
Notice

12 June 2020

GUIDANCE NOTE FOR LEGAL PRACTITIONERS REGARDING THE RENDERING OF ESSENTIAL / PERMITTED LEGAL SERVICES DURING THE COVID-19 LOCKDOWN PERIOD – ALERT LEVEL 3

The Minister of Cooperative Governance and Traditional Affairs, Ms Dlamini Zuma declared Alert Level 3 of the National State of Disaster to commence on 1 June 2020 by Regulations issued in terms of section 27(2) of the Disaster Management Act of 2002 – as per Notice R.608, GG 43364 on 28 May 2020. The Minister of Justice & Correctional Services has issued Directions pertaining to Alert Level 3 by Notice No. 623, GG 43383 on 2 June 2020.

Legal practitioners are advised to acquaint themselves with the requirements of the aforementioned Regulations and Directions as well as the Court Directives applicable in their provinces. The Regulations and Directions pertaining to Alert Level 4 have not been withdrawn and remain applicable. The Legal Practice Council hereby issues the following guidance note to assist legal practitioners:

PROVISION OF REGULATIONS AS APPLICABLE TO LEGAL PRACTITIONERS

1. In terms of section 33 of the Regulations:

“ 33(1) a person may leave their place of residence to:

- a. to perform any service, as permitted under Alert Level 3;
- b. travel to and from work;

33(4) Movement of persons between provinces, metropolitan areas and districts are prohibited except for:

(a) persons doing so in the course of carrying out work responsibilities or performing any service permitted under Alert Level 3, provided that such person is in possession of a permit issued by the employer which corresponds with Form 2 of Annexure A.”

2. In terms of section 46 of the regulations:

“ 46(1) Businesses and other institutions may operate except those set out in Table 2;

46(4) Relevant health protocols and social distancing measures set out in directions must be adhered to, in addition to the occupational health and safety directions issued by the Cabinet member responsible for employment and labour, and applicable labour legislation;

46(5) Employers must implement measures for employees who are over 60 or those with co-morbidities to facilitate their safe return to work, which may include special measures at the work place to limit employees' exposure to COVID-19 infection and where possible that the employees work from home”

3. Table 2 of the Regulations, where applicable to Legal Practitioners reads as follows:

1. “All persons who are able to work from home should do so. However, persons will be permitted to perform any type of work outside the home and to travel to and from work and for purposes of work under Alert Level 3, subject to -
.....(d) the work not being listed under the specific economic exclusions in this Table.”

2. Essential services related to legal practitioners is not listed as a specific exclusion in Table 2.

THE MINISTER'S DIRECTIONS APPLICABLE TO ALERT LEVEL 3

In addition to the directions which remain applicable for Alert Level 4, these directions clarify the services which are permitted under Alert Level 3 and specify that:

1. The use of Audio-visual links has been authorised for all matters and not just criminal cases and related matters, subject to the discretion of the Presiding Officer.
2. Legal practitioners may commute between their places of residence, offices and courts including to a different province for purposes of performing permitted services, provided they are able to present their permit (Form 2 of Annexure A) together with any form of identification if required to do so by enforcement officers. Legal practitioners, as heads of institutions, are allowed to issue permits to their staff to come to their offices.
3. The permitted services which are allowed under Alert Level 3 are set out in the Annexure to the directions. They have expanded upon the permitted services which were allowed under Alert Level 4 to now also include:
 - additional criminal matters;
 - small claims court matters;
 - additional civil action or motion proceedings subject to the discretion of the Presiding Officer;
 - additional Family law services;
 - the Master of the High Court will be providing additional services;
 - the office of the State Attorney and litigation involving the State;
 - the office of the National Prosecution Authority;
 - the office of Legal Aid SA;
 - Legal Practitioners are specifically mentioned as a permitted service category subject to services provided by legal practitioners which are excluded in terms of the Regulations applicable to Alert Level 3;
 - the Special Investigations Unit;
 - the Council for Debt Collectors and Debt Collectors; and
 - Community Advice Offices

DIRECTIVES BY THE CHIEF JUSTICE AND HEAD OF COURTS

1. The Chief Justice has issued Directives in terms of section 8(3)(b) of the Superior Courts Act for the management of Courts during the National State of Disaster.
2. He has further delegated authority to all Heads of Courts to take such action and issue such Directions as may be necessary to give effect to his Directives
3. All Directives issues by the Heads of Courts have been sent to legal practitioners in the applicable jurisdiction and are also available on the LPC website www.lpc.org.za

ADDITIONAL

1. The restriction of movement of persons in and out of a hotspot as defined in the Regulations has not yet been implemented or promulgated.

11 June 2020.

Legal Practice Council.