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DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 489 **04 MAY 2020**

DIRECTIONS ISSUED IN TERMS OF REGULATION 4(2) OF THE REGULATIONS 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 issued under Government Notice No. R.480 published in the Government Gazette No. 43258 of 29 April 2020 and after consultation with the Minister of Cooperative Governance and Traditional Affairs, 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.

Issued on this 3 day of May 2020

R O Lamola, MP

Minister of Justice and Correctional Services

Schedule

1. Definitions

In these Directions, unless the context indicates otherwise-

'Alert level 4' means the alert level as declared by the Cabinet Member responsible for cooperative governance and traditional affairs in the Regulations;

'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 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 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);

'head of institution' means the head of an institution as defined in regulation 1 of the Regulations, and for the purposes of these Directions includes, in the case of—

(a) the Commission, the Secretary of 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);

(b) the Legal Practice Council, the Executive Officer of the Council established in terms of the Legal Practice Act;

(c) the National Prosecuting Authority, the Head of Administration or a person designated by him or her;

(d) the Provincial Legal Practice Council, the Director of a Provincial Legal Council established in terms of the Legal Practice Act, 2014;

(e) Legal Aid South Africa, the Chief Executive Officer or a person designated by him or her;

(f) a firm of attorneys, the senior partner or managing director of such firm of attorneys or a person designated by him or her;

(g) a practising attorney who is a sole practitioner, such attorney; and in the case of a practising advocate, such advocate;

(h) Office of a Sheriff, the Sheriff appointed in terms of the Sheriffs Act, 1986 (Act No. 90 of 1986);

(i) Special Investigating Unit, the Head or a person designated by him or her;

(j) Special Tribunal, the Secretary of the tribunal appointed in terms of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996); and

(k) a university law clinic, the Director or manager of such a clinic.

'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);

'permit' means a permit issued in terms of regulations 16(2)(b) or 28(4) of the Regulations;

'permitted service' means permitted service as determined in the Regulations and includes services listed in the Annexure to these Directions and in relation to –

(a) a legal practitioner it includes:

(i) professional legal work on litigation which is essential to be brought or enrolled for hearing, or attended to during Alert Level 4;

(ii) administrative and preparatory functions such as consultations, commissioning of affidavits, filing of court papers at court, accessing documents and utilise equipment in the office;

(iii) administrative work by a legal practitioner to ensure compliance with legal obligations which it is essential be complied with during Alert Level 4 ; and

(iv) any other professional legal work by a legal practitioner which, if not performed during Alert Level 4, is likely to result in substantial injustice or severe prejudice to an affected party; and

(b) a sheriff it includes:

(i) essential administrative actions before and after the receiving of court processes such as the capturing of data in respect of returns of service which, if not performed during Alert Level 4, is likely to result in substantial injustice or severe prejudice to an affected party; and

(ii) administrative work to ensure compliance with legal obligations which it is essential to be complied with during Alert Level 4; and

(c) a member of the NPA or SIU it includes permitted service as indicated in the Annexure;

'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;

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

'Special Tribunal' means the special tribunal appointed in terms of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 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.

Withdrawal

2 (a) The Directions published by Government Notice No. 440 of 31 March 2020 are hereby withdrawn.

(b) Despite the withdrawal of the Directions referred to under (a) under subparagraph (a), any conduct authorised by any such withdrawn Direction and any investigation, prosecution or any criminal or legal proceedings in pursuance of such withdrawn Direction, remains valid as if such Direction has not been withdrawn.

Directions issued by Heads of Court

3. 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), and any other directive as may be issued by the Chairperson of the Commission.

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 social distancing requirements.

5. Entry into the court room, court houses or justice service points may only be allowed in respect of permitted services in terms of the Annexure and subject to the conditions detailed in these Directions.

6. The number of persons entering a court rooms, 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 positive, may not be allowed to enter a court room, court house or a justice service point during the state of national disaster.

Postponement of 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.

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. All criminal trials enrolled during Alert Level 4 must be postponed to dates in future, save for prioritised cases or trials on matters listed in the Annexure or where special arrangements have been made with the judicial officer hearing the matter.

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.

16. 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.

Civil Cases

17. Small Claims Courts may not operate under Alert Level 4 and services relating to these courts are limited to email and telephonic enquiries.

18. Civil cases that are not identified as urgent or permitted services in terms of these Directions may not be placed on the court roll during Alert Level 4. However, Judicial Officers retain the discretion to authorise the hearing of all matters on a court roll including through teleconference or videoconference or any other electronic mode, which dispenses with the necessity to be physically present in a courtroom.

19. The registrar or clerk of the court, as the case may be, must, in writing, inform the parties and their legal representatives of the new court dates.

