

Covid-19: How the courts work during lockdown

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The courts and the legal system are an essential service, and are continuing to operate during the lockdown. But they are not carrying on as normal, and there are directions which have been issued by the Minister of Justice, and updated on 31 March, which govern how the courts will proceed.



While the courts are open, you can only access them if you meet certain criteria. Archive photo: Ashraf Hendricks

In an unusual move, both high and magistrates' courts are governed by one set of rules. Some magistrates have handed down their own directions, but these do not have a legal basis, and the directions of the minister must prevail.

The general principle in the directions is to keep people away from the courts to the extent that can be done without limiting people's rights unreasonably.

Access restricted

Access to courts is restricted to people who are litigants, the accused, witnesses, and those accompanying children, victims of domestic violence or sexual abuse, people with disabilities, family members, and also members of the media. They can only come to court for urgent and essential matters.

What is an urgent matter? That is always a difficult question. If you have been arrested you are entitled to appear before a

magistrate and ask for bail. Actual trials are being postponed and if there are postponements, the courts are trying to use video to do that. People held in prison or police cells and child and youth care centres won't be brought to court, if it can be avoided.

Civil cases are also being postponed. The original regulations attempted to suspend the operation of the time limits in the normal court rules. In the updated regulations that section has been removed, because it was recognised that the original directions couldn't override the court rules. The section that suspends all evictions has also been amended to indicate that the sheriff can't serve eviction orders. Only urgent court documents can be served by the sheriff.

The Office of the Master will make payments for minors and people who are under curatorship, if they have been already approved.

Family law

Family law issues have given rise to complications in the time of Covid-19. The certainty provided by custody orders and parenting plans has been challenged by people trying to ensure their children are kept safe, and in lockdown. Especially where court orders require children to move between homes on a weekly basis, parents have been trying to find solutions that best meet the needs of the children for isolation, and for contact with the non-resident parent. The section in the previous directions suggesting that parenting plans should be applied has been removed. While the lockdown continues, it however makes sense for children to stay with one parent.

The courts will remain open to deal with orders of court falling due or required to be made during the period of lockdown on foster care, adoption, removal of children in need of care and protection, placement of children in child and youth care centres, and international child abduction cases. First time applications for maintenance matters will be heard.

Very importantly, applications for interim domestic violence protection orders and applications for interim protection against harassment can be brought.

Lawyers to carry documentation

Lawyers going to court will also be required to carry a certificate provided by the Legal Practice Council, or an original or certified copy of the practitioner's admission certificate, proof of identification, and confirmation from the registrar or clerk of the relevant court that the matter is on the court roll for that particular day, that the practitioner is on record as the official legal representative in the particular matter, and that the matter is urgent or essential.

If you get to court, physical distance measures will be in place, as well as special cleaning measures. You will need to fill in a form before you are allowed in which asks about your possible exposure to Covid-19.

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