

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

GOVERNMENT GAZETTE, No. 48428 dd 14 April 2023

NO. R. 3289

14 April 2023

DOMESTIC VIOLENCE ACT, 1998

DOMESTIC VIOLENCE REGULATIONS, 2022

- (a) The Minister of Justice and Correctional Services has, in terms of section 19 of the Domestic Violence Act, 1998 (Act No. 116 of 1998), and subject to paragraphs (a) and (b) below, made the regulations in the Schedule hereto.
- (b) The Minister of Justice and Correctional Services has, in terms of section 19(1), read with section 19(2)(b) of the Domestic Violence Act, 1998 (Act No. 116 of 1998), and in consultation with the Minister of Finance, made regulations 22 and 32 in the Schedule hereto.
- (c) The Minister of Justice and Correctional Services has, in terms of section 19(1)(c) of the Domestic Violence Act, 1998 (Act No. 116 of 1998), and in consultation with Legal Aid South Africa, made regulation 35 in the Schedule hereto.

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1. Definitions and interpretation

(1) In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates –

‘electronically’ in relation to service of any document in terms of these Regulations, means to serve by any electronic medium including facsimile, electronic mail, short message service, multimedia messaging service or other social media;

‘ICMS’ means integrated case management system;

‘material interest’ includes an interest in the economical, financial, physical, psychological, medical or emotional wellbeing;

‘official language’ means Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu;

‘older person’ means a person who, in the case of a male, is 65 years of age or older and, in the case of a female, is 60 years of age or older, in accordance with the Older Persons Act, 2006 (Act No. 13 of 2006);

‘online portal’ means a web-based platform specially designed to provide a complainant or any person with an entryway to applying for a domestic violence protection order and access to related information and documents;

‘social media’ includes the various online technology tools, forms and electronic communication via the internet, such as websites and applications for social networking and micro blogging through which users create online communities to share information, ideas, personal messages and other content; and

‘the Act’ means the Domestic Violence Act, 1998 (Act No. 116 of 1998).

(2) Any document that is –

- (a) scanned from an original document;
- (b) created electronically;
- (c) uploaded to or downloaded from the integrated electronic repository; or
- (d) uploaded to or downloaded from an online portal,

is regarded as an original document.

(3) If any document that requires to be made under oath or on affirmation is submitted electronically or through the online portal, the clerk of the court may administer the oath or affirmation through an audio-visual communication with the person required to sign the document: Provided that the document is signed before the oath or affirmation is administered.

2. Notice containing information (section 2(b))

A notice contemplated in section 2(b) of the Act must contain the information provided for in and be on a form which corresponds substantially with Form 1 of the Annexure.

3. Explanation of notice (section 2(c))

A member of the South African Police Service must, if it is reasonably possible to do so –

- (a) explain to the complainant, or a person acting on behalf of the complainant, –
 - (i) that a member of the South African Police Service will render such assistance as circumstances may require, including assisting or making arrangements to find a suitable shelter and to obtain medical treatment;
 - (ii) their right to apply for a protection order to prohibit the respondent from committing further acts of domestic violence, even if no criminal complaint has been lodged, and the right to apply, simultaneously, for a domestic violence safety monitoring notice to ensure the complainant's safety, health and wellbeing;
 - (iii) the complainant's right to lodge a criminal complaint; and
 - (iv) the purpose of the notice;
- (b) hand the notice referred to in regulation 2 to the complainant;
- (c) read the notice to the complainant;
- (d) direct the complainant to a website where the notice could be accessed;
- (e) inquire from the complainant whether they –
 - (i) understand the contents of the notice; and
 - (ii) require further information regarding the remedies in terms of the Act and the right to lodge a criminal complaint;
- (f) explain to the complainant, on request –
 - (i) any part of the notice which the complainant does not understand; and
 - (ii) their remedies in terms of the Act and the right to lodge a criminal complaint;
- (g) inform the complainant that further information may be obtained from the clerk of the court, should questions of the complainant remain unanswered; and
- (h) inform the complainant of the option of applying for a protection order and for a domestic violence safety monitoring notice online, and how the online portal may be accessed.