20. Service of processes and execution of writs and warrants by sheriffs must be limited to cases which are urgent or permitted services, including the following:

(a) service and execution of court orders relating to COVID-19;

(b) service of domestic violence protection orders;

(c) service of protection from harassment orders;

(d) service of urgent court process relating to court hearings scheduled during Alert Level 4;

(e) service of urgent court processes in family law matters as determined in these Directions; and

(f) service of any other process in respect of permitted services.

21. The execution of warrants of execution, including evictions and all attachment and removal of property are suspended under Alert Level 4, subject to the provisions of regulation 19 of the Regulations.

Foreign language interpreters

22. Foreign language interpreters, where required, 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 audiovisual interpretation may be made.

Legal Aid

23. The provision of legal aid by Legal Aid South Africa is limited to permitted services including telephonic advice services.

Resolution of disputes

24. 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.

25. 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.

26. 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.

27. 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.

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

Other services permitted under Alert Level 4 as provided in the Annexure

29. Only permitted services listed in the Annexure may be rendered during Alert Level 4.

Travel by officers of court

30. Judges, magistrates, legal practitioners and sheriffs may commute between their places of residence, offices, and courts within their provincial area of jurisdiction 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.

Issuing of permits

31. The head of institution must issue a permit to a person within his or her institution for the performance of permitted services.

32. Persons who are required to perform permitted services under the national state of disaster are permitted to commute between their places of residence, offices and courts for purposes of performing such services, provided that every such person must have in his or her possession a form of identification and a permit authorising him or her to perform such services issued by the head of institution.

33. In addition to officers of the court mentioned in paragraph 30, other persons who are required to perform permitted services must, at all times, have in their possession a permit to perform permitted services, issued by the head of the institution.

34. Litigants who are not represented by a legal practitioner are permitted to commute to a court room, court house or justice service point and must be in possession of documentary proof of the fact that attendance at the a court room, court precinct or justice service point is required.

35. (a) Witnesses are permitted to commute to attend a court or obtain permitted services at a court house or justice service point or offices of legal practitioners.

(b) for the purposes of this paragraph a witness includes a person who needs to attest to an affidavit in motion proceedings;

(c) Every such witness or person must have in his or her possession a form of identification and a subpoena or a permit authorising him or her to attend at such court room, court house, justice service point or the office concerned, issued by a court or a person who is either the head of an institution in relation to such person or the legal practitioner representing a party to such proceedings.

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

36. Every head of office, court manager or person who manages a justice service point must ensure that there is, at all times, adequate supply of sanitisers and soap for people to wash and sanitise their hands.

37. 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.

38. The COVID-19 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.

Exclusion

39. 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

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

Annexure 1

Permitted services in terms of Alert Level 4

A.	**CRIMINAL MATTERS:**
1.	First Court Appearances;
2.	Postponement in absentia where is possible to inform accused persons / witnesses of future trial date;
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:
	(a) Corruption, Sexual offences, Gender Based Violence and Femicide (GBVF), serious violent crimes, robbery, murder and Violation of COVID-19 Regulations
	(b) Cases where accused persons are in detention;
	(c) Finalization of partly-heard matters which can be completed;
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 and trials;
7.	Divorce Proceedings, including Rule 43 applications in the High Court and Rule 58 applications in the Regional Court, as well as uncontested interlocutory applications and uncontested trials;
8.	Issue of all court process and proceedings and filing of papers relevant to pending proceedings;

9.	Applications for leave to appeal, Appeals and reviews;
10.	All uncontested civil actions or motions;
11.	*Ex parte* applications;
12.	Endorsement of powers of attorney.
C.	**FAMILY LAW MATTERS**
1.	Child and spousal maintenance proceedings;
2.	Protection orders in terms of the Domestic Violence Act No. 116 of 1998 or the Protection from Harassment Act No. 17 of 2011;
3.	Foster care applications and hearings;
4.	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.	International child abduction cases;
7.	Adoptions applications and hearings.
D.	**SERVICES OF THE OFFICES OF THE MASTER OF THE HIGH COURT**
1.	Reporting and issuing of letters of appointments in all deceased estates matters;
2.	Reporting and issuing of appointments in all Insolvency matters;
3.	Lodgment of requisitions by way of e-mail;
4.	Examination of L&D accounts in all deceased estates matters lodged by e-mail;
5.	Examination of L&D accounts in all Insolvency matters lodged by e-mail;
6.	Reporting and issuing appointments in only urgent Trust matters for the benefit of COVID-19 relief measures lodged by e-mail;
7.	Reporting and issuing appointments in only urgent curatorship matters lodged by e-mail;
8.	Receiving of applications and payments of funds from the Guardian's Fund;
9.	Issuing of letters of executorship and endorsement of powers of attorney.
E.	**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.
F. SPECIAL TRIBUNAL APPOINTED IN TERMS OF THE SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996)
Services as determined by the President of the Special Tribunal.

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