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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 623

02 JUNE 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, in terms of regulation 4(2) of the Regulations published under *Government Gazette* No. 43258, Government Notice No. 480 of 29 April 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.

**R O Lamola, MP****Minister of Justice and Correctional Services**

DATE 01/06/2020

Schedule

Definitions

1. In these Directions, unless the context indicates otherwise-

'Alert level' means the alert level determined by the Cabinet Member responsible for cooperative governance and traditional affairs in terms of regulation 3 of the Alert level 3 Regulations which applies at a national, provincial, metropolitan or district level or in a hotspot;

'Alert level 3 Regulations' means the regulations published in Government Notice No. 608 of 28 May 2020 which are applicable to Alert level 3;

'Annexure' means the annexure to these Directions;

'Commission' means the Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State appointed in terms of the Commissions Act, 1947 (Act No. 8 of 1947);

'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 videoconference 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);

'hotspot' means a geographical area or cluster of geographical areas referred to in regulation 3 of the Regulations as amended by the Alert level 3 Regulations;

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

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

'**legal practitioner**' means a legal practitioner defined in section 1 of the Legal Practice Act, and includes a candidate legal practitioner;

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

'**peace officer**' means a peace officer defined in section 1 of the Criminal Procedure Act and includes an enforcement officer as defined in the Regulations;

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

'**SIU**' means the special investigating unit established in terms of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996);

'**Solicitor-General**' means the solicitor-general appointed in terms of section 2 of the State Attorney Amendment Act, 2014 (Act No. 13 of 2014);

'**Special Tribunal**' means the special tribunal appointed in terms of the Special Investigating Units and Special Tribunals Act, 1996;

'**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); and

'**the Regulations**' means the Regulations made in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) and published in Government *Gazette* No.43258 of 29 April 2020 as amended from time to time.

Application

2. (a) These Directions apply in respect of Alert Level 3 and services permitted under this level as listed in the Annexure.

(b) The Directions published in Government Notice No. 440 of 31 March 2020 for Alert Level 4 remain in force and are applicable in any province, metropolitan area or district or hotspot in respect of which Alert Level 4 has been determined.

Directives issued by Heads of Court

3. These Directions must be read with the 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), and any other directive as may be issued by the Chairperson of the Commission or the President of the Special Tribunal.

Restriction of services and access to a court room, court house or justice service point

4. 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. Entry into a court room, court house or justice service point may only be allowed in respect of permitted services listed in the Annexure and subject to the conditions detailed in these Directions.

6. The number of persons entering a court room, court house or justice service point may be limited based on the floor space of the court room, court house or justice service point concerned to ensure compliance with the requirement relating to physical distancing.

7. A person who in the past fourteen days has been in contact with, or exposed to, another person who has tested positive for COVID-19, except a person who had tested positive but has

recovered and subsequently tested negative, may not be allowed to enter a court room, court house or a justice service point until such person has tested negative.

Criminal cases and related matters

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

9. An audiovisual link may also be used for unopposed bail applications for a charge listed in Schedule 1, 5 or 6 of the Criminal Procedure Act as well as any other process deemed appropriate by the Judicial Officer.

10. Where there is no audiovisual link installed between a correctional centre and a court, other alternative audio visual links, such as teleconference or videoconference or any other electronic mode, may be used to postpone cases, where accused persons are in custody.

11. 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 the immediate and necessary steps for its repair if it becomes dysfunctional.

12. A priority roll must be compiled in respect of each court under the direction of the judicial head of the court concerned and the National Prosecuting Authority in consultation with Legal Aid South Africa.

13. 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.

14. Trials involving awaiting- trial detainees who are being held in Correctional Centres must be prioritised.

15. An accused person arrested for a petty offence must be released and warned to appear in court on a future date, unless the matter can be finalised at the first appearance.

16. A Peace Officer may issue a contravention notice to a person arrested for contravention of regulation 37(2)(b) of the Regulations and who refused to disperse when ordered to do so, to appear in court on a date determined in the notice.

17. Directors of Public Prosecutions must, subject to any directive that the National Director 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, 1977.

Use of Audio visual links in other matters

18. Audio visual links may be used in any proceedings where the Presiding Officer deems it appropriate and if 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.

Interpreters

19. Court interpreters including foreign language interpreters, where required, must be sourced from within the province in which the case is heard except and where a particular language is not available within the province alternative arrangements for audiovisual interpretation must be made.

Resolution of disputes

20. 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.

21. 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.

22. 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.

23. 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.

24. A suitable person must be designated to assist parties who wish to utilise alternative dispute resolution mechanisms to resolve their disputes.

Travel by officers of court

25. Judges, magistrates, legal practitioners, sheriffs and other officers of the court may commute between their places of residence, offices, and courts including to a different province for purposes of performing permitted services upon presenting proof of appointment to such office together with any form of identification if required to do so by enforcement officers.

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

26. Every compliance officer must ensure that there is, at all times, an 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.

27. Every person at a court room or court house or justice service point must-

(a) at all times wear a cloth 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.

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

Disinfection of court room, court house or justice service point

29. A court room, or 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 to COVID 19 has been in such a court room, court house or a portion thereof or justice service point or a portion thereof.

30. The Department of Justice and Constitutional Development must publish a Protocol stating, among others—

(a) circumstances under which a court room, a court house or a portion thereof or justice service point or a portion thereof, may be closed for purposes of disinfection;

(b) the duration for which such court room, court house or a portion thereof or justice service point or a portion thereof, will be closed; and

(c) alternative arrangements made for the duration of the closure such court room, court house or a portion thereof or justice service point or a portion thereof.

Exclusion

31. 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.

