



LAW SOCIETY
OF SOUTH AFRICA

OFFICE OF THE EXECUTIVE DIRECTOR

28 April 2020

Minister of Justice and Correctional Services

Attention: Minister Lamola

C/O JB Skosana [Per email](mailto:jskosana@justice.gov.za) jskosana@justice.gov.za

CC Mr Bsarela bsarela@justice.gov.za

Dear honourable Minister Lamola and Acting DG, Mr Skosana

Dear Mr Skosana

Draft Court directions and Schedules

The attached, is the LSSA comments on the draft Court directions and schedules that were sent to the profession for comment.

The LSSA is extremely grateful for the opportunity to submit comments on behalf of the profession. The email was only sent out mid-morning (after receipt from the LPC) and the attached Annexure 1 is a summary of the key comments of the LSSA.

The comments were invited by the LSSA from the various LSSA specialist committees (designated by their areas of practice), which are constituted of practicing legal practitioners.

In addition is a second Annexure (marked Annexure 2) which was sent as a copy to your office on the 27 April 2020; this was a submission on the risk adjusted strategy as per the invite from the COVID 19 Task Team.

A handwritten signature in black ink, appearing to read 'Anthony Pillay'.

Anthony Pillay

Acting Executive Director

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The Law Society of South Africa brings together the Black Lawyers Association, the National Association of Democratic Lawyers and provincial attorneys' associations, in representing the attorneys' profession in South Africa.

COURT DIRECTIONS

The Law Society of South Africa (LSSA) has considered the Court Directions issued by the Minister of Justice and Constitutional Development and also sourced the views of legal practitioners and wish to comment as follows:

INTRODUCTION:

1. Government has put out a request for public comment on the Risk Adjust Strategy that aims to reopen different sectors of the economy when the country enters a level-4 lockdown from 1 May 2020. It is anticipated that this will lead to the promulgation of new/amended Regulations to precede the publication of new directions. The LSSA has submitted comments on the Risk Adjust Strategy, (which we attach hereto for your ease of reference as Annexure 2).
2. Essential services rendered by legal practitioners will extend beyond the ambit of the proceedings/services listed by the Minister of Justice and Constitutional Development under the Schedule of the proposed Directions. For example, should the Deeds Office be opened (they are listed as a level 4 essential service), the Directions should accordingly be drafted in a manner to expressly enable legal practitioners to render such services.
3. Given that the Directions concern not only courts, but also other work performed by legal practitioners (as per the definition of “essential services” in the Directions), the title of the document is inappropriate.
4. The Directions issued by the Minister of Justice and Constitutional Development should not infringe upon the mandate of the judiciary to issue directives aimed at ensuring the proper administration of the judicial system and access to justice during the lockdown.
5. The issues of dies non and prescription are of great concern and should be addressed urgently, whether by way of directions or an amendment to the legislation. Refer to the previous comments submitted by the LSSA.

COMMENT ON SPECIFIC CLAUSES:

(Proposals for amendments of the Directions appear in red, followed by a motivation).

1. Definitions

In this Schedule, unless the context indicates otherwise-

Alert Levels means the following levels as determined from time to time by the Cabinet Member responsible for cooperative governance and traditional affairs and which are referred to in the Schedule to these Directions:

- (a) 'Alert Level 1' which indicates a low virus spread with high health system readiness;
- (b) 'Alert Level 2' which indicates a moderate virus spread with a high health system readiness;
- (c)'Alert Level 3' which indicates a moderate virus spread with a moderate health system readiness;
- (d) 'Alert Level 4' which indicates a moderate to a high virus spread with a low to moderate health system readiness;
- (e) 'Alert Level 5' which indicates a high virus spread with a low health system readiness"

COMMENT: Most of the services mentioned in Alert levels 4 and 5 are also repeated in Alert Levels 1-3. See the definition of "service" below (Alert Level 1-3). Why differentiate between "essential service" and "service" when there is little or minor differences between services levels 1 – 5? The majority of the work if not performed during lockdown, will cause severe prejudice.

'Candidate Legal Practitioner' means a candidate legal practitioner with the right of appearance as defined in section 25 (5)(a) and (b) of the Legal Practice Act, 2014 and rules 1.10 and 1.1 of the South African Legal Practice Council Rules made under the authority of section 95(1) of the Legal Practice Act, 28 of 2014;

MOTIVATION: Practitioners rely heavily on candidate legal practitioners for consultations, preparation and appearances in court cases where previously allowed in terms of their right of appearance, which currently is not allowed. Thousands of case files are therefore lying stagnant, not being attended to. This could also be used by firms to extend access to justice.