4. Submission of report and risk assessment by functionary (section 2A(2)(a))

(1) A functionary, who believes or suspects, on reasonable grounds, that a child, a person with a disability or an older person may be a complainant, must prepare a report on a form which corresponds substantially with Form 2 of the Annexure.

(2) The report, duly completed and signed by a functionary as contemplated in subregulation (1), must be submitted to a social worker or a member of the South African Police Service by hand or electronically.

5. Reporting of knowledge, belief or suspicion of acts of domestic violence (section 2B(2)(a))

(1) An adult person who knows, believes or suspects on reasonable grounds that an act of domestic violence has been committed against a child, a person with a disability or an older person must, as soon as possible, report such knowledge, belief or suspicion on a form of an affidavit which corresponds substantially with Form 3 of the Annexure.

(2) The report, duly completed and signed by an adult person contemplated in subregulation (1), must be submitted, by hand or electronically, to a social worker or a member of the South African Police Service.

6. List of particulars and notice (section 3(3)(b))

(1) The list contemplated in section 3(3)(b)(i) of the Act that must be provided to the complainant must –

- (a) correspond substantially with Form 4 of the Annexure;
- (b) be available on the websites of the Departments of Health, Justice and Constitutional Development and Social Development;
- (c) be given by hand or electronically to the complainant or a person acting on behalf of the complainant, who must be directed to any website or other place or space where the list may be accessed; and
- (d) if reasonably possible, be available in the official language of choice of the complainant.

(2) The notice, contemplated in section 3(3)(b)(ii) of the Act, to be handed to the complainant must correspond substantially with Form 5 of the Annexure.

(3) The list referred to in subregulation (1) and the notice referred to in subregulation (3) must be accessible on the website of the Department of Justice and Constitutional Development and include the website address of the relevant Department.

7. Manner of applying for protection order (section 4(1))

(1) A complainant may apply to the court for a protection order –

- (a) on a form which corresponds substantially with Form 6 of the Annexure; and
- (b) by submitting the completed form to the clerk of the court –
 - (i) in person;
 - (ii) electronically; or
 - (iii) through the online portal.

(2) The application referred to in subregulation (1) must be made by way of an affidavit in which the following must be stated:

- (a) The facts on which the application is based;
- (b) the nature of the order applied for;
- (c) the name of the police station where the complainant is likely to report any breach of the protection order applied for; and
- (d) the court having jurisdiction at which the complainant will be able to or prefers to attend the hearing of the matter.

(3) Where the application is brought on behalf of a complainant by another person, the affidavit referred to in subregulation (2) must also set out or contain –

- (a) the grounds on which such person has a material interest in the wellbeing of the complainant;
- (b) the occupation of such person and capacity in which such person brings the application; and
- (c) except in cases excluded by the provisions of section 4(3)(b) of the Act, proof of the written consent of the complainant.

(4) The form of consent with which an application made on behalf of a victim may be brought, must correspond substantially with Form 7 of the Annexure.

(5) Any supporting affidavit may be submitted with the application.

8. Manner in which clerk of court must inform complainant or person not represented by legal practitioner (section 4(2))

(1) The clerk of the court must, if the complainant is not represented by a legal practitioner, and before the complainant applies for a protection order –

- (a) hand to the complainant a written notice which contains the information provided for in Form 8 of the Annexure, which must be in one of the official languages of choice of the complainant;
- (b) read the notice or cause the notice to be read to the complainant, if they are unable to read the notice;
- (c) inquire from the complainant whether the complainant –
 - (i) understands the contents of the notice; and

- (ii) require further information concerning the relief available in terms of the Act, and the right to lodge a criminal complaint;
- (d) on request of the complainant, further explain, to the best of the ability of clerk of the court –
 - (i) any part of the notice which the complainant does not understand; and
 - (ii) the relief available in terms of the Act and the right to lodge a criminal complaint;
- (e) inform the complainant of the requirement to confirm in writing that there has been compliance with section 4(2) of the Act and this regulation; and
- (f) the clerk of the court must scan and capture the confirmation on the ICMS, and file the said confirmation in the court file.

(2)(a) The information contained in Form 8 of the Annexure must be available on the online portal platform in all the official languages.

(b) The complainant must confirm on the online portal that the notice was read and understood, if the online portal platform was used.

