

South Africa

Disaster Management Act, 2002

Directions 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 (Adjusted Alert Level 3) Government Notice R73 of 2021

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Directions 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 (Adjusted Alert Level 3)

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Government Notice R73 of 2021

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I, Ronald Ozy 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 and after consultation with the Minister of Cooperative Governance and Traditional Affairs, issue the Directions in the Schedule in respect of Adjusted Alert Level 3, 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.

RO Lamola, MP

Minister of Justice and Correctional Services

1. Definitions

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(1) of the Regulations published in Government Notice No. R. 480 of 29 April 2020 as amended;

"Adjusted Alert Level 3 Regulations" means 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 for 2002), published in Government Notice No. 11 of 11 January 2021;

"Annexure" means the Annexure to the 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 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;

"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 audio visual link or other audio visual links such as teleconference or videoconference or any other electronic mode linked to a court;

"Criminal Procedure Act" means the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#));

"DFI" means the Departmental Financial Instructions;

"**DOJ&CD**" means the Department of Justice and Constitutional Development;

"**facility**" means a stand-alone building comprising of offices or block of offices built or rented for use by the Department at national, regional or district level for carrying-out its mandate, and excludes a court house or a justice service point;

"**fund holder**" means an officer of the Department who manages a budget;

"**hotspot**" means a geographical area or cluster of geographical areas referred to in regulation 3 of the Regulations;

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

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

"**Office Manager**" means an officer who manages or is in charge of a Branch Court, a facility or justice service point;

"**PFMA**" means the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)) and includes Regulations and Instructions issued in terms of the said Act;

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

"**protocol**" means the protocol issued by the Director-General on the temporary closing of court houses, facilities and justice service points for purposes of decontaminating following a confirmed COVID-19 positive case;

"**RAP**" means the COVID-19 Risk-Adjusted Plan of the DOJ&CD in respect of the different Alert Levels;

"**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 April 2020, as amended from time to time.

2. Application

These Directions apply to the Adjusted Alert Level 3 in respect of the services listed in the Annexure.

3. Directives 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](#)), and any other directive as may be issued by the Chairperson of the Commission or the President of the Special Tribunal.

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

- (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 as defined in regulation 34(1) of the Adjusted Alert Level 3 Regulations.
- (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 are 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.

- (3) The number of persons allowed in a-
 - (a) public gallery of a court room;
 - (b) court house; or
 - (c) justice service point,
may be limited based on the floor space to ensure compliance with the requirement relating to social distancing measures.
- (4) A person who has been in close contact with or has been exposed to, another person who has tested positive for COVID-19, except a person who had tested positive in the past but has recovered, or is still waiting for the test results following a COVID-19 test, may not be allowed to enter a court room, court house or justice service point, within 10 days of such contact or exposure.

5. Criminal cases and related matters

- (1) An audiovisual link, where such a link exists, must be used for-
 - (a) the postponement of cases;
 - (b) the hearing of bail applications; and
 - (c) any other proceedings where the Presiding Officer deems it appropriate and that to do so would-
 - (i) prevent unreasonable delay;
 - (ii) save costs; and
 - (iii) make it unnecessary for the person to appear in person in the court room.
- (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 the immediate and necessary steps for its repair if it becomes dysfunctional.
- (3) Where there is no audiovisual link installed between a correctional centre and a court, other alternative audiovisual links such as teleconference or videoconference or any other electronic mode may be used to postpone cases where accused persons are in custody.
- (4) A priority roll must be compiled in respect of each court under the direction of the Presiding Officer concerned and the NPA and Legal Aid South Africa must be consulted in this regard.
- (5) 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.
- (6) Trials involving awaiting-trial detainees who are being held in Correctional Centres must be prioritised.
- (7) A Peace Officer may issue a contravention notice to any person arrested for any offence specified in the Regulations to appear in court on a date determined in the notice.
- (8) Directors of Public Prosecutions may, 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. Interpreters

- (1) Court interpreters, including foreign language interpreters, where required, must be sourced from within the province in which the case is heard.
- (2) Where an interpreter of a particular language is not available within the another province, such interpreter may be sourced from another province.
- (3) Audio visual links may be used for court interpreters sourced from another province.

7. Resolution of disputes

- (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.
- (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.
- (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.
- (4) Services of Judges discharged from active service and mediators for purposes of court annexed mediation may be utilised to resolve civil disputes through arbitration or mediation.
- (5) A person designated by the DOJ&CD or the Office of the Chief Justice must, where required, assist parties who wish to utilise alternative dispute resolution mechanisms to resolve their disputes.

8. Safety measures at a court room, court house and justice service point during the period of the national state of disaster

- (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 a court house, including each court room and justice service point for which he or she has been designated or appointed.
- (2) Every person at a court room, court house or justice service point or facility must-
 - (a) at all times wear a cloth face mask; and
 - (b) observe a distance of 1,5 metres in any queue or seating arrangement in a court room, court house or justice service point and must adhere to any demarcations at such places.
- (3) The compliance officer designated for each court house, justice service point or facility may 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 may cause any person who refuses to comply with such request to be removed therefrom.
- (4) In areas designated as 'hot spots' Regional Heads may implement further administrative risk mitigation measures approved by the Director-General.

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

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 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 a justice service point or a portion thereof in line with the applicable protocol.

10. 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.

11. Repeal

The directions published by Government Notice No 623 of 02 June 2020 are hereby repealed.

12. Commencement

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

Annexure

Services under Adjusted 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:
 - (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 shall be 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 existing 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. Adoptions applications and hearings.

7. Mediation and Facilitation.

D. Services of the offices of the Master of the High Court

1. Reporting and issuing 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 Liquidation and Distribution accounts in all deceased estates matters lodged.

5. Examination of Liquidation and Distribution 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 and 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 Solicitor General

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 of the Regulations applicable to Adjusted Alert level 3.
2. Prosecutorial services determined by the National Director of Public Prosecutions.
3. Administrative functions in the NPA designated by 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 of the Regulations applicable to Adjusted 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 of the Regulations applicable to Adjusted Alert Level 3.

I. Sheriffs services

1. All Services except those excluded in terms of the Regulations applicable to Adjusted Alert Level 3, including the service of all processes and orders and the execution of writs and warrants.
2. The Directions regarding auctions and sale in execution conducted by sheriffs of the court published under Government Notice R. 816 in the *Government Gazette* No. 43553 of 27 July 2020, read with Regulation 36 of the Regulations as amended, is applicable to auctions and sales in execution.
3. Evictions shall not be conducted unless in terms of Regulation 37 of the Regulations as amended.

J. Special Investigation 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 of the Regulations applicable to Adjusted Alert level 3.

L. Community Advice Offices

1. All Services except those excluded in terms of the Regulations applicable to Adjusted 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.