



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Namibian Constitution

pursuant to Article 26(5) of the Namibian Constitution,
subsequent to the declaration of a State of Emergency in the whole of Namibia,
following a worldwide outbreak of the disease known as Coronavirus Disease 2019
(COVID-19), by Proclamation No. 7 of 18 March 2020 (GG 7148)

State of Emergency - Covid-19: Further Suspension of Operation of Provisions of Certain Laws and Ancillary Matters Regulations [Stage 2]

Proclamation 18 of 2020

(GG 7204)

came into force on date of publication: 4 May 2020

Note that the High Court found regulation 12(1)(a) and (b), (2) and (5), and regulation 16 in part, to be unconstitutional in *Namibian Employers' Federation and Others v President of the Republic of Namibia and Others* (HC-MD-CIV-MOT-GEN 2020/00136) [2020] NAHCMD 248 (23 June 2020).

Most of these regulations covered the period from 23:59 on 4 May 2020 to at 23:59 on 1 June 2020.

(See the definition of "specified period" in regulation 1 read together with the references to this period throughout the regulations.)

However, regulations 4, 8(3), 9 and 11 apply during the entire State of Emergency.

(See the definition of "State of Emergency" in regulation 1 read together with the references to the "State of Emergency" in regulations 4, 8(3), 9 and 11.)

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PART 1

PRELIMINARY MATTERS

Definitions

1. In these regulations a word or an expression to which a meaning has been given in the Regulations or in an affected law bears that meaning and, unless the context indicates otherwise -

“affected law” means any law set out in Part 2, whose provisions are suspended or in any way affected by any provision of a regulation made under these regulations;

“direction” means a direction issued by the Chief Justice under regulation 14 of the Regulations;

“specified period” means the specified period referred to in regulation 1 of the Regulations;

“State of Emergency” means the State of Emergency that was declared by the President by Proclamation No.7 of 18 March of 2020, and which came into effect on 17 March 2020;

“the Regulations” means the State of Emergency-COVID-19 Regulations published under Proclamation No. 17 of 4 May of 2020.

Purpose of regulations

2. The purpose of these regulations is to -
 - (a) suspend the operation of provisions of certain laws; and

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- (b) deal with incidental matters arising from the suspension of the operation of the laws by the President pursuant to Article 26(5)(b) of the Namibian Constitution,

subject to such conditions as are reasonably justifiable, for the purpose of combating, preventing and suppressing the spread of COVID-19, for the duration of the specified period or the State of Emergency, as applicable.

PART 2

SUSPENSION OF OPERATION OF PROVISIONS OF CERTAIN LAWS

Suspension of operation of certain provisions of Magistrates' Courts Act, 1944

3. (1) The procedures and time periods specified in the Rules of Court published under Government Notice No. R.1108 of 21 June 1968 (hereafter "the Rules of Court"), are suspended for the duration of the specified period insofar as they relate to -

- (a) a party or witness who is not ordinarily resident in Namibia and who, for the duration of the specified period, is refused entry into Namibia; or
- (b) any other party or witness, including a Namibian citizen, a person domiciled in Namibia or any other person who in terms of any law has the right to residency in Namibia, and who, for the duration of the specified period, is not -
- (i) in Namibia; and
- (ii) able to return to Namibia because of any Covid-19 related reason.

(2) Any sale in execution and the time periods specified in sections 63, 65E, 66, 66 and 71A of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) (hereafter "the Act"), are suspended for the duration of the specified period.

(3) Any sale in execution and time periods specified in rules 36, 38, 39, 40, 41, 42, 43 and 45(4) of the Rules of Court, are suspended for the duration of the specified period.

(4) Despite subregulations (1) to (3), the Chief Justice may, for the duration of the specified period, issue directions in relation to procedures and time periods applicable in the magistrates' courts.

(5) The computation of any time period or time limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (1), (2) or (3), where interrupted by the specified period, resumes after the expiry of the specified period, and commences after the expiry of that period.