(3) The provisions of this regulation will apply equally, with the necessary changes, to a person contemplated in section 4(3) of the Act.

9. Documents and information to be captured in integrated electronic repository (section 4(7)(a))

(1) The clerk of the court must capture the following documents in the integrated electronic repository:

- (a) Application and supporting affidavit as contemplated in section 4(7)(a) of the Act;
- (b) application for safety monitoring notice contemplated in section 4A(9)(b) of the Act;
- (c) safety monitoring notice contemplated in section 4A(9)(b) of the Act;
- (d) return of service on the respondent as contemplated in section 4A(9)(b) of the Act;
- (e) return of service on the station commander as contemplated in section 4A(9)(b) of the Act;
- (f) interim protection order as contemplated in section 5(3)(c)(ii) of the Act;
- (g) return of service on the respondent as contemplated in section 5(4)(c) of the Act;
- (h) notice to show cause as contemplated in section 5(4)(c) of the Act;
- (i) return of service of the notice to show cause on the respondent as contemplated in section 5(4)(c) of the Act;
- (j) notice anticipating the return date as contemplated in section 5(5)(b) of the Act;
- (k) return of service of application, any supporting affidavit, record of any evidence and interim protection order on the respondent as contemplated in section 5(7)(a) of the Act;
- (l) return of service of interim protection order and warrant of arrest on the complainant as contemplated in section 5(8)(a) of the Act;
- (m) final protection order as contemplated in section 6(6)(b)(i) of the Act;
- (n) warrant of arrest as contemplated in section 6(6)(b)(ii) of the Act;
- (o) return of service of final protection order on the respondent as contemplated in section 6(6)(b)(iii)(aa) of the Act;
- (p) return of service of final protection order and warrant of arrest on the complainant as contemplated in section 6(6)(b)(iii)(bb) of the Act;
- (q) notice of variation or setting aside of order as contemplated in section 10(2) of the Act and regulation 31(3);
- (r) return of service of the notice of variation or setting aside of order on the respondent as contemplated in section 10(2) of the Act and regulation 31(3); and
- (s) return of service of the notice of variation or setting aside of order on the complainant as contemplated in section 10(2) of the Act and regulation 31(3).

(2) The clerk of the court must, for the purpose of capturing any document required to be stored on the integrated electronic repository, –

- (a) scan such document or, if a document is in an electronic format, convert that document into a portable document format or other format that enables such document to be captured in the integrated electronic repository;
- (b) upload such document under the case number or unique reference number allocated to the matter concerned; and
- (c) capture the relevant information relating to the uploaded documents, including –
 - (i) the names of the parties;

- (ii) the identity numbers of the parties;
- (iii) the dates of birth of the parties;
- (iv) the names and particulars of legal practitioners of the parties; and
- (v) the return date for the interim protection order.

(3) All documents referred to in this regulation must be uploaded on the integrated electronic repository as soon as possible after it has been submitted to or filed with the clerk of the court.

10. Domestic violence safety monitoring notice (section 4A(1)(a)).

(1) The application for a domestic violence safety monitoring notice must be made on a form which corresponds substantially with Form 9 of the Annexure.

(2) If the court issues a domestic violence safety monitoring notice, it must do so on a form which corresponds substantially with Form 10 of the Annexure.

(3) The clerk of the court must immediately, but no later than two hours after the application was dealt with by the court, notify the complainant in person, telephonically or electronically of the outcome of the application.

(4) The clerk of the court must, upon the issue of the domestic violence safety monitoring notice contemplated in subregulation (2), serve the notice immediately on the station commander, contemplated in section 4A of the Act, by hand or electronically.

(5)(a) The station commander must immediately after receiving the domestic violence safety monitoring notice, assign a member of the South African Police Service to serve the notice on the respondent.

(b) The member who has been assigned must –

- (i) within 24 hours of being assigned, serve the respondent with a copy of the notice without the Annexure thereto by hand or electronically;
- (ii) contact the complainant immediately after service on the respondent;
- (iii) if the application or domestic violence safety monitoring notice could not be served, contact the complainant in person or telephonically for assistance on the whereabouts of the respondent, for the purpose of serving the respondent with the notice;
- (iv) as soon as is reasonably possible, but no later than 12 hours after service on the respondent, submit a return of service which corresponds substantially with Form 40 of the Annexure to the clerk of the court by hand or electronically; and
- (v) if, notwithstanding assistance contemplated in subparagraph (iii), the respondent could still not be served, the member must, within 12 hours of the inability to serve, file a return of non-service, which must state the reason for non-service.