'court house' means a court room or an office in which court proceedings are conducted and includes

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judges' chambers, magistrates' chambers and an audio- visual remand centre;

'**court precinct**' means an area of a court demarcated as such with or without a fence or a wall;

'**Criminal Procedure Act**' means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

'**Essential matter**' means an urgent application or other court application and hearing which, if not enrolled for purposes of services described under the Alert Levels in the Schedule will lead to a substantial injustice and includes a bail application in case of first appearance of an accused person;

'**essential services**' means a service defined in Alert Levels 4 and 5 in the Schedule. and more specifically in relation to legal practitioners [or candidate legal practitioners] it includes professional legal work on litigation matters which it is essential to be brought, enrolled for hearing, including essential administrative and preparatory actions such as consultations, commissioning of affidavits, filing at court, and attending offices to access documents and utilise equipment; any other professional legal work by legal practitioners [or candidate legal practitioners] which, if not performed during the lockdown, is likely to result in substantial injustice or severe prejudice to an affected party; and administrative work by a legal practitioner [or candidate legal practitioner] to ensure compliance with legal obligations which it is essential be complied with.

'**essential support staff**' means a staff member identified by a head of institution required to assist him / her with the professional legal work mentioned in the definition of 'essential services'.

MOTIVATION: As in respect of candidate legal practitioners, legal practitioners rely heavily on support staff to perform their duties.

'**head of institution**' means the head of an institution as defined in regulation 1 of the Regulations, and for the purposes of these Directions means the senior partner or managing director of a firm of attorneys; in the case of a practising attorney who is a sole practitioner, such attorney; and in the case of a practising advocate, such advocate [and in the case of a University Law Clinic, the director or manager thereof];

MOTIVATION: University Law Clinics (ULC's) provide for access to justice and supplementary legal aid by representing vulnerable and poor clients on real cases, in order to facilitate student training. ULC's do

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not form part of, or fall under the control of Legal Aid South Africa, either. Most ULC's also employ candidate attorneys to assist with provision of access to justice and the representation of live clients who qualify for legal aid, in court. A number of ULC's also render legal aid through the employment of legal practitioners and candidate legal practitioners through Co-operation Agreements on behalf of Legal Aid South Africa. In some areas there is no Legal Aid South Africa presence, and ULCs provide all legal aid to the vulnerable and poor members of society there. ULC's are currently not specifically included in the continuation of the provision of essential services or legal services as defined in the new Draft Directions. As such, ULC's urgently need to be included specifically in the new Directions to allow them to continue with provision of access to justice to the vulnerable and poor members of our society.

'head of institution' means the head of an institution defined in regulation 1 of the Regulations, and for the purposes of these Directions means the Director of a Provincial Legal Council established in terms of section 23 of the Legal Practice Act, or her or his delegate as the case may be;

COMMENT: This definition is to be deleted.

MOTIVATION: There cannot be two different definitions for "head of institution". It is submitted that a Head of Institution who is able to grant permits in terms of essential matters for legal practitioners should be as per the first definition of "head of institution" as mentioned above. Where there is abuse of the process, the Legal Practice Council can deal with those in the normal course as per the Code of Conduct for Legal Practitioners. It is not practical at all that permits needs to be issued by the LPC. Other sectors can issue their own permits and have a much higher risk of exposure and less contact control.

Head of Institutions should be entitled to issue permits to their personnel, which will include administrative and secretarial staff, practicing practitioners and registered candidate attorneys.

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

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

'legal Practitioner' means a legal practitioner defined in section 1 of the Legal Practice Act, 2014;

'**permit**' means a permit issued in terms of Regulation)? by the head of an institution as defined in Chapter? of the Regulations;

'**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;

'**service**' means a service described in Alert Level 1 – 3 and any other services that may be performed or obtained at a court house, court precinct or justice service point.

'**state of disaster**' means the national state of disaster declared by the Minister of Cooperative Governance and Traditional Affairs on 15 March 2020; and

'**the Regulations**' means the regulations issued in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) and published in Government Gazette ?

Repeal of previous Directions and transitional provisions

- 2.(a) Directions published in the Government Gazette No.s are hereby repealed.
- (b) Despite the repeal of the Directions referred to under subregulation(a):
 - (i) any conduct authorised by any such repealed Direction; and
 - (ii) any investigation, prosecution or any criminal or legal proceedings in pursuance of such repealed Direction,
remains valid as if such Direction has not been repealed.

