

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 992

11 SEPTEMBER 2020

DIRECTIONS ISSUED IN TERMS OF REGULATION 4(2) OF THE REGULATIONS MADE UNDER THE DISASTER MANAGEMENT ACT, 2002:

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services, hereby issue the Directions in the Schedule in terms of regulation 4(2)(b) and (c) read with regulation 4(10) of the Regulations made by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002), and published in Government Notice No. R. 480 of 29 April 2020, as amended by Government Notice No. R. 608 of 28 May 2020, Government Notice No. R. 714 of 25 June 2020, Government Notice No. R. 763 of 12 July 2020 and Government Notice No. R. 891 of 17 August 2020, to address, prevent and combat the spread of COVID-19 in all courts, court houses and justice service points in the Republic of South Africa.



R O LAMOLA, MP

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

DATE: 08/09/2020

SCHEDULE

1. Definitions

In these Directions, unless the context indicates otherwise—

'Annexure' means the Annexure to these Directions;

'case backlog' means, in relation to a district or regional court—

(a) a civil case that has been in the district or regional court for longer than nine (9) months since the issue of summons without being finalised; and

(b) a criminal case that has not been finalised within nine (9) months of the first appearance of the accused in either a district or regional court;

'court room' means a room in which proceedings of a court, commission or special tribunal are conducted and includes judges' chambers, a commissioner's chamber, magistrates' chambers, and audiovisual link or other audiovisual links such as teleconference or video conference or any other electronic mode linked to a court;

'court house' means a court building or premises demarcated with or without a fence or a wall where a court is built or situated;

'court manager' means an official appointed by the Department of Justice and Constitutional Development or the Office of the Chief Justice, as the case may be, who manages a court house;

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

'justice service point' means a centre or an office where family law services or services of the Masters of the High Court are obtainable;

'National Prosecuting Authority' means the National Prosecuting Authority established in terms of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

'priority roll' means the roll of criminal cases that has been prioritised in respect of each court;

'state of disaster' means the national state of disaster declared by the Minister of Cooperative Governance and Traditional Affairs on 15 March 2020 in terms of section 27(1) of the Disaster Management Act, 2002 (Act No. 57 of 2002), as extended; and

'the Regulations' means the Regulations issued by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002), and published in Government Notice No. R. 480 of 29 April 2020, as amended.

2. Application

- (a) These Directions apply in respect of Alert Level 2 as declared by Government Notice No. 891 of 17 August 2020, and Alert Level 1, in the event the latter is declared, subject to amendment.
- (b) The Directions published by Government Notices No. 440 of 31 March 2020 and No. 623 of 02 June 2020 in respect of Alert Levels 4 and 3 respectively, will apply in the event that either Alert Level is declared for the country or part thereof.
- (c) The Directions issued regarding auctions and sales in execution conducted by sheriffs of the court published by Government Notice No. R. 816 of 17 July 2020, remain in force.

3. Limited Services

Limitations to the services listed in the Annexure to these Directions are applicable during Alert Level 2, to the extent indicated in the said Annexure.

4. Directions issued by Heads of Court

These Directions must be read with directives issued from time to time by the Chief Justice and Heads of Court in terms of the Superior Courts Act, 2013 (Act No.10 of 2013).

5. Restriction of access to a court room, court house or justice service point

5.1 Access to a court room, court house or justice service point is subject to strict adherence to health protocols and social distancing measures including the mandatory wearing of a face mask or a home-made item that covers the nose and mouth or other appropriate item that covers the nose and mouth.

5.2 Persons with a material interest in a case such as litigants, accused persons, legal practitioners, witnesses, or persons who may be needed to provide support to the litigant, accused persons and witnesses including family members and persons accompanying children, victims of domestic violence or sexual offences and persons with disabilities and members of the media will be permitted to enter a court room, a court house or justice service point, provided that in respect of a court room, the presiding judicial officer may direct that the number of persons in the court room be reduced to comply with safety measures and physical distancing requirements.

5.3 The number of persons allowed in a—

- (a) public gallery of a court room;
- (b) court house; or
- (c) justice service point,

is subject to a restriction to not more than 50 percent of the available floor space, with members of the public observing a distance of at least one and a half metres from each other.

5.4 A person who, within the previous ten days, has been in close contact with, or exposed to, another person who has tested positive for COVID-19, except a person who had tested positive in the past but has recovered, may not be allowed to enter a court room, court house, or justice service point.

6. Postponement of criminal cases and related matters

6.1 An audiovisual link, where such a link exists, must be used for postponing cases where accused persons are in custody.

6.2 A court manager and a head of a correctional centre where the audiovisual link equipment has been installed, must ensure that such a system is at all times in a functional state and must take immediate and necessary steps for its repair if it becomes dysfunctional.

6.3 Directors of Public Prosecutions must, subject to any directive that the National Director of Public Prosecutions may give, issue such directives as may be necessary, to facilitate and expedite the fixing of bail by prosecutors as permitted in terms of section 59A(1) of the Criminal Procedure Act.

6.4 All matters where children are detained in Child and Youth Care Centres and Correctional Centres must be brought before court for consideration of continued detention.

