



# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 15 Issue 12, 13 July 2020

### This Update

This newsletter overviews new relevant National laws up to **13<sup>th</sup> July 2020**.

Log-in to [www.gazette.co.za](http://www.gazette.co.za), peruse the list and follow the hyperlinks to laws that interest you.

**Please note** that you can keep up to date, in-between newsletters, by visiting latest updates.

## Log-in details for SAICA members

To access [www.gazette.co.za](http://www.gazette.co.za) please use the following details:

- log-in name **in small letters**: saica + your SAICA membership number (e.g. saica01234567); and
- password : Your SAICA membership number (e.g. 01234567).

Please do not hesitate to contact us should you have any queries or comments.

## Index



### General

1. [Notable one liners](#)



### Information

2. [Promotion of Access to Information Act: 30 June 2021](#) 



### Safety

3. [Disaster Management Act: COVID-19 regulations](#) 



## General

### 1. NOTABLE ONE LINERS

#### **Banks Act** 🚩

The conduct standard 3 of 2020 (banks) is available from the FSCA.

*Note: The standard will cover culture and governance; design, suitability and performance requirements; retail financial customers; advertising; disclosures; complaints; refusal, withdrawal or closures by a bank; and termination, closure or switching by a financial customer. For example, contractual agreements with financial customers must make provision for the types of circumstances in which the contractual agreement may be terminated or withdrawn by the bank or by the financial customer.*

#### **Copyright Act**

The [Copyright Amendment Bill 2017](#) has been sent back to Parliament for further consideration.

#### **Disaster Management Act (Basic education)** 🚩

[COVID-19 directions \(schools\)](#) amended to remove references to pre-grade R, and to amend the general phased return dates of learners and officials to school.

*Note: A Member of the Executive Council responsible for education in a province, who is unable to comply with the phased return, is now required to submit a report containing reasons for non-compliance as well as a plan with the proposed dates for the phased return.*

#### **Disaster Management Act (Co-operative governance)** 🚩

[COVID-19 directions \(municipalities, provinces and traditional leadership\)](#) amended to require that municipalities and municipal entities must provide update, progress, expenditure and performance reports as required by the Disaster Management Act; and to allow municipal councils that are due to fill municipal office-bearer vacancies may request the Electoral Commission to manage the election of such office-bearers.

### Disaster Management Act (Health) 🇷🇺

COVID-19 directions (personnel, human remains, and quarantine facilities) amended to provide that where exceptional circumstances make it necessary for the mandatory quarantine of a person returning to South Africa to take place in a manner which involves the incurring of additional costs beyond those ordinarily incurred as a result of mandatory quarantine, the Director-General: Health may direct that such person is to pay the additional costs concerned.

### Disaster Management Act (Higher education) 🇷🇺

COVID-19 directions (skills development activities) introduced retrospectively from 1 June 2020, and states that accredited skills development providers offering occupational qualifications, institutions offering occupational learning programmes, and accredited assessment centres and/or trade test centres conducting assessments and trade testing, approved workplaces offering workplace based training may operate under these directions read with any other applicable Disaster Management Act regulations and specific directives or guidelines.

### Disaster Management Act (Home affairs) 🇷🇺

COVID-19 directions (entry into SA and exit from SA) amended to include applications for identity cards or documents for learners, and to allow a person who falls outside the categories allowed to enter SA by the COVID-19 regulations and directions inhibitions to demonstrate exceptional circumstances for entry.

### Disaster Management Act (Justice) 🇷🇺

The COVID-19 directions (correctional centres and remand detention facilities) suspends various visits by members of the public, consultation visits by legal practitioners, amenities to inmates from external sources, office visitations by parolees and probationers, and visits by external non-essential health care providers.

*Note: The directions also set out safety measures at correctional facilities; restrictions on placement, movement and release of inmates, parolees and probationers; and continued referral of remand detainees to court for consideration of their length of detention.*

## Disaster Management Act (Social development)

(i) SA news agencies reported that the High Court in Pretoria ruled (in case 24258/2020) that a decision by the Department of Social Development to inhibit private preschools and early childhood development centres from opening under level 3 is unconstitutional - they may open if they can do so safely.