Measures to address, prevent and combat the spread of COVID 19 in correctional centres and Remand

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COMMENT:

The issue of legal visits in urgent and emergency situations particularly with regard to preparation for bail applications, should be revisited.

In addition, in numerous bail applications at various Magistrate's Courts accused persons are not being brought to court by Correctional Services. This is in direct conflict with the previous regulations which stated that bail applications would be dealt with by courts. Even in a situation where special arrangements have been made with Magistrates and Prosecutors for awaiting trial detainees to be brought to court for these bail applications, they are still not being brought to court.

Furthermore, the AVR system is not set up to deal with bail applications, specifically where they are opposed. There are no audio-visual equipment available in the lower courts to deal with bail applications and to enable the legal practitioner to consult in private with such a link. Even if the AVR was appropriately set up, this would not be sufficient for bail purposes as there is no provision for legal practitioners to take instructions from their clients throughout the actual bail.

We are aware the Department of Correctional Services are permitting inmates to attend Court if their bail is pre-agreed, their bail is part-heard or their bail has been on the roll for an extended period of time. This is unfair and an injustice to accused persons. The Courts are well placed to facilitate bail applications during this time as their resources are not bogged down by trials or excessive provisional attendances. This presents an opportunity to attend to the backlog of bail applications. The onus is on the Department of Corrections to isolate those inmates who are attending Court and further to ensure appropriate hygiene mechanisms are put in place while accused persons are in custody.

(Measures limiting the transportation and visitation of inmates may need to be incorporated here – no longer in Regulations)

Restriction of services and access to the court house, court precinct and justice service point and services in respect of Alert levels

4. Services provided in respect of criminal and civil matters, family law services and services of the Master

shall be limited or restricted in accordance with the Alert Level as indicated in the Schedule.

5. Only persons with a material interest in a case such as, litigants, accused, witnesses, and persons accompanying, or persons who may be needed to provide support such as those accompanying children, victims of domestic violence or sexually abused persons and persons with disabilities, family members, and members of the media will be allowed access into a court house, court precinct or justice service point in respect of Alert Levels 4 and 5.

COMMENT: This clause should specifically include legal practitioners.

6. An increased number of people who have an interest in the matter may be allowed into a court house, court precinct or justice service point provided that there is adherence to the prescribed social distancing requirement.

Use of audio visual remand centres for postponement of cases

7. Audio -Visual Remand Centres in Correctional Centres linked to a court must be used for purposes of the postponement of cases where accused persons are in custody.
8. A Court Manager and Head of Correctional Centre where the audio visual remand equipment has been installed must ensure that such system is at all times in a functional state and must take the immediate and necessary steps for its repair it becomes dysfunctional to ensure its repair.
9. The Regional Head of a province must submit weekly statistics of cases postponed through the Audio - Visual Remand Centres and those where the accused who is in custody appeared physically at the court to the Director-General.

Fixing of bail by prosecutors and statistics of bail fixed by police

10. An accused person arrested for a petty offence must be released and warned to appear in court on a future date.
11. Directors of Public Prosecutions must, subject to any such 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 required by section 59A(1) of the Criminal Procedure Act deserving cases.
12. The Director-General must cause the collection and collation of statistics for bail fixed by the members of the South African Police Service in terms of section 59(1) of the Criminal Procedure Act.

13. Criminal court cases where accused persons are not incarcerated may be placed on the court roll on a future date with due consideration to the Alert Levels in the Schedule.

COMMENT AND MOTIVATION:

There has to be a fixed time limit for the detention of accused at holding cells at police stations. In many of these instances, accused persons have to wait for a number of hours before an arrival of a detective to process their cases. This can be solved by having the charge office commanders fixing bail without a detective present. At many police stations detectives are not at their office. The charge office commander can then fix bail if the accused person can provide proof of address and proof of identity.

Additionally, while many police stations have enacted hygiene measures since the onset of COVID-19, the underlying issues remain such as pest control issues which amplify the spread of the virus.

In addition, a clearer definition of “petty offence” must be established as in practice there is often a dispute between what types of offences fall within the category of “petty offence”.

With regard to paragraph 11, again a time limit must be stipulated and as with paragraph 10, the charge office commander may process the suspect before the arrival of the prosecutor.

With regard to paragraph 13, clear guidelines must be established, for example, cases for accused persons who are not in custody are to be postponed without them being present and that warrants of arrest are to be held over to a future date when lockdown has been lifted.

