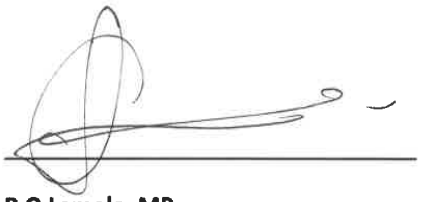
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 632 **16 July 2021**

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, as amended, issue the Directions in the Schedule 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 16/07/2021

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;

'Adjusted Alert level 4 Regulations' means the regulations published in Government Notice No. R. 565 of 27 June 2021, as amended;

'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);

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

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

'Risk Adjusted Plan' means a risk adjusted plan published by the Director-General in terms of the Regulations in order to prevent and combat the spread of COVID-19 in all courts, court houses, justice service points and facilities;

'separate roll' means a roll of criminal cases compiled in respect of cases where the accused persons are charged with offences arising from public violence and unrest which may include arson, destruction of business premises and public amenities or looting;

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

'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 as extended from time to time; 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. These Directions apply in respect of all Adjusted Alert Levels as may be declared by the Cabinet Member responsible for cooperative governance and traditional affairs, unless withdrawn or amended as required.

3. The Directions regarding auctions and sales in execution conducted by sheriffs of the court published in Government Notice No. R816 of 27 July 2020 apply only where such auctions are authorised by the Regulations.

Directives issued by Heads of Court

4. 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 court room, court house or justice service point

5. 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.

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, including a member of staff or court personnel, who has been in contact with, or exposed to, another person who has tested positive for COVID-19, may not enter a court room, court house or a justice service point until after he or she has self-isolated for the required period of 10 days, except where he or she tested negative to COVID-19.

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. Cases in the districts and sub-districts which are affected by incidents of public violence or unrest which include cases relating to arson, destruction of business premises and public amenities and looting may be postponed in absentia or through the use of any virtual platform authorised by the Presiding Officer of the court concerned;

10. An audiovisual link may also be used for a bail application and any other process deemed appropriate by the Judicial Officer.

11. 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.

12. 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.

13. Directors of Public Prosecutions must, subject to any directive that the National Director of Public Prosecutions may issue, facilitate and expedite the fixing of bail by prosecutors, as permitted in terms of section 59A(1) of the Criminal Procedure Act, 1977, who must act in consultation with the police official charged with the investigation of the case in question.

Use of Audiovisual links in other matters

14. Audiovisual links may be used in any proceedings where the Presiding Officer deems it appropriate and if to do so will prevent unreasonable delay, save costs or be convenient and make it unnecessary for the person to appear in person in the court room.

Compilation of priority and separate rolls

15. Every court must strive to function optimally.

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

17. The following cases must be placed on the priority roll:

(a) Trials involving children who are detained in Child and Youth Care Centres and Correctional Centres and awaiting- trial detainees;

(b) cases where accused persons are charged with the following:

(i) Sexual offences;

(ii) gender-based violence and femicide;

(iii) serious contact crimes or serious violent crimes;

(iv) corruption; or

(v) contravention of Covid 19 regulations;

(c) cases that are trial-ready;

(d) cases that are to be enrolled for sentence following conviction;

(e) partly heard cases;

(f) cases that may be considered suitable for alternative dispute resolution and can be finalised under this dispensation; and

(g) any other case which the presiding officer, in consultation with the National Prosecuting Authority and the Legal Aid South Africa, in instances where the latter represents an accused person, deems it necessary to be included on the priority roll.

Special measures in respect of cases arising from public violence or public disorder

18. Cases involving accused persons who are charged with an offence arising from the incidents of public violence or public disorder which started in KwaZulu Natal on 8 July 2021 and spread to other parts of the country may be placed-

(a) on a priority roll; or

(b) on a separate roll of cases wherein cases involving an accused person charged with an offence arising from the incidents of public violence or public disorder are placed.

19. A court dedicated for the trial of cases on a separate roll may be established where this is necessary and expedient.

20. Cases on a separate roll may, for reasons of safety or practicality, be tried at a place of sitting outside the district or sub-district in which the offence is alleged to have been committed.

21. Appropriate measures must be considered for the expeditious hearing of cases on a separate roll including the allocation of dedicated judicial officers and court personnel with the requisite qualifications and skills.

22. The National Prosecuting Authority may, where the accused is charged with a less serious offence in respect of which an admission of guilt is permissible and justified, fix an appropriate amount as an admission of guilt in respect of the accused person concerned.

Interpreters

23. Court interpreters including foreign language interpreters, where required, must, firstly, be sourced from within the province in which the case is heard except where a particular language is not available within the province, in which case alternative arrangements, including the use of audio visual link, must be made.

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 a Judge discharged from active service or a mediator appointed in terms of the Rules Regulating the Conduct of the Proceedings of the Magistrates' Court of South Africa 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.

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

29. 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.

30. Every person at a court room, 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.

31. The compliance officer designated for each court house or justice service point must request every 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.

Sanitisation of equipment and surfaces

32. Any equipment used in the court room which is shared in the court room and passed-by hands or touched must be sanitised before being passed-on to other users who are required to use them and surfaces likely to be touched must be sanitised regularly.

Disinfection of court room, court house or justice service point

33. A court room, court house or a portion thereof or a justice service point or a portion thereof must be disinfected whenever an officer of 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.

34. In-house capacity must be developed within each region for purposes of disinfecting the courts and the Expanded Public Works Programme (EPWP) must be considered for this purpose.

35. A Risk Adjusted Plan issued by the Director-General must—

(a) state 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;

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

(c) state the 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; and

(d) ensure minimum disruption of services where such disruption is unavoidable due to disinfection or reduced number of staff who are required to perform services at a court room, court house or justice service point.

36. The Director-General must, when developing the Risk Adjusted Plan or any amendment thereof, take into account the effect of a reduced staff compliment implemented due to staff rotation or work shifts, on the functioning of the courts or justice service points.

Exclusion

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

Commencement

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

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
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Publications: Tel: (012) 748 6053, 748 6061, 748 6065