*Note: It seems the Department has a standard operating procedures manual that it expects private preschools and ECDs to comply with, even though it is not a gazetted measure. It is suggested that private preschools and ECDs that are able to consider gaining legal advice on the manual's actual legal position.*

(ii) [COVID-19 directions \(social services\)](#) amended to allow for visits (but not at old age homes and frail care centres, residential facilities for people with disabilities, community nutrition development centres, to provide for health and safety measures at facilities and centres managed by Department of Social Development, to continue support of NGOs, faith based organisations and community based organisations which are providing services on behalf of the social development sector as a response to COVID-19, and to provide temporary support to shelters for homeless persons.

*Note: A number of laws ask that we consider the dignity and choice of older persons, including [section 5](#) of the Older Persons Act that states that all proceedings, actions or decisions in a matter concerning an older person must respect, protect, promote and fulfil the older person's rights, the best interests of the older person and the rights and principles set out in this Act, subject to any lawful limitation; respect the older person's inherent dignity; treat the older person fairly and equitably; and protect the older person from unfair discrimination on any ground, including on the grounds of the health status or disability of the older person.*

*Further note: A number of laws ask that we consider the dignity and choice of persons with disabilities, including [section 9](#) of the Promotion of Equality and Prevention of Unfair Discrimination Act that states that no person may unfairly discriminate (as defined in that Act) against any person on the ground of disability, including denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society; contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility; or failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.*

## Disaster Management Act (Sports, arts and culture)

COVID-19 directions (sport, cultural and religious events) amended to allow the opening of libraries, archives, museums, galleries, cinemas and theatres subject to direction 6I; to allow non-contact sport to resume training and matches subject to direction 6G; to allow contact sport to resume training subject to direction 6A; to require a sport body to appoint a compliance officer and to develop a phased-in return plan; and to allow a sport body to appeal a decision.

*Note: The directions state that a sport body and its affiliate members will be jointly and severally responsible for any claim for damages or negligence arising as a result of failure to take reasonable measures in curbing the spread of COVID-19.*

*Further note: The text may have meant 50 persons per screening room (subject to such room having the necessary space, including safety measures to accommodate 50 persons) - unfortunately this was not made clear so there is regulatory uncertainty regarding whether the limitation is to 50 persons within an entire cinema complex, regardless of the size of the complex and number of cinemas within that complex.*

*Final note: A slight amount of regulatory uncertainty persists with regard to direction 6D control measures social distancing, in that it would be preferable to have clarification that, for example, two partners choosing to go to a library, gallery, cinema, museum or theatre, are not forced to stay 1.5m away from each other during such visit.*

## Disaster Management Act (Tourism)

COVID-19 directions (tourism - risk-adjusted strategy) introduced for restaurants, fast food outlets and coffee shops (but on-site consumption liquor is still prohibited); self-drive excursions; conference and meeting venues (of up to 50 persons); and casinos.

*Note: The directions introduced for lodges, bed and breakfast, time-share facilities and resorts and guest houses seem to have been overtaken by the 12 July 2020 amendments to the regulations.*

*Further note: These directions must be read with the [regulations](#) and [Workplaces Safety Directions](#).*

*Further note: Restaurants, fast food outlets and coffee shops should keep the interaction of the Protection of Personal Information Act in mind, especially after 1 July 2020, when considering the direction to keep a daily record of employees, delivery persons, and persons that deliveries are made to for 6 weeks after the end of the national state of disaster. The same applies for casinos, hotels, lodges, bed and breakfast, time-share facilities, resorts, guest houses, conference organisers or event organisers daily employee and guest records.*

*Further note: Some of the suggested safety measures may require a review to determine their practical sensibility, for example the 1,5m distance between customers in a restaurant - the text probably meant 1,5m distance between customers that are not from the same group or that choose not to be close together, but if this was the intention it needs to be made clear in the wording.*

*Final note: Requests submitted to the Department of Tourism under the withdrawn tourism directions by establishments rendering services related to the lockdown, other than quarantine or isolation, for approval as at 29 June 2020, are approved on condition they comply with the regulations and relevant directions.*

### **Disaster Management Act (Transport)**

**COVID-19 directions (air services)** amended to increase permitted domestic airports, increase aerial work (aerial advertising and parachuting), confirm general aviation permissions, and to allow recreational aviation for proficiency flights.