Foreign language interpretation

14. Foreign language interpreters, where required during the state of national disaster, 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 must be made.

COMMENT: There are no adequate audio-visual facilities available at Magistrate’s Court level to be utilised for proper and correct interpretations in courts.

Handling of Civil Cases by the Registrar and Mediation services

15. Civil cases may be placed on the court roll with due consideration to the Alert Levels in the Schedule, however, Heads of courts retain the discretion to authorise the hearing of matters through teleconference or videoconference or any other electronic mode, which dispenses with the necessity to be physically present in a courtroom.
16. The Registrar or Clerk of the Court, as the case may be, must inform the parties and their legal representatives of the new court date in writing.
17. The Solicitor-General must, through offices of the State Attorney, facilitate mediation in respect of any deserving civil dispute.
18. Consideration will be given to the utilisation of judges discharged from active service for purposes of mediation of civil disputes with a view to increasing access to justice.

COMMENT: It must be borne in mind that mediation is a voluntary process. Further, the suggested parties to be involved is impracticable. There is already a list of duly qualified court appointed mediators at each court that can and should be utilized for this purpose.

Service of process and execution of writs by sheriffs

19. Service of process and execution of writs by sheriffs will be undertaken with due regard to the Alert Levels indicate in the Schedule.
20. Writs relating to evictions shall not be carried out during in respect of Alert Levels 2 and 1.

COMMENT: What about the services not mentioned in the Alert levels? For example, the issuing and service of summonses in relation to other services not mentioned, Section 65 and interpleading proceedings?

Services of Judicial Officers, legal practitioners and other officers of court for purposes of performing services under Alert Levels in the Schedule

Judicial Officers

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21. Enforcement officers must allow the following judicial officers to commute between their places of residence and the court where appointed for purposes of performing essential services and any other service described under the Alert Levels in the schedule:
 - (a) Judges in active service
 - (b) Acting Judges
 - (c) Judge discharged from active service and who have been appointed to perform service in terms of any of the Alert Levels in the Schedule
 - (d) Magistrates
 - (e) Acting Magistrates

22. Enforcement Officers must accept an appoint card or any written proof of appointment to any of the above judicial offices for purposes allowing such judicial officer to commute between his or her place residence and place of work.

Legal Practitioners

23. ... Enforcement officers must [despite any curfew] allow the legal practitioners [and those persons identified under paragraph 23 (e)] to commute between their places of residence, offices and courts for purposes of performing essential services [including commute between provinces, operating their offices where work-from-home is not possible] and any other service described under the Alert Levels in the schedule provided [and applicable schedules provided pursuant to directions issued by other Ministers] that:
 - (a) Legal practitioners who seek to engage in essential services or any other service described in the Alert Levels in the Schedule must seek a permit authorising him or her to do so from a person who is the head of an institution in relation to such practitioner.

COMMENT: We support this clause, provided that the first definition of “head of institution” is utilized.

- (b) A legal practitioner may leave her or his place of residence for purposes of performing essential services only if in possession of a permit authorising her or him to do so and specifying the services

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in question.

- (c). A legal practitioner may only utilise a permit in conjunction with a form of identification referred to in paragraph 23(b).
- (d). The identification referred to in subparagraph (c) must be presented when the permit is used, failing which the practitioner seeking to rely on the permit must return to her or his residence in accordance with Regulation?
- (e). [Enforcement officers must allow Candidate Legal Practitioners, the essential staff of the legal practitioner; clients seeking assistance with essential services; witnesses and persons who may be needed to provide support such as those accompanying children, victims of domestic violence or sexually abused persons and persons with disabilities will be allowed access into the legal practitioner's offices. The head of the institution of the legal practitioners must issue a permit to the persons listed under this sub-paragraph.]

MOTIVATION:

- (i) Legal practitioners, candidate legal practitioners and support staff members must be allowed to commute, not only from their place of residence to their law firms, but also to travel to their branch offices, other law firms, counsel, clients (who are sometimes in other districts/provinces), Sheriffs' offices, for inspections in loco, various other meeting points, etc. These clauses only relate to practitioners leaving their place of residence for an essential service as stated in the proposed schedule.
- (ii) Legal practitioners should be allowed to travel interprovincially for purposes of ensuring access to justice specifically relating to court appearances, applications and actions, consultations that cannot be conducted via electronic means, inspections in loco etc.) Some deeds offices are also in another jurisdiction, necessitating interprovincial travel to and from the office of the legal practitioner and the deeds office. Furthermore, legal practitioners may, for example, reside in one province and practice in another and should, where applicable, be permitted to engage in provincial cross-border travel.
- (iii) Curfews will be implemented between 8pm and 5am, unless for essential service workers returning from or going to work. Legal practitioners should be allowed to travel between the curfew hours to assist e.g. clients who have been arrested.