(6)(a) Upon receipt of the return of service or non-service of the domestic violence safety monitoring notice on the respondent, the clerk of the court must immediately notify the complainant, telephonically or electronically, of the service or non-service of the notice.

(b) The clerk of the court must upload and capture the notice and the information relating to the return of service or non-service on the integrated electronic repository.

(7)(a) A report by the member must be on a form which corresponds substantially with Form 11 of the Annexure.

(b) The report must –

- (i) state when and how the member contacted the complainant upon receipt of the notice;
- (ii) state, when the member communicated with the complainant, if –
 - (aa) the complainant or a related person appeared to have been hurt or threatened with harm;
 - (bb) there was any damage or threat of damage to property; and
 - (cc) any household pet or other animal whose welfare affects the complainant's well-being was harmed or threatened with harm;
- (iii) if the complainant appeared to have been hurt or threatened, state what information was given to the complainant, including –
 - (aa) referral for medical assistance;
 - (bb) referral to a shelter; or
 - (cc) the opening of a criminal complaint; and
- (iv) be filed with the clerk of the court by hand or electronically within 48 hours after the expiry of the period stated in the notice.

(c) The member must use a single Form 11 of the Annexure to report on –

- (i) every contact made with the complainant; and
- (ii) the outcome of monitoring the complainant's safety.

(d) The clerk of the court must capture the report on the ICMS.

11. Issuing of interim protection order and manner of service (section 5(2) and (3))

(1) An interim protection order must be issued on a form which corresponds substantially with Form 12 of the Annexure.

(2) The certified copies of the interim protection order, application and any supporting affidavit must be served, as soon as possible, but no later than 24 hours, if served in person, on the respondent in the manner set out in regulation 32(1).

(3) If the court issues the interim protection order, the clerk of the court must immediately notify the complainant thereof telephonically, in writing, by hand or electronically.

12. Notice to show cause and manner of service of notice, application and supporting affidavits (section 5(4)(a) and (b))

(1) The notice calling upon the respondent to show cause on the specified return date why a protection order should not be issued must be made on a form which corresponds substantially with Form 13 of the Annexure.

(2) The notice, certified copies of the application and any supporting affidavit must be served on the respondent in the manner set out in regulation 32(1).

(3) The clerk of the court must, if the court does not issue an interim protection order, notify the complainant telephonically, in writing, by hand or electronically –

- (a) that the court has not issued the interim protection order;
- (b) that the court has issued a notice to show cause; and
- (c) of the date set for the hearing.

13. Manner of service of interim protection order and warrant of arrest on complainant (section 5(7))

Certified copies of the interim protection order and original warrant of arrest must be served on the complainant in the manner set out in regulation 32(1).

14. Subpoena of person as witness or to provide book, document or object (section 5A(1))

(1) A subpoena must –

- (a) if it is issued for any person to appear as a witness, correspond substantially with Form 14 of the Annexure; or
- (b) if it is issued for any person to provide any book, document or object, correspond substantially with Form 15 of the Annexure.

(2) The subpoena referred to in subregulation (1) must contain the following information:

- (a) The date and time of appearance;
- (b) the physical address of the court and the court room number in which the witness must appear;
- (c) the name and contact details of the person with whom arrangements can be made for audio-visual testimony, if this manner of testifying is a suitable option for the witness; and
- (d) the consequences of not complying with the subpoena.

(3)(a) After the clerk of the court has issued the subpoena, the original of the subpoena must be served upon the person affected thereby –

- (i) by hand and the person to be served must be given a copy thereof; or
- (ii) electronically.

(b) The person serving the subpoena must notify the person to be served of –

- (i) the purpose of the subpoena;
- (ii) the consequences of the failure to comply with the subpoena; and
- (iii) the right to raise an objection against the provision of the subpoenaed book, document or object concerned.

(4) The return of service must, together with the duplicate subpoena, be submitted to the clerk of the court who must capture such documents on the ICMS, and record the relevant information relating thereto in the integrated electronic repository.