### **Disaster Management Tax Relief Bill**

The **Disaster Management Tax Relief Bill** proposes that a COVID-19 disaster relief organisation be deemed to be public benefit organisation; provision for a deduction in respect of donation to COVID-19 disaster relief organisation and increase in annual donations limit for donations to Solidarity Fund; and that certain amounts received or accrued from COVID-19 disaster relief organisation are not included in remuneration.

### **Disaster Management Tax Relief Administration Bill**

The **Disaster Management Tax Relief Administration Bill** proposes, amongst others, that a qualifying taxpayer (as defined) may defer payment of 35% of employees' tax deducted or withheld during 1 April 2020 and ending on 31 July 2020; a qualifying provisional taxpayer may defer certain provisional tax amounts; a qualifying micro-enterprise may defer certain tax amounts; an employer may deduct from remuneration certain donations made to the Solidarity Fund on behalf of the employee; and a Category A or B VAT vendor may for a limited time be deemed to fall within Category C subject to conditions.

*Note: For purposes of the calculation of a time period prescribed under a tax Act the period of the lockdown (23H59 on 26 March 2020 until 23H59 on 30 April 2020) must be regarded as dies non for a time period prescribed for the appointment of a public officer under [section 246\(2\)\(d\)](#) of the Tax Administration Act, or revoking third*

party access under [section 256\(6\)](#) of the Tax Administration Act. Similar arrangements apply between the [proposed section 7 extension](#), and aspects of [section 49G\(1\)](#), [section 50G\(1\)](#), [section 64L\(1\)](#) and [section 64M\(1\)](#) of the Income Tax Act, or aspects of [section 47](#), [section 48\(1\)](#), [section 53](#), [section 60\(3\)](#), [Chapter 7](#), [section 99\(1\)](#), [section 100](#), [Chapter 9](#), [section 215\(3\)](#), [section 219](#) or [section 244\(3\)](#) of the Tax Administration Act, or aspects of the [Customs and Excise Act](#).

### Electricity Regulation Act

- (i) The Electricity Act [levy on electricity generated for supply by licensed electricity generators](#) (for 1 April 2020 to 31 March 2021) has been gazetted.
- (ii) A [determination](#) has been made on new generation capacity needed to ensure the continued uninterrupted supply of electricity.

### Electronic Communications Act

- (i) A digital sound broadcasting policy direction is available from the Department.
- (ii) Reminder that the [service code 116 will be mandated for Child Helpline service](#), with no call or SMS charges to a caller or sender, as from 3 months after 15 April 2020.

*Note: 9 months after 15 April 2020, the code "116" will be the exclusive number for Child Helpline services - this amendment gives effect to the UN Specialised Agencies resolution that there be a harmonised 116 number for child helpline services.*

### Electronic Communications and Transactions Act

The Protection of Personal Information Act will, from 30 June 2021, amend the [definition of personal information](#) (to include email address, physical address, telephone number, location information, online identifier and biometric information).

*Note: The Act will also repeal the [unsolicited goods, services and communications](#) and [protection of personal information](#) sections (as these will be covered by the Protection of Personal Information Act).*

### Films and Publications Act

The draft films and publications regulations 2020, that will repeal the existing regulations, are available from the Department of Communications and Digital Technologies. Comment deadline 30 days from 3 July 2020.

### Financial Advisory and Intermediary Services Act

Fit and proper requirements amended to provide, amongst others, for safeguards where a natural person representative is sequestrated, and for deemed completion of regulatory examinations in certain instances.

*Note: Reference updates (notably long-term insurance subcategory definitions and short-term insurance personal definitions), and corrections, have also been made.*

### Financial Advisory and Intermediary Services Act

The general code of conduct for authorised services providers and representatives has been amended (definitions, specific duties of provider, information on product suppliers, information about financial services, furnishing of advice), and will be amended 6 months from 26 June 2020 (financial interest and conflict of interest management policy, forecasts etc, advertising, direct marketing, and complaints management).