Commencement

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

Annexure

Permitted services under Alert Level 3

A.	CRIMINAL MATTERS
1.	First Court Appearances, including child justice preliminary inquiries;
2.	Postponement hearings;
3.	Bail applications;
4.	Proceedings under section 63A of the Criminal Procedure Act;
5.	Consideration of the continued detention of children awaiting trial in detention in Child and Youth Care Centres and Correctional Centres on a case by case basis;
6.	Postponements of trials through audiovisual link;
7.	Guilty Pleas;
8.	Trials limited to: <ul style="list-style-type: none"> (a) Corruption, Sexual offences, Gender Based Violence and Femicide (GBVF), serious violent crimes, robbery, murder and Violation of COVID-19 Regulations; (b) Cases where a child is an accused, a witness, or a victim; (c) Cases where accused persons are in detention; (d) Single witness trials; (e) Finalisation of partly-heard matters which can be completed; (f) Cases on the priority roll; (g) Any other matter allowed by the Presiding Officer;
9.	Applications for leave to appeal, appeals and reviews.
B.	CIVIL LAW PROCEEDINGS
1.	Civil matters dealt with online, telephonically or in writing;
2.	Urgent motion applications;
3.	Urgent civil trials, including COVID 19 related cases;
4.	Alternative Dispute Resolution Mechanisms;
5.	Taxations;
6.	Debt Review applications;
7.	Divorce Proceedings, including Rule 43 applications in the High Court and Rule 58 applications in the Regional Court, as well as interlocutory applications and trials;

8. Small Claims Court matters;
9. Issue of all court process and proceedings and filing of papers;
10. Applications for leave to appeal, Appeals and reviews;
11. The hearing of any other civil action or motion not provided for in this section is subject to the approval of the Judicial Officer hearing the matter;
12. *Ex parte* applications;
13. Endorsement of powers of attorney.

C. FAMILY LAW SERVICES

1. Child and spousal maintenance proceedings;
2. Protection orders in terms of the Domestic Violence Act, 1998(Act No. 116 of 1998 or the Protection from Harassment Act, 2011(Act No. 17 of 2011);
3. Foster care applications and hearings, as well as extension of exiting orders;
4. Guardianship, care and contact, care and protection proceedings in respect of children, including removal to temporary safe care and placement in child and youth care centers;
5. International child abduction cases;
6. Adoption applications and hearings;
7. Mediation and Facilitation.

D. SERVICES OF THE OFFICES OF THE MASTER OF THE HIGH COURT

1. Reporting and issuing of letters of appointment in all deceased estate matters;
2. Reporting and issuing of letters of appointment in all Insolvency matters;
3. Lodgment of requisitions by way of e-mail;
4. Examination of L&D accounts in all deceased estate matters lodged;
5. Examination of L&D accounts in all Insolvency matters lodged by e-mail;
6. Reporting and issuing of appointments in all Trust matters;
7. Reporting and issuing of appointments in all curatorship matters;
8. Receiving of applications and payments of funds from the Guardian's Fund;
9. Examination of accounts in Curatorship matters;
10. Dealing with all correspondence received by e-mail.

11.	Registration and appointments in deceased estates, in line with the Master's delegation;
12.	Receiving via e-mail and allowing all Liquidation & Distribution accounts to lie open for inspection and issuing and sending via e-mail, the relevant certificate after expiration of the inspection period;
13.	Receiving and checking Guardian's Fund applications, MOVIT applicants and forwarding the applications to the relevant Master's Offices.
E.	OFFICE OF THE STATE ATTORNEY
1.	All litigation involving the State, including litigation arising out of COVID-19;
2.	Administrative Services in the Office of the Solicitor-General and office of the State Attorney, including payments of legal fees;
3.	All administrative functions in the Office of the State Attorney as determined by the Solicitor-General or any other person designated by him or her.
F.	NATIONAL PROSECUTION AUTHORITY
1.	All prosecution not excluded in terms the Regulations applicable to Alert level 3;
2.	Prosecutorial services determined by the National Director of Public Prosecutions;
3.	Administrative functions in the NPA designated by the administrative head or any other person designated by him or her.
G.	LEGAL AID SA
1.	All litigation and advisory services except those excluded in terms the Regulations applicable to Alert level 3;
2.	All administrative functions determined by the head of Institution or any other person designated by him or her.
H.	LEGAL PRACTITIONERS

All Services except those excluded in terms the Regulations applicable to Alert level 3.	
I.	SHERIFFS SERVICES
1.	All Services except those excluded in terms the Regulations applicable to Alert level 3 including, the service of all processes and orders and the execution of writs and warrants and online sales in execution.
2.	Evictions may not be conducted unless in terms of Regulation 36 of the Alert level 3 Regulations.
J.	SPECIAL INVESTIGATING UNIT
1.	Investigations pertaining to maladministration, malpractice, corruption and fraud;
2.	Investigations pertaining to Special Tribunals;
3.	All administrative functions determined by the head of Institution or any other person designated by him or her.
K.	COUNCIL FOR DEBT COLLECTORS AND DEBT COLLECTORS
1.	All administrative functions relating to the administration of the Council as determined by the head of Institution or any other person designated by him or her;
2.	All Services except those excluded in terms the Regulations applicable to Alert level 3.
L.	COMMUNITY ADVICE OFFICES
1.	All Services except those excluded in terms the Regulations applicable to Alert level 3;
2.	Services determined by the head of the advice office concerned, subject to compliance with Health Protocols and physical distancing requirement.
M.	SERVICES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE
Services as determined by the Chairperson of the Judicial Commission of Inquiry into	

allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State.

N. SPECIAL TRIBUNAL

Services as determined by the President of the Special Tribunal.

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