(5) A subpoena contemplated in subregulation (1) must be served on the person affected by it at least 10 days before the date of hearing.

(6) Where a person is subpoenaed as contemplated in subregulation (1)(b), such person must, before 12:00 pm on the day before the date of hearing –

- (a) deliver the book, document or object specified in the subpoena to the clerk of the court by hand;
- (b) if practical, send the said book, document or object to the clerk of the court electronically; or
- (c) if practical, upload the said book, document or object on the online portal.

(7) A person who objects to providing the book, document or object specified in the subpoena –

- (a) must, in writing before 12:00 pm on the day before the date of hearing, notify the clerk of the court in person or electronically of –
 - (i) the intention to raise an objection; and
 - (ii) the grounds upon which such objection is based; and
- (b) must attend court in person or with a legal practitioner on the day of the hearing, to raise the objection.

(8)(a) In the case of an audio-visual hearing contemplated in subregulation (2)(c), the link for the remote audio-visual testimony must be sent to the witness before the hearing commences.

(b) If the witness fails to attend the audio-visual hearing, proof of the link and any response to the electronic hearing link, must be submitted to the court.

(c) Where the witness is unable to connect to the audio-visual hearing at the time of the hearing, the witness must report such inability to the clerk of the court for assistance.

15. Form of direction directing electronic communications service provider to furnish information to court and manner of service (section 5B(1)(b))

(1) A direction contemplated in section 5B(1) of the Act must be made on a form that corresponds substantially with Form 16 of the Annexure.

(2) The direction must be served by the clerk of the court on the electronic communications service provider by hand or electronically.

(3) After the service of the direction has been effected in terms of subregulation (2), the clerk of the court must capture the form and return of service on the ICMS.

(4)(a) The order made by the court after the inquiry contemplated in paragraph (a) must be on a form which corresponds substantially with Form 17 of the Annexure.

(b) The clerk of the court must serve the order on the person who is liable to pay the tariff to the electronic communications service provider by hand or electronically.

16. Manner in which electronic communications service provider must furnish information to court and form of affidavit to furnish particulars to court (section 5B(1)(b))

(1) On receipt of a direction referred to in regulation 15(1), the identified electronic communications service provider must –

- (a) complete an affidavit which corresponds substantially with Form 18 of the Annexure; and
- (b) send the said affidavit to the clerk of the court by hand or electronically.

(2) The clerk of the court who receives the affidavit must –

- (a) upload and capture the said affidavit on the ICMS; and
- (b) submit it to the court for consideration.

17. Application by electronic communications service provider for extension of period within which information must be provided to court or cancellation of direction and form of affidavit (section 5B(3)(b))

(1) An application by an electronic communications service provider for the extension of the period within which the information must be provided to the court or for the cancellation of the direction must be made on an affidavit which corresponds substantially with Form 19 of the Annexure.

(2) The application must be filed with the clerk of the court by hand or electronically.

(3) The clerk of the court must on receipt of the application –

- (a) capture the said application on the ICMS; and
- (b) submit it to the court for consideration.

18. Manner of requesting additional evidence from electronic communications service provider and form of affidavit by electronic communications service provider (section 5B(4)(b))

(1) A request for additional evidence, as contemplated in section 5B(4)(b) of the Act, must be made on a form which corresponds substantially with Form 20 of the Annexure.

(2) The request must be served by the clerk of the court identified by the court on an electronic communications service provider by hand or electronically.

(3) After the service of the request has been effected in terms of subregulation (2), the clerk of the court must capture the request and return of service on the ICMS, and record the relevant information relating thereto in the integrated electronic repository.

(4) On receipt of a request, the electronic communications service provider must furnish the requested evidence by way of an affidavit which corresponds substantially with Form 21 of the Annexure, which must be submitted to the clerk of the court by hand or electronically.

(5) The clerk of the court must, on receipt of the requested additional evidence –

- (a) capture the said evidence on the ICMS; and
- (b) submit it to the court for consideration.

19. Form and manner of informing electronic communications service provider of outcome of application (section 5B(4)(d))

(1) The court must inform the electronic communications service provider of the outcome of the application contemplated in section 5B(3)(b) of the Act, on a form which must correspond substantially with Form 22 of the Annexure.