*Note: Complaints management framework requirements will be further amended 112 months from 26 June 2020.*

### Financial Advisory and Intermediary Services Act

The general code of conduct for authorised financial services providers and representatives conducting short-term deposit business has been amended to require that a provider covered by this code must comply with the advertising and complaints management requirements of the general code of conduct.

### Financial Advisory and Intermediary Services Act

Preparation guides for regulatory examinations are available from the FSCA.

### Hazardous Substances Act

Exemption has been given (for 18 months from 26 June 2020) to licensed and authorised medical device establishments to sell an electronically controlled ventilator (a Group III hazardous substance) for use in SA.

*Note: The exemption relates to the prohibition on selling, letting, using, operating or applying a Group III hazardous substance without a licence or contrary to prescribed conditions.*

### Income Tax Act

Reminder that the Disaster Management Tax Relief Administration Bill proposes changing the commencement dates for [sections 49E](#), [50E](#), [64FA](#) [64G](#), and [64H](#) to 1 October 2020.

### Labour Relations Act

Notice given that an [essential services investigation](#) is being conducted into private health services; private security services; ports and marine services; nutrition or feeding services at schools; laundry services in privately owned old age homes; and maintenance services in the aviation industry.

*Note: The notice further states that the possible variation of the Key Point Computer Systems designation is also being considered.*

*Further note: An essential services declaration means a party to a dispute is precluded from participating in a strike or lock-out and must follow a specific conciliation-arbitration approach.*

### Legal Practice Act

(i) Proposal made to amend the [accounting rules](#) to require that copies of accounts, that include the lists of balances, be retained for 7 years. Comment deadline 10 August 2020.

(ii) Proposal made that it be [misconduct on the part of an attorney](#) seeking to employ a candidate legal practitioner to require or stipulate in an ad that there must be a valid driver licence, ownership of a motor vehicle or access to a motor vehicle - a similar prohibition is also proposed for a training supervisor considering an applicant for a practical vocational training contract.

*Note: The draft notice states that a prospective employer of a candidate legal practitioners should not require that the applicant have a driver licence and/or own or have access to a motor vehicle for use in the course of employment, as the Council believes this practice is anti-transformative, and prejudices persons from disadvantaged backgrounds.*

*Further note: The proposal goes further than the stated reasoning when it also proposes prohibiting a principal from entering into a practical vocational training contract with a candidate attorney which incorporates any*

*unreasonable or unusual terms, which terms may include, without limitation, the above requirement - the text creates great regulatory uncertainty as there are no parameters on what will be considered unreasonable, a novel 'unusual' category is introduced into law that is not explained, and there is no clarity on who will decide what is unreasonable and unusual.*

*Final note: A number of attorneys rely heavily on candidate attorneys to travel to perform important tasks such as serving certain types of notices - the need for a candidate attorney to be able to travel on their own may be a real practical requirement in many instances, and the need to know whether a candidate attorney has a valid driver licence could also be important in instances where there may be vicarious liability for a driving incident involving an attorney's vehicle.*

Comment deadline 10 August 2020.

### **Liquor Products Act**

The [Liquor Products Amendment Bill 2016](#) has been sent back to Parliament for further consideration.

### **Draft Local Government Municipal Demarcation Bill**

The Draft Bill proposes, [amongst others](#), repealing the [Local Government: Municipal Demarcation Act](#), and establishing a Municipal Demarcation Board that undertakes municipal capacity assessments and makes recommendations on provincial boundaries. Comment deadline 29 July 2020.

### **Local Government Municipal Structures Act**

The Draft Local Government Municipal Demarcation Bill 2020 [proposes](#) repealing sections 2 (areas which must have category A municipalities) and 4 (application of criteria), as well as several items in schedule 1 electoral system for metro and local councils (delimitation of wards, number of wards, delimitation criteria, and publication of delimitation).

### **Medicines and Related Substances Act**

[Certain alcohol-based hand-rubs have been excluded](#), until 26 June 2021, from requirements relating to professional information for medicines for human use, patient information leaflet, and/or licence to manufacture, import, export, act as a wholesaler or distribute.