Legal Aid Practitioners

24. A legal aid practitioner must, for purposes of performing any service described in Alert Levels to the Schedule, be in possession of a Permit issued by the Chief Executive Officer of Legal Aid South Africa.
25. A legal practitioner may only utilise a permit in conjunction with a form of identification referred to in paragraph 23(b).

Sheriffs and Deputy Sheriffs

26. Sheriffs and Deputy Sheriffs must be allowed to commute between their places of residence, offices, court and the area of service of process for purposes of performing service described in the Alert Levels in the Schedule.
 - (a) A Sheriffs and Deputy Sheriffs may leave her or his place of residence for purposes of performing essential services or service only if in possession of a permit authorising her or him to do so and specifying the services in question and the following document:
 - (a) an original or certified copy of their appointment certificate;
 - (b) proof of identification; and
 - (c) original document/s to be served.

COMMENT: The Sheriff should be allowed to attend to the attachment of assets, sales in execution and commercial evictions, at the very least in respect of pre-lockdown debts.

The issuing of certificates to perform essential service

27. In addition to the officers of the court mentioned in paragraph 9 above, other persons who are required to perform essential services must, at all times, have in their possession a certificate to perform an essential service, as issued by an authorised person.

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

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28. Every Regional Head, Provincial Head of Correctional Services, court manager, head of a correctional centre and any person who manages a service point must ensure adherence to general measures to prevent the spreading of COVID 19 as prescribed in the Regulations including the following:
- (a) cause to be undertaking deep cleaning and disinfection of offices and public spaces as directed by the head of office.
 - (b) that all members of the public entering a court, court precinct or justice service point must report at the security station set up for purposes of controlling access to the court, court precinct or justice service point where such person must complete a form and have his or her hands sanitised.
 - (c) The form referred to in paragraph (b) above must request the following information:
 - (i) Names and contact details of the person wishing to access the court, court precinct or justice service point;
 - (ii) whether the person travelled overseas within the last three weeks;
 - (iii) whether the person displays COVID-19 symptoms such as fever, dry cough, and tiredness;
 - (iv) whether the person has been in contact with any person diagnosed with COVID- 19; and
 - (v) whether the person has been tested for COVID-19 and the results are pending or have been received.
 - (d) If a person answers "yes" or "not sure" to questions (ii) - (v) as mentioned in paragraph (c) above, that person must be taken to a designated area, set apart for isolation and the Head of Office must be informed immediately and he or she must decide whether access should be granted or refused.
 - (e) ensuring that dispensers of alcohol-based hand sanitiser must be displayed prominently in public areas for use by all persons within the court precinct.
 - (f) ensuring that seating arrangements are such that that employees and attendees are seated at least one (1) square meter apart.
 - (g) ensuring that windows and doors must be opened whenever possible, to ensure that the venue is well ventilated.
 - (h) Office managers and heads of courts must ensure that the number of persons at any time in any room is limited with due regard to social distancing and other safety measures.
 - (i) that members of staff and the public entering a court house, court precincts, correctional centre, Remand Detention Centre and justice service point wear face masks at all times wear masks, including cloth masks;

COMMENT:

The courts are not being properly and effectively sanitised although there are cleaners at some of the courts. There have been experiences where proper and effective sanitising is not taking place, where proper and effective social distancing is still not taking place and where persons using the court are not wearing masks and gloves.

The biggest problem relates to the lack of sanitising at police holding cells as well as the cells at the Magistrates' courts. In fact, we are now experiencing police stations having to be closed down, because of the spread of the COVID-19 virus. This causes a huge problem as neighbouring police stations are placed under immense pressure to deal with not only their cases, but cases from other police stations as well. They also have to deal with detainees from other police stations which causes overcrowding and will in turn cause a potential health hazard and the potential spread of the COVID-19 virus.

Exclusion

29. 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 in these Directions be deviated from.