(2) The completed form contemplated in subregulation (1), must be served by the clerk of the court identified by the court, on the electronic communications service provider by hand or electronically.

(3) After the service, as contemplated in subregulation (2), has been effected, the clerk of the court must capture the form and return of service on the ICMS, and record the relevant information relating thereto in the integrated electronic repository.

20. Order to remove or disable access to electronic communication, affidavit and court order for variation (section 5B(6))

(1) An order contemplated in section 5B(6)(a) of the Act, must be made on a form which corresponds substantially with Form 23 of the Annexure.

(2) The court must, after issuing an order contemplated in subregulation (1), direct the clerk of the court to serve the order immediately on the electronic communications service provider in question electronically, but no later than one hour after the order is made.

(3) An application by the electronic communications service provider to set aside or amend the order made in terms of subregulation (1) must be –

- (a) on an affidavit which corresponds substantially with Form 24 of the Annexure;
- (b) made within 14 days after service of the order made in terms of subregulation (2); and
- (c) served on the clerk of the court by hand or electronically.

(4) In considering the application, the court may request such additional evidence from the electronic communications service provider as it deems fit, which request –

- (a) must be made on a form which corresponds substantially with Form 25 of the Annexure; and
- (b) must be served on the electronic communications service provider by hand or electronically.

(5) The electronic communications service provider must provide the requested additional evidence to the clerk of the court on an affidavit which corresponds substantially with Form 26 of the Annexure by hand or electronically.

(6)(a) If the court is satisfied that good cause has been shown to set aside or amend the order made in terms of subregulation (1), it must issue an order on a form which corresponds substantially with Form 27 of the Annexure.

(b) The court must, after issuing an order contemplated in paragraph (a), direct the clerk of the court to serve the order on the electronic communications service provider in question by hand or electronically.

21. Manner in which electronic communications service providers must bring change of particulars to attention of Director-General: Communication and Digital Technologies and list of electronic communications service providers (section 5B(8)(c))

(1) An electronic communications service provider must bring any change of particulars of the electronic communications service providers, as contemplated in section 5B(8) of the Act, to the attention of that Director-General: Communication and Digital Technologies, in writing.

(2) The list referred to in section 5B(8) of the Act, and any subsequent amendments made thereto, must be –

- (a) made available on the internal website of the Department of Communication and Digital Technologies; and
- (b) emailed or hand delivered by the Director-General: Communication and Digital Technologies to the Director-General: Justice and Constitutional Development.

22. Refund of tariff paid to electronic communications service provider by State (section 5B(10)(d))

An order contemplated in section 5B(10)(d) of the Act, must be on a form which corresponds substantially with Form 28 of the Annexure.

23. Issuing of final protection order (section 6(1))

(1) A final protection order must –

- (a) in the event that an interim protection order was issued, be on a form which corresponds substantially with Form 29 of the Annexure; or
- (b) in the event that an interim protection order was not issued or the protection order is issued as contemplated in section 60(12) of the Criminal Procedure Act, be on a form which corresponds substantially with Form 30 of the Annexure.

(2)(a) The clerk of the court must deal with a protection order issued as contemplated in section 60(12) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as if it was issued in terms of the Act.

(b) The clerk of the criminal court must submit the record of the criminal proceedings referred to in paragraph (a) to the clerk of the court dealing with protection orders in terms of the Act.

(3)(a) The original final protection order must be served on the respondent in the manner set out in regulation 32(1) or (2)(a)(i).

(b) The certified copy of the final protection order and the original warrant of arrest must be served on the complainant in the manner set out in by regulation 32(1) or (2)(a)(i).

24. Form and manner of notifying parties of extended date of hearing (section 6(2A) and (2B)(b))

(1) If the court extends the interim protection order and the return date, as contemplated in section 6(2A)(a) of the Act, or discharges the interim protection order as contemplated in section 6(2A)(b) of the Act, it must do so on a form which corresponds substantially with Form 31 of the Annexure.

(2) A notification contemplated in section 6(2A)(a) of the Act, must be on a form which corresponds substantially with Form 32 of the Annexure.

(3) The completed forms referred to in sub-regulations (1) and (2), must be served by the clerk of the court on the complainant and the respondent by hand or electronically.