## Merchant Shipping Act

The Draft Merchant Shipping Bill, available from the Department of Transport, proposes repealing the [Merchant Shipping Act](#), the [Marine Traffic Act](#), and the [Ship Registration Act](#). Comment deadline extended to 30 days from 6 July 2020.

## National Credit Act

The Protection of Personal Information Act will, from 30 June 2021, amend the [compliance notice](#) section (sanction for failure to comply with a code of conducts, and aspects of requirements relating to directories and to transborder information flows will be subject to POPI enforcement, offences, penalties and administrative fines), and the [right to confidential information](#) section (removal of credit bureau offence to not comply with a right to confidential information offence).

*Note: Amendments consequential to the above will also be made to the definition of [prohibited conduct](#), [complaints to Regulator](#) and [complaints to the tribunal](#).*

## National Environmental Management Integrated Coastal Management Act

Draft amendments to the national estuarine management protocol are available from the Department of Forestry, Fisheries and the Environment.

## National Environmental Management Waste Act

[Draft extended producer responsibility](#) gazetted that propose affected producers must register, implement responsibility measures (eg finance schemes, transform as prescribed, take back products at end of life, and give environmental labels and declaration), determine an extended producer responsibility fee, and report on the performance of the scheme. Comment deadline 30 days from 26 June 2020.

*Note: The draft regulations were gazetted with draft responsibility schemes for the electrical and electronic equipment sector; lighting sector; and paper, packaging and some single use products (to be read with the regulation 6 minimum requirements and criteria for extended producer responsibility schemes to operate).*

*Further note: The producers may approach the Department for an earlier review due to non-achievement or over-achievement of targets.*

*Further note: All existing product responsibility organisations, created to handle the schemes and collect the fees, must register.*

*Final note: A producer who does not comply with these regulations may face criminal penalties and may also have their registration revoked and/or be compelled to join another scheme. A producer responsibility organisation that does not comply with these regulations will only face the possibility of their registration revoked.*

## **Pension Funds Act**

(i) FSCA conduct standard 4 of 2020 ([minimum skills and training requirements for board members of pension funds](#)) gazetted to require that a board member of a fund must attain the certification of the Trustee Training Toolkit within 6 months from the date of appointment to the board.

*Note: A board member who was appointed before 10 July 2020 will, for the purposes of the standard, be deemed to have been appointed on 10 July 2020 and must complete the Trustee Training Toolkit within 6 months from 10 July 2020.*

*Further note: A board member who attained the certification of the Trustee Training Toolkit before 10 July 2020 is not required to complete the certification again, subject to the board member completing a declaration stating that the board member completed the Trustee Training Toolkit without assistance.*

(ii) FSCA communication 41 of 2020 reminds retirement funds of 2 default preservation and portability duties namely [regulation 38\(1\)\(b\)\(ii\)](#) (members that leave the service of a participating employer before retirement must be given a paid-up membership certificate within 2 calendar months of the fund becoming aware they left), and [regulation 38\(1\)\(e\)\(i\)](#) (certain funds to request, as prescribed and within 4 months of a member joining the fund, a list of all paid-up membership certificates in respect of any retirement savings of that member).

## **Performers Protection Act**

The [Performers Protection Amendment Bill 2016](#) has been sent back to Parliament for further consideration.

## **Prescribed Rate of Interest Act**

The [prescribed rate of interest](#) is 8,75% per annum as from 1 March 2020 (it was previously 9,75%).

*Note: See the [past overview](#) on the importance of this interest rate to all entities.*

## Protection of Personal Information Act

Sections 2 to 38, 55 to 109, 111 and 114(1), (2) and (3) [commence](#) 1 July 2020. Sections 110 and 114(4) commence 30 June 2021.

*Note: The commencement dates must be read with the one year [transitional arrangements](#).*

*Further note: Reminder that the [protection of personal information regulations](#) commence on a date that must still be gazetted.*

*Final note: You may wish to revisit the [past overviews](#) (overview protection of personal information bill, and employee emails, RICA and POPI).*

## Protection of State Information Bill

The Bill has been sent back to Parliament for further consideration.