Commencement

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

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Schedule to the Directions

Alert level 5

A. CRIMINAL PROCEEDINGS
<ol style="list-style-type: none">1. First Court Appearances2. Postponement in absentia where is possible to inform accused persons / witnesses of future trial date3. Bail application/ Application for bail4. Postponements of trials through Audio Visual Remand System (AVR)5. Guilty Pleas6. Appeals and reviews
B. CIVIL LAW PROCEEDINGS
<ol style="list-style-type: none">1. All online civil law applications2. Urgent Motion Applications3. Urgent Civil Trials including COVID 19 related cases4. Dispute Mediation Services facilitated through the offices of the State Attorney5. Taxations6. Debt Review application and trials7. Pending Divorce, uncontested applications and trials8. Labour Court, CCMA and Bargaining Council hearings should continue other than than on an urgent basis.9. Unopposed motion proceedings should be left to the discretion of the magistrate concerned or be conducted via skype of other electronic means.10. Exchange of documents should continue regardless of prescription. Electronic (e-mail) service has always been permitted subject to consent. Service of process should be left to the discretion of the litigants.11. Reporting of estates at Magistrate's Offices and the estate services provided by them should be allowed.
C. FAMILY LAW SERVICES

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1. Child and spousal Maintenance applications
2. Protection orders (Domestic Violence applications and interim orders) (What about final orders?)
3. Foster care (What about applications and processes relating to foster care?)
4. Removal of children in need or care and protection
5. placement of children in child and youth care centres
6. international child abduction cases
7. Harassment applications

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

1. Payments to natural guardians, tutors and curators, or for, and on behalf of,

minors and persons under curatorship in the following instances:

(i) Where payments in respect of maintenance and education, which have been approved and payments are made electronically, these payments will continue to be made electronically; and

(ii) only applications for payment, if the quarterly payments have not already been received, for the benefit of child-headed households, orphans and the elderly, will be attended.

2. Other services in respect of the Administration of Estates Act:

(i) Only documentation required for the burial of a deceased person will be processed; and

(ii) only urgent appointment of curators will be processed.

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 application/ Application for bail
4. 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
5. Postponements of trials through Audio Visual Remand System (AVR)
6. Guilty Pleas;
7. Trials limited to:
 - (a) Corruption, Sexual offences, Gender Based Violence and Femicide (GBVF and Violation of COVID-19 regulations
 - (b) Cases where accused persons are in detention
8. Application for appeals and reviews

B. CIVIL LAW PROCEEDINGS

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1. All online applications;
2. Urgent Motion Applications

3. Urgent Civil Trials including COVID 19 related cases
4. Dispute Mediation Services facilitated through the offices of the State Attorney
5. Taxations
6. Debt Review application and trials
7. Pending Divorce, uncontested applications and trials

COMMENT: The legal profession is an integral part of and crucial to the proper functioning of the courts, the administration of justice and the rule of law. Public interest cannot be limited to urgent matters. There are a great many matters which are not urgent as envisaged by the courts but are of huge importance to a great many members of the public. We believe it is inappropriate that trials cannot proceed on level 4 and it is noted that trials will not be proceeding at full capacity until level 2.

FURTHER COMMENT:

The directives do not deal with the operations of the lower courts and this should be rectified.

C. FAMILY LAW MATTERS

1. Maintenance applications and trials
2. Domestic Violence applications and interim orders and final orders
3. Adoptions applications and hearing
4. Foster care applications and hearings
5. Care and protection orders
6. Harassment applications

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 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.

COMMENT: Endorsement of powers of attorneys in respect of conveyancing matters should be included, in view of the fact that the deeds offices are regarded as an essential service under level 4.

Alert level Three

A. CRIMINAL MATTERS:
<ol style="list-style-type: none">1. First Court Appearances2. Bail application/ Application for bail;3. Consideration of the continued detention of children awaiting trial in detention in Child and Youth Care Centres and Correctional Centres4. Postponements of trials through Audio Visual Remand System (AVR);5. Guilty Pleas;6. Preliminary Children Inquiries;7. Trials limited to 30% of all trial ready cases, prioritizing the following (which must be on the Priority Roll): Corruption<ol style="list-style-type: none">(a) Sexual offences(b) Gender Based Violence and Femicide (GBVF)(c) Serious Violence(d) Robbery(e) Violation of COVID-19 regulations8. Trials where accused persons are in detention9. Application for appeals and reviews restricted to limited trials;
B. CIVIL LAW PROCEEDINGS
<ol style="list-style-type: none">1. All online applications;2. Urgent Motion Applications3. Urgent Civil Trials including COVID 19 related cases4. Disputes Mediation Services facilitates through the Offices of the State Attorney5. Taxations6. Debt Review application and trials7. Pending Divorce, uncontested applications and trials
C. FAMILY LAW SERVICES
<ol style="list-style-type: none">1. Maintenance applications and trials2. Domestic Violence applications and interim orders and final orders

3. Adoptions applications and hearing
4. Foster care applications and hearings
5. Care and protection orders
6. Harassment applications

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 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 of appointments in all Trust matters lodged by e-mail;
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 lodged by e-mail;
10. Dealing with all correspondence received by e-mail.

