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## **GUIDANCE NOTE FOR LEGAL PRACTITIONERS REGARDING THE RENDERING OF ESSENTIAL /PERMITTED LEGAL SERVICES DURING THE COVID-19 LOCKDOWN PERIOD – ALERT LEVEL 4**

The Minister of Cooperative Governance and Traditional Affairs, Ms. Dlamini Zuma has declared Alert Level 4 of the National State of Disaster to commence on 1 May 2020. She further promulgated Regulations in terms of section 27(2) of the Disaster Management Act of 2002 – as per Notice R.480, GG 43258 on 29 April 2020. The Minister of Justice & Correctional Services has issued Directions as per section 4(2) of the Regulations through notice R.489, GG 43268. 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 16 of the Regulations:**

“2. a person may leave their place of residence to:

- (a) To perform an essential service or permitted service as allowed in Alert Level 4 (annexures “D” and “Table 1” to the regulations)
- (b) Go to work where a permit which corresponds with Form 2 of Annexure A has been issued

4. Movement between provinces, metropolitan areas and districts are prohibited except:

- (a) for workers who have a permit to perform an essential or permitted service who have to commute and from work on a daily basis.

#### **2. In terms of section 28(4 of the regulations:**

“Persons performing essential services or permitted services must be duly designated in writing by the head of an institution or by a person designated by him or her on a form that corresponds with Form 2 in Annexure A

**3. Table 1 of the Regulations, as is applicable to Legal Practitioners reads as follows:**

1. “All persons who are able to work from home should do so.

Persons in the following list of industries and activities will be permitted to perform work outside the home, and to travel to and from work, under Alert Level 4.....”

2. **PART H (9)** reads as follows: “Other professional services may operate only where work from home is not possible and only to support other Alert Level 4 services”

3. In terms of Annexure D(B) (15) clarifies essential services as is applicable to legal practitioners as follows - ***“services related to the essential functioning of courts, judicial officers, the Master of the High Court, sheriffs and legal practitioners required for those services”***

## **ISSUING OF PERMITS**

1. All person who leave their place of residence must be in possession of a permit.

2. The Legal Practice is issuing letters confirming that a legal practitioner is enrolled with the LPC and is a practising legal practitioner. This letter is issued to all eligible legal practitioners. This letter must be presented with the permit, in the form of Form 2 of Regulations, as issued by head of institution. If you have not received your letter – you are kindly requested to contact your provincial office through contact details which are available on the LPC website, [www.lpc.org.za](http://www.lpc.org.za). The Legal Practice Council will no longer be issuing permits as from 6 May 2020.

3. The Minister in his Directions has expanded the definition of head of institution as per below. This allows legal practitioners to issue their own permits (as per definition below), and to also issue permits to their candidate legal practitioners and support staff.

4. The Minister in his directions specifies, under 1. Definitions:

“‘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.

5. To further clarify permitted services as defined in the Regulations, the Minister of Justice through his Directions specifies services that are classified in Annexure 1 of his Directions and defines permitted services, under 1. Definitions, as follows:

‘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 utilize 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
- (v) Civil matters dealt with online, telephonically or in writing (annexure 1, part B paragraph 1);

## **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](http://www.lpc.org.za)

## **OPENING OF OFFICES**

1. The LPC offices are opened and operating on skeleton staff and reduced scale of services effective from 6 May 2020. The scales of services offered has been sent to all Legal Practitioners.
2. The LPC has advised been that the State attorney offices will only open on 12 May 2020.
3. There has been no indication yet on the opening of the Deeds offices.

6 May 2020.

Legal Practice Council.