## Public Protector Act

The Protection of Personal Information Act will [remove complaints regarding the operation or administration of the Promotion of Access to Information Act from the competencies of the public protector](#) on 30 June 2021, as this will be covered by the Information Regulator.

## Skills Development Act

Further extension granted to 31 July 2020 for the submission of the 2020/2021 financial year applications for mandatory grants by levy paying employers in terms of [regulation 4\(1\)](#) of the SETA grant regulations.

## Standards Act

New, proposed, amended, and withdrawn [standards](#) have been gazetted for 3 and 10 July 2020.

*Note: Generally related laws may in certain circumstances involve standards, for example, [section 55](#) of the Consumer Protection Act, the [Occupational Health and Safety Act](#), the [National Regulator for Compulsory Specifications Act](#), the [National Health Act](#), the [Agricultural Products Standards Act](#), and/or the [Competition Commission and SABS MoU](#).*

## Tax Administration Act

[Notice to submit income tax returns](#) for the 2020 year of assessment has been gazetted.

*Note: A natural person is not required to submit an income tax return in terms of paragraph 2(f)(vii) if the person is notified by the Commissioner in writing that he or she is eligible for automatic assessment, and the person's gross income, exemptions, deductions and rebates reflected in the records of the Commissioner are complete and correct as at the date of accepting automatic assessment (or as at the date specified in paragraph 4(b)(iii), irrespective of whether the return relates to a provisional taxpayer, if he or she does not respond to the notification by this date).*

*Further note: Returns for turnover tax must be delivered to an office of SARS, other than an office which deals solely with matters relating to customs and excise.*



[Back to index](#)



## Information

### 2. PROMOTION OF ACCESS TO INFORMATION ACT: 30 JUNE 2021



The Protection of Personal Information Act (POPI) will amend the Act, from 30 June 2021:

#### General

- (i) The responsibility for this Act will fall within the jurisdiction of the Information Regulator;
- (ii) [Personal information](#) will include email address, physical address, telephone number location information, online identifier, and biometric information;
- (iii) [Personal requester](#) provisions will be removed, for example excluding a request for access to a record containing personal information about the requester from the [right to access public records](#) and repeal of the [correction of personal information](#) provision; and
- (iv) [Complaints to the Information Regulator](#) will be regulated.

#### Private bodies

[Private body PAIA manuals](#) will be required to include available remedies, and such other information as may be prescribed, as well as the following information where POPI applies:

- (i) Purpose of processing;
- (ii) Description of the categories of data subjects and of the information or categories of information relating thereto;
- (iii) Recipients or categories of recipients to whom the personal information may be supplied;
- (iv) Planned transborder flows of personal information; and
- (v) A general description allowing a preliminary assessment of the suitability of the information security measures to be implemented by the responsible party to ensure the confidentiality, integrity and availability of the information which is to be processed.

*Note: [Private body PAIA manuals](#) will be required to be made available on the web site, if any, at the principal place of business for public inspection during normal business hours, to any person upon request and upon the payment of a reasonable amount and to the Information Regulator upon request.*

*Further note: The [notice of fees to a requester](#), [notice of decision regarding a request](#), [notice of extension](#) and [third party notice of decision](#) will also inform requesters of the right to make a complaint to the Information Regulator.*

## **Public bodies**

**Public body PAIA manuals** will be required to include available remedies, and such other information as may be prescribed, as well as the following information where POPI applies:

- (i) Purpose of processing;
- (ii) Description of the categories of data subjects and of the information or categories of information relating thereto;
- (iii) Recipients or categories of recipients to whom the personal information may be supplied;
- (iv) Planned transborder flows of personal information; and
- (v) A general description allowing a preliminary assessment of the suitability of the information security measures to be implemented by the responsible party to ensure the confidentiality, integrity and availability of the information which is to be processed.

