

LEGISLATION VS REGULATION AND CONSEQUENCES OF DEFIANCE / NON-ADHERENCE

On 15 March 2020, the COVID-19 pandemic was declared a national state of disaster in South Africa, setting into motion a series of ministerial announcements and directives. We keep reading about the Disaster Management Act and the so-called “lock-down regulations”, but what is the difference between the legislation and the regulations published in terms thereof? Do the regulations carry the force of law, and what are the consequences of non-adherence to the regulations? Can you be punished for failure to abide by the regulations, and what are the penalties / sanctions if applicable?



THE ACT

The Disaster Management Act 57 of 2002 (hereinafter: the DMA) came into full operation on 1 July 2004 and provides for an integrated and coordinated disaster management policy in South Africa, focusing on preventing risk of disasters, mitigating the severity of disasters, effective and rapid response to disasters and post-disaster recovery. Section 3 provides that the Act is to be administered by a Cabinet member designated by the President, and currently, the designated member is the Minister of Co-operative Governance and Traditional Affairs, Nkosazana Clarice Dlamini-Zuma.

In short, the DMA sets out broad legal principles and establishes numerous forums and committees. It is aimed at establishing a broad framework for disaster management and conferring certain powers to key role-players in an effort to manage, mitigate and respond to a state of disaster.

Section 27 of the DMA empowers the Minister to declare a national state of disaster, and in terms of Section 27(2), to make regulations / issue directions or authorise the issue of directions concerning, among other things, the release of state resources and emergency personnel, the regulation of movement of persons and goods, and the suspension or limiting of the sale and / or transportation of alcohol. In terms of Section 27(3), the powers of the Minister with regards to issuing the above regulations may be exercised only to the extent that it is necessary for the purpose of assisting and protecting the public, protecting property, preventing or combating disruption and dealing with the destructive and other effects of the disaster.

QUICKLINK -<https://www.gov.za/coronavirus/guidelines>

Access the above link for a complete and updated list of all the regulations and guidelines issued pertaining to the Coronavirus COVID-19 pandemic, inclusive of all directions, disaster management guidelines and notices in addition to links to the DMA.

THE REGULATIONS



The so-called “lockdown regulations” were published on 18 March 2020 in terms of Section 27(2) of the DMA and have been amended several times since publication. The most recent amendment was published on 19 April 2020. Regulations add flesh to framework legislation - they basically provide “implementation detail” or fill in procedures left out in the Act / legislation itself.

The lockdown regulations currently regulate social distancing measures, forced testing, isolation and quarantine of individuals, travel restrictions between provinces and metropolitan and district areas, closure of schools, partial care facilities and non-essential businesses and entities, the closure of borders, regulation of movement of people and goods in general, the ban on sale of non-essential items and aspects relating to commuter transfer services / public transport. The regulations also speak to the movement of people for funeral attendances and addresses the issue of children travelling between parents during the lockdown period. Provision is made for “contact tracing” and the establishment of a national database enabling the tracing of persons who are known or reasonably suspected to have come into contact with someone suspected to have contracted COVID-19. The most recent amendments make provision for a prohibition on evictions, providing that no person may be evicted from his / her place of residence for the duration of the lockdown, and Annexure “B” to the regulations constitutes the categorization of essential goods and services during lockdown.

NON-ADHERENCE

Since the National Lockdown came into effect on the 27th of March 2020, thousands of South Africans have been arrested on account of their failure to adhere to the regulations. This is because the regulations (in particular Regulation 11 and Regulation 11B aimed at restricting movement of citizens during the lockdown period) have created new offences for which an individual may be charged and later convicted. But what is happening to those arrested, and what are the penalties / sanctions that can be imposed by the courts on conviction?

In terms of Section 27(4) of the DMA, the regulations may include regulations prescribing penalties for any contravention of the regulations, and in terms of Section 59(3), the Minister may prescribe a penalty of imprisonment for a period not exceeding six months or a fine for any contravention of, or failure to comply with, a regulation. Therefore should you intentionally misrepresent that you or some other person is infected with COVID-19, you are guilty of an offence and on conviction, liable to a fine or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment (Regulation 11(4)). If you spread fake news with the intention to deceive any other person with regards to COVID-19 or the infection status of any other person or measures taken by Government to address COVID-19, you will similarly on

conviction find yourself facing a fine or imprisonment, or both (Regulation 11(5)). Defying the “stay at home” / restriction of movement provisions will also land you in hot water and open yourself up to the same punishments. Probably the most serious offence in terms of the regulations can be found in Regulation 11(6) in terms of which you may be prosecuted for assault, attempted murder or murder if you intentionally expose another person to COVID-19.

With regards to fines, the Gauteng Judiciary made a determination which provides for admission of guilt fines to be paid in the event of a breach of some of the Final Lockdown Regulations. For example travelling between metropolitan and district areas in Gauteng can land you with a fine of R2,500.00, whilst failing to confine yourself at home can result in a fine of R1,500.00. The arrested individual then has the option of either paying the admission of guilt fine or appearing in court and following the normal process of applying for bail, getting released and standing trial at a later stage.

Fortunately, legal practitioners have been classified as an essential service, and therefore a person who has been arrested and charged with contravening the Lockdown Regulations may contact an attorney to assist him / her with his / her bail application. After release, the normal criminal process will follow. Thus where a person pleads guilty or is so convicted by the Court, said person may be ordered to pay a fine or be sentenced to a maximum of 6 months in prison, or both. Should the accused have a legitimate defense, he / she will not be convicted.

IN CLOSING



To summarize, the Regulations published in terms of the DMA serve to give effect to the framework established by the DMA and provides the necessary implementation detail required for the effective management and mitigation of the national disaster occasioned by COVID-19. The regulations create new offences in terms of which individuals acting in contravention of the regulations can be charged and convicted. Conviction may result in imprisonment for a maximum period of 6 months or a fine (unspecified), or both a fine and imprisonment.

It is important to bear in mind that the Minister’s powers as it pertains to these regulations are not absolute, and may only be exercised in as far as it is necessary to manage the pandemic, protect the public and property and combat adverse effects of the disaster. South Africans still have the right to a fair trial and to legal representation, no matter the offence. Thus although COVID-19 has resulted in some of our basic human freedoms being limited, recourse to the courts remains open.