Alert Level TWO

A. Criminal Matters:

1. First Court Appearances
2. Bail application/ Application for bail
3. Consideration of the continued detention of children awaiting trial in detention in Child and Youth Care Centres and Correctional Centres
4. Postponements of trials through Audio Visual Remand System (AVR);
5. Guilty Pleas;
6. Preliminary Children Inquiries;
7. Trials up to 70% of all cases ready for trial on the roll
8. Application for Appeals and reviews

B. CIVIL PROCEEDINGS
<ol style="list-style-type: none">1. All online applications;2. Urgent Motion Applications3. Urgent Civil Trials including COVID 19 related cases4. Dispute Mediation Services facilitates through the Offices of the State Attorney5. Taxations6. Debt Review application and trials7. Pending Divorce, uncontested applications and trials8. All civil proceedings and trials up to 70% of cases on the civil roll
B. FAMILY LAW SERVICES
<ol style="list-style-type: none">1. Maintenance applications and trials2. Domestic Violence applications and interim orders and final orders3. Adoptions applications and hearing4. Foster care applications and hearings5. Care and protection orders6. Harassment applications
C. SERVICES OF THE OFFICES OF THE MASTER OF THE HIGH COURT
<ol style="list-style-type: none">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 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 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 lodged by e-mail;10. Convening and advertisement of first meeting of creditors;11. Dealing with all incoming post and correspondence.

ANNEXURE 1

28/4/2020

Alert Level ONE

A. Criminal Matters:
<ol style="list-style-type: none">1. First Court Appearances2. Bail application/ Application for bail3. Consideration of the continued detention of children awaiting trial in detention in Child and Youth Care Centres and Correctional Centres4. Postponements of trials through Audio Visual Remand System (AVR);5. Guilty Pleas;6. Preliminary Children Inquiries;7. Trials up to 85% of all cases ready for trial on the roll8. Application for Appeals and reviews
B. CIVIL LAW PROCEEDINGS
<ol style="list-style-type: none">1. All online applications;2. Urgent Motion Applications3. Urgent Civil Trials including COVID 19 related cases4. Mediation services facilitates through the Offices of the State Attorney5. Taxations6. Debt Review application and trials7. Pending Divorce, uncontested applications and trials8. All civil proceedings and trials up to 85% of cases on the civil roll
C. FAMILY LAW SERVICES
<ol style="list-style-type: none">1. Maintenance applications and trials2. Domestic Violence applications and interim orders and final orders3. Adoptions applications and hearing4. Foster care applications and hearings5. Care and protection orders6. Harassment applications
D. SERVICES OF THE OFFICES OF THE MASTER OF THE HIGH COURT
All services of the offices of the Master of the High Court up to 85% at each office

Clause (number)	Comments
<p>H.7</p>	<p>Clause H.7 states that “Other professional services may operate only where work-from-home is not possible, and only to support other Level Four services”.</p> <p>We note that individual professions are not categorized but assume that this will be dealt with in the Regulations.</p> <p>Nevertheless, clarification should be provided as to the meaning of the words “... and only to support other Level Four services”. We assume that, based on the fact that deeds offices are categorised as a Level Four service, conveyancers will be permitted to operate to support them. The same applies to the Courts. However, there are services that legal practitioners perform that do not fall under Level Four, e.g. drafting of wills and contracts. Does the proviso mean that they will not be able to deal with these matters? Our submission is that legal practitioners must be permitted to do other legal services under level 4, even if not specified.</p> <p>This clearly also requires that on a limited extent, the offices of legal practitioners are functional in dealing with administrative issues and should also be allowed, e.g. payroll, creditors and debtors functions so that service providers are paid, and fees collected etc.</p>
<p>O.2</p>	<p>Clause O.2 states that “Only essential government and administration services may operate, including</p> <ul style="list-style-type: none"> a) ...; b) ... deeds offices ...; c) any service designated by the Executive Authority, HOD, Heads of Court ...; d) essential municipal services; e) ...; f) essential SARS services as defined by the Commissioner of SARS.” <p>1. DEEDS OFFICES</p> <p>The Law Society of South Africa (LSSA) has previously made submission for the unlocking of the deeds offices and is grateful to note that the deeds offices have been moved from Level 3 to Level 4.</p>