(6) The operation of subsection (5) of section 25 of the Act, relating to approval by the Cabinet, and of subsection (6) of that section, relating to the tabling of the alteration of rules of court in Parliament, are suspended for the duration of the specified period.

Suspension of operation of provision of Price Control Act, 1964

4. The Minister, despite section 2 of the Price Control Act, 1964 (Act No. 25 of 1964) that requires the Minister to appoint a Price Controller subject to the laws governing the public service, may appoint a Price Controller for the duration of the State of Emergency, without complying with the requirements of that section.

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Suspension of operation of certain provisions of Criminal Procedure Act, 1977

5. (1) Any time period, time limit and process relating to the operations of the Magistrates' Courts and High Court in criminal matters as contemplated in Chapters 15, 17, 18, 19A, 20, 21, 22, 25, 26, 27, 28, 29 and 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (hereafter "the Act"), are suspended for the duration of the specified period insofar as they relate to -

- (a) an accused person or a witness who is not ordinarily resident in Namibia and who, for the duration of the specified period, is refused entry into Namibia; or
- (b) any other accused person or witness, including a Namibian citizen, a person domiciled in Namibia or any other person who in terms of any law has the right to residency in Namibia, and who, for the duration of the specified period, is not -
 - (i) in Namibia; and
 - (ii) able to return to Namibia because of any Covid-19 related reason.

(2) The time periods contained in sections 303, 306 and 310 of the Act, are suspended for the duration of the specified period insofar as they relate to -

- (a) an accused person or a witness who is not ordinarily resident in Namibia and who, for the duration of the specified period, is refused entry into Namibia; or
- (b) any other accused person or witness, including a Namibian citizen, a person domiciled in Namibia or any other person who in terms of any law has the right to residency in Namibia, and who, for the duration of the specified period, is not -
 - (i) in Namibia; and
 - (ii) able to return to Namibia because of any Covid-19 related reason.

(3) The computation of any time period or time limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (1) or (2), where interrupted by the specified period, resumes after the expiry of the specified period, and commences after the expiry of that period.

Suspension of operation of certain provisions of Supreme Court Act, 1990

6. (1) The time period specified in section 14 of the Supreme Court Act, 1990 (Act No. 15 of 1990) and any other time periods or time limits prescribed in the Rules of the Supreme Court of Namibia published under Government Notice No. 249 of 29 September 2017 (hereafter "the Rules of the Supreme Court"), will not run for the duration of the specified period insofar as they relate to -

- (a) a party or witness who is not ordinarily resident in Namibia and who, for the duration of the specified period, is refused entry into Namibia; or
- (b) any other party or witness, including a Namibian citizen, a person domiciled in Namibia or any other person who in terms of any law has the right to residency in Namibia, and who, for the duration of the specified period, is not -

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- (i) in Namibia; and
- (ii) able to return to Namibia because of any Covid-19 related reason.

(2) Despite subregulation (1), the Chief Justice may, for the duration of the specified period, issue directions to regulate the Registrar’s office hours for the purpose of issuing of any process or filing of any document or for the purpose of filing a notice of intention to oppose a matter in the Supreme Court.

(3) The sale in execution relating to any warrant or writ of the court issued in terms of rule 28(b) of the Rules of the Supreme Court, is suspended for the duration of the specified period.

(4) The computation of any time period or time limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (1) or (3), where interrupted by the specified period, resumes after the expiry of the specified period, and commences after the expiry of that period.

Suspension of operation of certain provisions of High Court Act, 1990

7. (1) The time period specified in section 24 of the High Court Act, 1990 (Act No. 16 of 1990) (hereafter “the Act”), and any time period specified or time limit prescribed in the Rules of the High Court of Namibia published under Government Notice No. 4 of 17 January 2014 (hereafter “the Rules of the High Court”) will not be applied or run for the duration of the specified period insofar as they relate to -

- (a) a party or witness who is not ordinarily resident in Namibia and who, for the duration of the specified period, is refused entry into Namibia; or
- (b) any other party or witness, including a Namibian citizen, a person domiciled in Namibia or any other person who in terms of any law has the right to residency in Namibia, and who, for the duration of the specified period, is not -
 - (i) in Namibia; and
 - (ii) able to return to Namibia because of any Covid-19 related reason.