*Note: [Public body PAIA manuals](#) will be required to be made available on the web site, if any, at the head office for public inspection during normal business hours, to any person upon request and upon the payment of a reasonable amount and to the Information Regulator upon request.*

*Further note: Public bodies will make [automatically available records](#) known in the prescribed manner (reference to annual submission will be removed).*

In addition:

- (i) [Public body records will be required to also be preserved](#) where a complaint has been lodged with the Information Regulator;
- (ii) The [notice of fees to a requester](#), [notice of decision regarding a request](#), [notice of extension](#) and [third party notice of decision](#) will also inform requesters of the right to make a complaint to the Regulator; and

(iii) As with an internal appeal or court application, if a complaint to the Regulator is lodged against the granting of a request for access to a record, [access may be only be given when the decision to grant the request is finally confirmed.](#)



[Back to index](#)



### 3. DISASTER MANAGEMENT ACT: COVID-19 REGULATIONS

The most recent amendments to the [regulations](#) took place on 25 June 2020 and 12 July 2020:

- (i) Amongst others, alcohol is banned without time to prepare, accommodation is withdrawn without time to prepare, less opportunity of domestic flights for leisure during level 3, and more actions are criminalised.
- (ii) The COVID-19 regulations and directions have unfortunately become a case study in regulatory uncertainty, including the unexpected and devastating immediate withdrawal of a licence to operate.

*Note: The following overview refers to amendments made to the regulations as at 12 July 2020.*

Cloth face mask, homemade item or another appropriate item that covers the nose and mouth (Cover)

[Regulation 5](#) now states:

- (i) It is mandatory to wear a Cover in a public place;
- (ii) A person must only be allowed to be in any public open space, in any building, place or premises (Place) used by the public to get goods or services, or on any form of public transport, if he or she wears a Cover;

*Note: The public open space prohibition will not apply to a person who undertakes vigorous exercise in a public place, provided that the person maintains a distance of at least 3m from any other person, and subject to directions on what is considered to be vigorous, to be decided at some stage.*

- (iii) An employer must provide every employee with a Cover when in the workplace, and may not allow any employee to perform any duties or enter the employment premises if the employee is not wearing a Cover while performing his or her duties.

*Note: Specific additional Cover duties are also generated for a principal of a school, or owner or manager of an early childhood development centre.*

*Further note: In terms of regulation 14 an employer, a manager or owner of a Place, driver or operator of any form of public transport, or a principal of a school, or manager or owner of an early childhood development centre who fails to take reasonable steps to ensure compliance with the Cover duties imposed on them will be liable on conviction to a fine and/or imprisonment of up to 6 months.*

## Track and tracing

Regulation 8 has been renamed and amended to:

- (i) Allow for electronic systems or applications to be used on mobile devices or computers collect, on a voluntary basis, information from members of the public for inclusion in the COVID-19 database, subject to three conditions;
- (ii) Allow for the National Department of Health to receive, on a voluntary basis, information regarding members of the public from electronic systems or applications operated by private entities for inclusion in the COVID-19 database, subject to three conditions; and
- (iii) The Director -General of Health may, in writing and subject to a number of conditions, appoint any organ of state outside the Department of Health or private entities to provide services necessary for the carrying out of his or her powers and functions under this regulation.

*Note: The liability for non-compliance with this regulations is not clear, the practical viability and enforcement of this regulation on the persons using this regulation is not clear, and COVID-19 regulations seem to have a tendency to change from original intent.*

## Constraining movement

Regulation 33 was amended on 25 June 2020 to also allow a person to leave his or her place of residence to buy goods or services as permitted under level 3, and to travel for leisure purposes as allowed under level 3.

Regulation 33, read with annexure A, was amended on 12 July 2020 to confine every person to his or her place of residence from 9pm to 4am, unless granted a permit that corresponds with Annexure A Form 2 (to perform a service permitted under alert level 3, or to attend a security or medical emergency).

*Note: In terms of regulation 48 failure to comply is now an offence that on conviction may lead to a fine and/or to imprisonment for up to 6 months.*

## Constraining social interaction and relaxation

Regulation 37 was amended on 25 June 2020 to allow certain gatherings, subject to various conditions per type of allowed gathering, for business conferences and meetings, cinemas, theatres, casinos, sporting activities, museums, galleries, libraries and archives, personal care services, and restaurants.

