by all persons within the court precinct.

(f) Seating must be arranged so as to ensure that attendees are seated at least one (1) square metre apart.

(g) Windows and doors must be opened whenever possible, to ensure that the venue is well ventilated.

(h) 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 over any matter in court may, where the interests of justice so require, order that the application of any provision in these Directions be deviated from.

13. Withdrawal

Reproduced by LexisNexis under Government Printer's Authorisation (Authorisation No. 11802) dated 13 November 2018

The Directions published by Government Notice No. 418 of 26 March 2020, are hereby withdrawn.

14. Commencement

These Directions come into operation on the date of publication in the Government Gazette.

This gazette is also available free online at www.gpwonline.co.za