(2) Any process of the court as may be identified by a direction of the Chief Justice, in the Rules of the High Court, is suspended for the duration of the specified period insofar as it relates to -

- (a) a party or witness who is not ordinarily resident in Namibia and who, for the duration of the specified period, is refused entry into Namibia; or
- (b) any other party or witness, including a Namibian citizen, a person domiciled in Namibia or any other person who in terms of any law has the right to residency in Namibia, and who, for the duration of the specified period, is not -
 - (i) in Namibia; and
 - (ii) able to return to Namibia because of any Covid-19 related reason.

(3) Any -

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- (a) process of the court relating to any sale in execution, as may be identified by a direction of the Chief Justice; and
- (b) sale in execution contemplated in Part 11 of the Rules of the High Court, are suspended for the duration of the specified period.

[This provision is reproduced as it appears in the *Government Gazette*. However, the closing phrase “are suspended for the duration of the specified period” was probably intended to have been formatted so as to apply to both paragraphs (a) and (b).]

(4) Despite subregulation (1), (2) or (3), the Chief Justice may, for the duration of the specified period, issue directions to regulate the Registrar’s office hours for the purpose of the issuing of any process or the filing of any document or for the purpose of filing a notice of intention to defend or a notice of intention to oppose a matter in the High Court.

(5) The computation of any time period or time limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (1), (2) or (3), where interrupted by the specified period, resumes after the expiry of the specified period, and commences after the expiry of that period.

(6) For the purposes of this regulation, the provisions of section 39 of the Act, which relate to the making of rules of the High Court by the Judge-President with the approval of the President, are suspended.

Suspension of operation of certain provisions of Social Security Act, 1994

8. (1) The provisions of section 21(4) and (5) of the Social Security Act, 1994 (Act No. 34 of 1994) (hereinafter “the Act”), insofar as they relate to the obligation of the employer to deduct and pay over both the employees’ and employer’s contributions to the Commission, are suspended from 1 May 2020 to 31 July of 2020, except that this benefit only extends to employers who have suffered financial losses due to the actual or potential impact of COVID-19 on the employer’s operations.

(2) An employer who is exempted from deducting and paying over contributions to the Commission pursuant to subregulation (1) is discharged from liability to pay money to the Commission as contemplated in section 26(1) of the Act for the period from 1 May 2020 to 31 July 2020.

(3) The conducting of training schemes and employment schemes approved by the President for the benefit of socio-economically disadvantaged persons who are unemployed as contemplated in section 37(4) of the Act is deemed to be extended to include a member of any of the funds who was registered on or before 17 March 2020, and who has suffered financial losses due to the actual or potential impact of COVID-19 during the State of Emergency.

Suspension of operation of provision of Identification Act, 1996

9. The operation of section 14(2) of the Identification Act, 1996 is suspended for the duration of the State of Emergency, except that that the Minister may, whenever he or she considers it necessary, disclose specific information such as the name, surname and identity number of any person contained in the Population Register for Namibia to any institution, public or private, for the validation and verification of such information for the purpose of payment of any grant made available by the State.

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[The word “that” is repeated in the *Government Gazette*, as reproduced above.]

Suspension of operation of certain provisions of Liquor Act, 1998

10. (1) The provisions of Parts II, III and IV of the Liquor Act, 1998 (Act No. 6 of 1998), and any related regulations made under section 79 of that Act, insofar as they relate to the time periods or time limits and other matters relating to applications, issuances, renewals and appeals, are suspended for the duration of the specified period.

(2) The computation of any time period or time limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (1), where interrupted by the specified period, resumes after the expiry of the specified period, and commences after the expiry of that period.