(4) If the clerk of the court is not able to serve the complainant or the respondent or both the complainant and the respondent, the clerk of the court must complete –

- (a) a form which corresponds substantially with Form 40 of the Annexure: a return of non-service; and
- (b) a form which corresponds substantially with Form 41 of the Annexure: request for authorisation of alternative manner of service, and approach the court for authorisation of an alternative manner of service.

(5) After the service has been effected in terms of subregulation (3), the clerk of the court must –

- (a) capture Form 40 and Form 41 on the ICMS; and
- (b) record the relevant information relating thereto in the integrated electronic repository.

25. Issuing of warrant of arrest (section 8(1)(a))

(1) A warrant of arrest, contemplated in section 8(1)(a) of the Act, must be authorised and issued by the court on a form which corresponds substantially with Form 33 of the Annexure.

(2) The clerk of the court must, on the day of issue –

- (a) capture the issued warrant of arrest on the ICMS;
- (b) upload and capture it together with any relevant information relating to it on the integrated electronic repository; and
- (c) submit a certified copy of the warrant together with a copy of the protection order by hand or electronically to the police station chosen by the complainant.

26. Affidavit for second or further warrant of arrest (section 8(3))

(1) An affidavit filed for purposes of obtaining a second or further warrant of arrest must be on a form which corresponds substantially with Form 34 of the Annexure.

(2) The affidavit contemplated in subregulation (1) must state that –

- (a) the second or further warrant is required for the protection of the complainant; and
- (b) the existing warrant of arrest has been executed and cancelled, lost or destroyed.

(3) The affidavit may be submitted to the clerk of the court by hand or electronically.

(4) The clerk of the court must, on the day of issue –

- (a) upload and capture the issued second or further warrant of arrest on the integrated electronic repository;
- (b) upload and capture it together with the relevant information relating to it on the integrated electronic repository;
- (c) submit a certified copy of the second or further warrant together with a copy of the protection order by hand or electronically to the police station chosen by the complainant; and
- (d) notify the complainant electronically that a certified copy of the second or further warrant together with a copy of the protection order have been submitted to the chosen police station.

27. Affidavit regarding contravention of protection order (section 8(4)(a))

(1) An affidavit stating that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order must be made on a form which corresponds substantially with Form 35 of the Annexure.

(2) The affidavit contemplated in subregulation (1) must state –

- (a) that the respondent has contravened a prohibition, condition, an obligation or order contained in the protection order;
- (b) the specific prohibition, condition, obligation or order contravened by the respondent; and
- (c) the manner in which or the extent to which the respondent has contravened the prohibition, condition, obligation or order.

(3)(a) When reporting the contravention of the protection order to the police, the complainant must hand the affidavit, together with a certified copy of the protection order and the original warrant of arrest to the police.

(b) If the protection order and warrant of arrest are in an electronic form, they need not be certified.

28. Written notice to respondent to appear before court (section 8(4)(c))

(1) A written notice contemplated in section 8(4)(c) of the Act must–

- (a) be made on a form which corresponds substantially with Form 36 of the Annexure; and
- (b) be captured by the clerk of the court on the ICMS.

(2) The member of the South African Police Service must –

- (a) file a copy of the written notice in the docket which must be submitted to the prosecutor on or before the date of hearing; and
- (b) submit a copy of the written notice by hand or electronically to the clerk of the court dealing with protection orders in terms of the Act.

(3) Any respondent who is called upon to appear before the court in accordance with a written notice referred to in sub-regulation (1), and who fails to –

- (a) appear at the place and on the date and time specified in that notice; or
- (b) remain in attendance at the proceedings, is guilty of an offence and on conviction, is liable to a fine or to imprisonment for a period not exceeding one year.

(4) The court may, if satisfied from the duplicate notice referred to in section 8(4)(d) of the Act that –

- (a) the notice was handed to the respondent and that the respondent has failed to appear at the place and on the date and time specified in the notice; or
- (b) the respondent has failed to remain in attendance at the proceedings concerned, issue a warrant for the respondent's arrest.