	<p>The opening up of the deeds office necessitates other role players, such as municipalities, Body Corporates, Home Owners' Associations, SARS and the Master's Offices to function, albeit on a limited basis. The main problem with conveyancing matters is the lapsing of rates clearance certificates. It is recommended that the Regulations should provide for the reopening of all Local Authorities, Body Corporates and Home Owners' Associations for the purpose of issuing rates clearance figures and certificates. Several City Councils have been moving over to electronic issuing of clearance certificates, which makes it possible for them to operate in a safe environment.</p> <p>2. COURTS</p> <p>Currently the Chief Justice issues directives of general application in the High Court and the various Judges President issue supplementary directives as far as their courts are concerned. In some of the lower courts, the Chief Magistrate issues directives pertaining to his / her court. We would like to urge that, for the sake of certainty, more uniform directives be issued in terms of which the Magistrates' Courts operate in a similar manner during the lockdown period, as practitioners find it difficult to establish the practice in the different courts. We also request that the Judges President, where possible, engage the profession in regard to directives.</p> <p>The issues of dies non and prescription is of great concern to the profession and should be addressed, whether by way of regulations, directives or an amendment to the Prescription Act. This is of utmost importance because those who are unable to work remotely and do not have permits for their operations, will experience hardships because of the uncertainty.</p> <p>3. MASTERS' OFFICES</p> <p>The Regulations insofar as the Master's Office is concerned are that only documentation required for the burial of a deceased person will be processed; and only urgent appointment of curators will be processed.</p> <p>In line with the opening of the Deeds Offices, it is suggested that the Masters' Offices' operations should be extended to include endorsement of powers of attorney to pass transfer. (also refer to point 1 above).</p>
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	<p>Deceased estates - The cessation of estate administration services is causing serious financial and practical hardship to families, particularly where the deceased was the main provider. The prompt issuing of Letters of Executorship is very important to ensure that surviving spouses and other dependents are not left without access to financial support. Banks and institutions will not provide emergency access to the deceased's funds in the absence of the appointment of an executor.</p> <p>Due to the very narrow field of operation of the Master's Office during the lockdown, the essential and usually relatively uncomplicated process of obtaining Letters of Executorship has been rendered impossible. While other administrative matters relating to deceased estates may be delayed to some extent without causing grave harm, it is very important that Letters of Executorship be issued so that someone has legal authority to take charge of the assets and thus prevent distress and hardship to dependents where needed, and also to prevent fraud or the unlawful appropriation of estate assets by desperate dependents.</p> <p>Therefore, it is suggested that the Master's Office functions also be widened so that application for the issue of Letters of Executorship or Letters of Administration can still be dealt with. Insofar as original documents need to be filed, the Master's Office can provide a delivery counter for messengers to access, there need not be physical advice desks which might cause crowding and queues.</p> <p>4. ESSENTIAL MUNICIPAL SERVICES</p> <p>It is suggested that the issuing of rates clearance certificates be categorised as an essential municipal service, as they play an integral role in the conveyancing process – see point 1 above.</p> <p>5. SARS</p> <p>It is noted that the SARS Commissioner will define essential SARS services. We suggest that this should include the processing of transfer duty certificates, as these are in any case done online, with no contact with the public – see point 1 above.</p>
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<p>R.1</p>	<p>The current permit system as far as legal practitioners are concerned should be reconsidered. The volumes of requests for permits will increase dramatically with the opening of the deeds offices, placing a further strain on the already overburdened Provincial Councils of the Legal Practice Council. The LSSA requests that firms be appointed as institutions and the heads of the institution or a delegated person can issue the permit. Abuse of the process can be dealt with by the Legal Practice Council in terms of the Code of Conduct for Legal Practitioners.</p> <p>Clause R1 provides that interprovincial travel is not permitted, except for ... essential services. The practical implication of this clause might be problematic, specifically read with the proviso to clause H.7. It is suggested that specific provision be made in the Regulations for legal practitioners to travel across provincial borders without having to apply for a permit on each occasion. Legal practitioners need to be able to follow their clients and often, the courts and the deeds offices are in a different jurisdiction, which makes it necessary for the legal professional to travel across provincial borders to perform his / her functions.</p>
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