Suspension of operation of certain provisions of Standards Act, 2005

11. The Namibian Standards Institution may, for the duration of the State of Emergency, under section 20(1) of the of the Standards Act, 2005 (Act No. 18 of 2005) set, establish, and issue a Namibian Standard or amend or withdraw a Namibian Standard issued under that section, without having to follow the procedures for the setting, establishing, issuing, amending or withdrawing of a Namibian Standard as set out in the Standards Regulations published under Government Notice No. 249 of 20 September 2005.

Suspension of operation of certain provisions of Labour Act, 2007

12. (1) ~~Despite anything to the contrary in any provision of the Labour Act, 2007 (Act No. 11 of 2007) (hereafter “the Act”), an employer may not, for the duration of the specified period—~~

~~(a) force an employee to take unpaid leave for reasons related to—~~

~~(i) the actual or potential impact of COVID-19 on the operation of the employer’s business; or~~

~~(ii) the implementation of a provision of any regulation which is intended to give effect to the measures occasioned by the COVID-19 pandemic; or~~

~~(b) reduce the remuneration of any employee for reasons related to—~~

~~(i) the actual or potential impact of COVID-19 on the operation of the employer’s business; or~~

~~(ii) the implementation of a provision of any regulation which is intended to give effect to the measures occasioned by the COVID-19 pandemic.~~

[The High Court found subregulation (1)(a) and (b) unconstitutional and thus invalid in *Namibian Employers’ Federation and Others v President of the Republic of Namibia and Others* (HC-MD-CIV-MOT-GEN 2020/00136) [2020] NAHCMD 248 (23 June 2020). The basis for the holding is that these provisions were not “reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency” in terms of Art 26(5)(b) of the Namibian Constitution.]

~~(2) Despite subregulation (1)(b), if, in the duration of the specified period, an employer wishes to reduce or defer payment of full remuneration because of its inability to pay full~~

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~~remuneration due to the actual or potential impact of COVID-19, the employer must negotiate in good faith with—~~

- ~~(a) — a recognised trade union;~~
- ~~(b) — a workplace representative; or~~
- ~~(c) — in the absence of a recognised trade union or workplace representative, the affected employee or employees.~~

[The High Court found subregulation (2) unconstitutional and thus invalid in *Namibian Employers' Federation and Others v President of the Republic of Namibia and Others* (HC-MD-CIV-MOT-GEN 2020/00136) [2020] NAHCMD 248 (23 June 2020). The basis for the holding is that this provision was not “reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency” in terms of Art 26(5)(b) of the Namibian Constitution.]

(3) If the parties have reached an agreement, the agreement must be filed with the Labour Commissioner, but, in the absence of any agreement, any party may refer a dispute to the Labour Commissioner.

(4) An employee, insofar as it relates to the care of a family member who has contracted COVID-19 and is unable to care for him or herself, or is under quarantine or under self-isolation, in the employee's care is -

- (a) entitled to sick leave provided for in section 24 of the Act; and
- (b) where the period of sick leave referred to in paragraph (a) is exhausted, entitled to such extended sick leave benefit as permitted by section 30 of the Social Security Act, 1994 (Act No. 34 of 1994),

as may be required to care for such a family member.

~~(5) — If, prior to the commencement of these regulations, an employer has notified his or her employees of an intended dismissal in terms of section 34 of the Act for reasons related to the actual or potential impact of COVID-19 on the operations of the employer's business, the date of the intended dismissal is deemed to be 28 days after the end of the specified period, unless a later date is specified in the notice.~~

[The High Court found subregulation (5) unconstitutional and thus invalid in *Namibian Employers' Federation and Others v President of the Republic of Namibia and Others* (HC-MD-CIV-MOT-GEN 2020/00136) [2020] NAHCMD 248 (23 June 2020). The basis for the holding is that this provision was not “reasonably justifiable for the purpose of dealing with the situation which has given rise to the emergency” in terms of Art 26(5)(b) of the Namibian Constitution.]

(6) If, after duration of the specified period, an employer wishes to dismiss employees for reasons related to the actual or potential impact of COVID-19, it must do so in compliance with section 33 or section 34 of the Act, including negotiations over the right of the employees to be recalled to their former or comparable positions as the employer's operation recovers.