Regulation 37 was amended on 12 July 2020 to allow all auctions, subject to strict adherence to all health protocols and social distancing measures and directions still to be determined.

### Prohibited places

Regulation 39 was amended on 25 June 2020 to state prohibited premises do not apply where an exception is specified in regulation 37 or 39, and to limit the prohibition of accommodation establishments to those that are not formally accredited and licensed, such as private homes for paid leisure accommodation.

Regulation 39 was amended on 12 July 2020 to summarily undo the rights returned to accommodation establishments in the regulations and the Tourism Directions, and the cost and time spent by these entities to prepare for operation, to bring back employees and to take bookings by again prohibiting hotels, lodges, bed and breakfasts, timeshare facilities and resorts and guest houses from making a living, except to the extent that they are required for accommodation by:

- (i) The remaining tourists confined to such facilities;
- (ii) Persons for work purposes; and
- (iii) Persons in quarantine or isolation.

### Public transport differentiation

Regulation 43 was amended on 12 July 2020 to define long distance travel as a trip of 200km or more whether the travel is within a province or inter-provincial, and to allow bus and taxi services to carry 100% of the licensed capacity for any trip not regarded as long distance travel.

*Note: Failure by bus and taxi services to not carry more than 70% of the licensed capacity for long distance intra-provincial and permitted inter-provincial travel will be regarded an offence that on conviction, may lead to a fine and/or to imprisonment for up to 6 months.*

### Removing liquor businesses ability to operate

Regulation 44 was amended on 12 July 2020 to summarily undo the rights returned to businesses primarily or secondarily within the liquor industry on liquor in the regulations, and the cost and time spent by these entities to prepare for operation, to advertise and to bring back employees. It now prohibits:

- (i) The sale, dispensing and distribution of liquor;

- (ii) The transportation of liquor (except for export purposes, from manufacturing plants to storage facilities, or in relation to alcohol required for industries producing hand sanitizers, disinfectants, soap or alcohol for industrial use and household cleaning products); and
- (iii) Applications for special or events liquor licenses during the ongoing duration of the declared state of disaster.

*Note: Directions for the transportation and storage of liquor are to be determined at some stage.*

### Continued inhibition of the trade industry right to economic activity

[Regulation 45](#) was amended on 12 July 2020 to rephrase the prohibition to reference the sale of tobacco, tobacco products, e-cigarettes and related products to members of the public and to persons including retailers who sell directly to the members of the public.

*Note: Regulation 48 states that failure to comply is an offence that, on conviction, may lead to a fine and/or to imprisonment for up to 6 months.*

The following rights were returned to entities in this sector:

- (i) The right to sale of tobacco, tobacco products, e-cigarettes and related products for export, is permitted; and
- (ii) The right to sell tobacco from farmers to local processors or local manufacturers (and from processors to manufacturers), is permitted.

### Excluding economic activity

[Table 2](#) was amended on 12 July 2020 to, amongst others, specifically exclude:

- (i) Sale, dispensing or transportation of liquor except as provided for in [regulation 44](#);
- (ii) Sale of tobacco, tobacco products, e-cigarettes and related products to members of the public and to persons including retailers who sell directly to the members of the public, except as provided for in [regulation 45](#);
- (iii) Hotels, lodges, bed and breakfasts, timeshare facilities and resorts and guest houses, for leisure purposes;
- (iv) Short term home-sharing, letting, leasing, or rental; and

*Note: On 25 June 2020 this prohibition was limited to 'leisure purposes' - this additional text has now been removed.*

(v) Domestic passenger air travel for leisure purposes.

*Note: On 25 June 2020 this prohibition included the statement 'until directions with health protocols and social distancing measures are issued by the relevant Cabinet member responsible for transport' - this additional text has now been removed.*



[Back to index](#)

*This SAICA Legal Update is not intended as legal or professional advice and has been prepared as a summary and opinion on general principles of law or other common practice and is published for general information purposes only. Only specific professional advice should be relied upon as what is herein contained may not be appropriate in particular circumstances. This is not a substitute for legal or other professional advice. Note also that the views expressed by the editor of SAICA Legal update might not necessarily be the views of SAICA.*