7. Measures to reduce case backlogs

7.1 All courts must function optimally subject to the norms and standards determined by the Chief Justice and under strict observance of the health protocols.

7.2 A priority roll of criminal cases must be compiled in respect of each court under the direction of the presiding officer of such court and in consultation with the National Prosecuting Authority and Legal Aid South Africa.

7.3 The following cases must be placed on the priority roll:

- (a) Trials involving awaiting-trial detainees who are in custody;
- (b) cases where accused persons are charged with gender-based violence and femicide, other forms of serious contact crimes, corruption and a serious contravention of the Regulations;
- (c) cases that are trial-ready;
- (d) cases that are to be enrolled for sentence following conviction;
- (e) partly heard cases; and
- (f) any other case which the presiding officer deems it necessary to be included in the priority roll.

7.4 Weekly meetings of all relevant stakeholders must be convened by the presiding officer of each court for purposes of preparing, updating, reviewing or monitoring the priority roll required in respect of each such court.

8. Use of Audiovisual links in judicial proceedings

An audio visual link or any electronic mode may be used in any proceedings where the presiding officer deems it appropriate and, where to do so, would prevent unreasonable delay, save costs or be convenient and make it unnecessary for the person to appear in person in the court room.

9. Interpreters

Court interpreters including foreign language interpreters, where required, must be sourced from within the province in which the case is heard except where a particular language is not available within the province such interpreter may be sourced from another province.

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10. Resolution of disputes

10.1 Parties to a civil dispute may consider alternative dispute resolution mechanisms to resolve the dispute and, for that purpose, may—

- (a) either before or after the commencement of litigation but before the granting of judgment by the court, agree to refer the dispute to mediation; or
- (b) before the commencement of litigation, agree to refer the dispute to arbitration.

10.2 Parties intending to resolve a dispute through mediation must—

- (a) in the Magistrates' Courts, follow the procedure set out in Chapter 2 of the Rules of the Magistrates' Courts, which regulate court-annexed mediation; and
- (b) in the High Courts, follow the provisions of Rule 41A of the Uniform Rules of Court and consider the appointment of judges retired from active service, as mediators.

10.3 In disputes involving the State or an organ of State, the provisions of regulation 13 of the Regulations apply in so far as they are applicable.

10.4 Services of Judges discharged from active service and mediators approved by the Minister of Justice and Correctional Services for purposes of court-annexed mediation may be utilised to resolve civil disputes through arbitration or mediation.

10.5 A person designated by the Department of Justice and Constitutional Development or the Office of the Chief Justice must assist parties who wish to utilise alternative dispute resolution mechanisms to resolve their disputes.

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

11.1 Every compliance officer must ensure that there is, at all times, adequate supply of sanitisers and soap for people to wash and sanitise their hands at the court house or justice service point for which he or she has been designated or appointed.

11.2 Every person at a court room or court house or justice service point must—

- (a) at all times wear a face mask or a home-made item that covers the nose and mouth or another appropriate item to cover the nose and mouth; and
- (b) observe the social distancing requirement of 1,5 metres in any queue or seating arrangement and must adhere to any demarcations at such court room, court house or justice service point.

11.3 The compliance officer designated for each court house or justice service point must ensure that every person at a court room, court house or justice service point complies with the provisions of these Directions and the Regulations and must cause any person who refuses to comply to be removed therefrom.

12. Disinfection of court room, court house or justice service point

12.1 A court room, court house or a portion thereof or a justice service point or a portion thereof must be disinfected whenever any officer of the court or a member of the public who has tested positive for COVID-19 has been in such a court room, court house or a portion thereof or a justice service point or a portion thereof.

12.2 A Protocol published by the Department of Justice and Constitutional Development must state—

- (a) circumstances under which a court room, a court house or a portion thereof or a justice service point or a portion thereof may be closed for purposes of disinfection or deep cleaning;
- (b) the duration for which such court room, court house or a portion thereof or justice service point or a portion thereof will remain closed; and
- (c) alternative arrangements made for the duration of the closure of such a court room, court house or a portion thereof or a justice service point or a portion thereof.

13. 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 of these Directions be deviated from, provided that such deviation does not result in the exposure of persons to infection by COVID-19.

14. Commencement

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

ANNEXURE
LIMITED SERVICES UNDER ALERT LEVEL 2
 (Direction 3)

A. CRIMINAL MATTERS	EXTENT OF LIMITATION
Any trial involving a witness from outside the Republic and where the testimony of such witness cannot be obtained through an audiovisual link.	Case can be heard only after any such witness is permitted to travel to the Republic.
B. CIVIL LAW PROCEEDINGS	EXTENT OF LIMITATION
The enrolment of any civil trial involving a witness who is from outside the Republic and where the testimony of such witness cannot be obtained through an audiovisual link.	Case can be heard only after any such witness is permitted to travel to the Republic.
C. SHERIFFS SERVICES	EXTENT OF LIMITATION
1. Evictions. 2. Auctions.	1. Except by order of court. 2. To the extent permitted under the Directions regarding auctions and sales in execution conducted by sheriffs of the court published under Government Notice R.816 in the Government Gazette No. 43553 of 27 July 2020.