(7) Parts A to C of Chapter 8 of the Act and regulations, rules or codes of conduct made under that Act, which relate to the time periods or time limits, processes and procedures in respect of conciliation and arbitration of labour disputes and issuance of arbitration awards, appeals and reviews against decisions of arbitrators and the variation and rescission of awards, are suspended for the duration of the specified period insofar as they relate to -

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- (a) a party or witness who is not ordinarily resident in Namibia and who, for the duration of the specified period, is refused entry into Namibia; or
- (b) any other party or witness, including a Namibian citizen, a person domiciled in Namibia or any other person who in terms of any law has the right to residency in Namibia, and who, for the duration of the specified period, is not -
 - (i) in Namibia; and
 - (ii) able to return to Namibia because of any Covid-19 related reason.

(8) Section 87 of the Act, and the time periods or time limits specified in section 89 of the Act, and the Labour Court Rules published under Government Notice No. 279 of 2 December 2008, are suspended for the duration of the specified period.

(9) Despite subregulation (7) or (8), the Chief Justice may, for the duration of the specified period, issue directions to regulate the Registrar's office hours for the purpose of issuing of any process or filing of any document or for the purpose of filing a notice of intention to oppose a matter in the Labour Court.

(10) The computation of any time period or time limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (7) or (8), where interrupted by the specified period, resumes after the expiry of the specified period, and commences after the expiry of that period.

(11) For the purposes of subregulation (9), the provisions of section 39 of the High Court Act, 1990 (Act No. 16 of 1990) and section 119 of the Act which relate to the making of rules of the Labour Court by the Judge-President with the approval of the President, are suspended.

Suspension of operation of provision of Correctional Service Act, 2012

13. The provisions of section 77 (1) (a) of the Correctional Services Act, 2012 (Act No. 9 of 2012), and of any related subsidiary legal instrument issued under that Act or the authority of that Act, relating to the receiving of visitors at correctional facilities, are suspended for the duration of the specified period.

Suspension of operation of certain provisions of Public Procurement Act, 2015

14. (1) The provisions of sections 28(1)(b) and 30 of Public Procurement Act, 2015 (Act No. 15 of 2015), are suspended for the duration of the specified period.

[The word "the" appears to have been omitted
before the phrase "Public Procurement Act, 2015".]

(2) The computation of any time period or time limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (1), where interrupted by the specified period, resumes after the expiry of the specified period, and commences after the expiry of that period.

PART 3

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Provisions relating to expiry of licenses, permits and other authorisations

15. (1) Despite any provision to the contrary in any law, any licence, permit, approval, or other form of authorisation by whatever name called, issued to any person under any law, which expired during the period of lockdown, is deemed to be further valid for -

- (a) the duration of the specified period; or
- (b) such longer period as the minister or other functionary administering the relevant law may determine -
 - (i) by a directive issued under regulation 15 of the Regulations; or
 - (ii) where appropriate, by a written notice to the holder of such licence, permit or other form of authorisation,

but subject to such conditions as the minister or other functionary may specify in the directive or notice.

(2) Subregulation (1) does not apply to any licence, permit or other form of authorisation which expired before the period contemplated in that subregulation.

(3) Any penalty applicable for failure to renew any licence, permit or authorisation is suspended for the duration period contemplated in subregulation (1).

Validity of actions taken prior to suspension of operation of provisions of certain laws

16. (1) Despite anything to the contrary in any law, the suspension of the operation of the provisions of certain laws is deemed to have come into effect on 28 March of 2020.

(2) Any action taken prior to the suspension of operation of the provisions of certain laws in terms of these Regulations but after the date referred to in subregulation (1) is validated and deemed to have been lawfully done.

[The High Court found regulation 16 to be unconstitutional insofar as it relates to the provisions of these regulations which were found to be unconstitutional and therefore invalid in *Namibian Employers' Federation and Others v President of the Republic of Namibia and Others* (HC-MD-CIV-MOT-GEN 2020/00136) [2020] NAHCMD 248 (23 June 2020).]