29. Form and manner of informing station commander and National Commissioner of South African Police Service of final protection order (section 9(4)(a))

(1) The clerk of the court must, as soon as reasonably possible, but no later than 24 hours after the protection order has been issued, inform the station commander of the police station servicing the area where the respondent resides, studies, carries on business or is employed, and the National Commissioner of the South African Police Service of the final protection order issued against the respondent on a form which corresponds substantially with Form 37 of the Annexure.

(2) The completed form must be served by the clerk of the court on the station commander and the National Commissioner in the manner set out in regulation 32.

(3) After the service has been effected in terms of subregulation (2), the clerk of the court must capture the form and return of service on the ICMS.

30. Application for variation or setting aside of protection order (section 10(1)(a))

(1) An application for the variation or setting aside of a protection order must be made on a form which corresponds substantially with Form 38 of the Annexure.

(2) The application referred to in subregulation (1) must be submitted by hand or electronically to the clerk of the court.

31. Notice of variation or setting aside of protection order (section 10(3))

(1) The notice of the variation or setting aside of a protection order must be made on a form which corresponds substantially with Form 39 of the Annexure.

(2) The notice referred to in subregulation (1) must be forwarded by the clerk of the court to the complainant and respondent by –

- (a) handing it to them personally; or
- (b) sending it to them electronically.

32. Service and filing of documents (section 13)

(1) Whenever service by hand is required –

- (a) the interim protection order or notice to show cause, together with a copy of the application and supporting documents; or
- (b) the final protection order, in a case where the respondent was not present at court,

must be served by the clerk of the court, the sheriff or a peace officer.

(2) The clerk of the court must –

- (a) serve any document in terms of the Act or these Regulations, except where the Act or these Regulations provide otherwise, by –
 - (i) handing over a certified copy of that document to the person on whom the document is to be served; or
 - (ii) serving the document on that person electronically; and
- (b) where the Act or these Regulations require any document to be forwarded –
 - (i) the document must be sent electronically to the person; or
 - (ii) a certified copy of that document must be handed over to the person who must receive it.

(3) A person authorised to effect service contemplated in subregulation (1), who is not a member of the South African Police Service, may, in any case where resistance to the service of a document is encountered or is reasonably anticipated, request assistance from a member of the South African Police Service to enable such person to serve any document provided for in the Act and these Regulations.

(4) The complainant or respondent who requires a document to be served in terms of the Act or these Regulations is responsible for the costs of such service.

(5) Subject to section 13(1)(b) of the Act, any document required or directed to be served or executed upon any person, may be transmitted by facsimile, or by means of any other electronic medium to the person intended to be served.

(6) The document received or printed as a result of the transmission contemplated in subregulation (5) is of the same force and effect as the original thereof.

(7) The return of service by the clerk of the court, member of the South African Police Service or sheriff must –

- (a) be filed by hand or electronically with the clerk of the court;
- (b) contain the details, including –
 - (i) the date and time of service;
 - (ii) the electronic mail address, physical address or social media information to which service was effected; and
 - (iii) if served by hand, the full names and age of the person who was served, and if that person is not the person intended to be served, the relationship with the person who is intended to be served.

(8) The return of non-service must state the reason for non-service and the attempts made to effect successful service of the document.

(9) The return of service or of non-service must be filed with the clerk of the court as soon as possible, but no later than 24 hours after service or attempted service.

(10) The filing of any document with the clerk of the court may be effected by –

- (a) hand delivery to the clerk of the court;
- (b) sending the document to an electronic mail address or facsimile number of the clerk of the court; or
- (c) uploading the document on the online portal.

(11) The person sending a document electronically to any person in terms of these Regulations must –

- (a) obtain a delivery report, screenshot or facsimile transmission report as confirmation that the document was successfully delivered electronically to the person or persons intended to be served;
- (b) complete a return of service; and
- (c) attach the delivery report, screenshot, facsimile transmission report or other proof of delivery to the return of service.

(12) Where a document has been served or submitted electronically, proof of filing in terms of subregulation (10), the delivery report, screenshot or facsimile transmission report in terms of subregulation (11)(a), and the return of service contemplated in subregulation (11)(b) must be kept as proof of service, filing or submission.

(13)(a) If any document is required to be served by hand, and the respondent cannot be located or has moved to an area that is served by another police station or by another sheriff, the member or the sheriff required to serve the document must file with the clerk of the court a return of non-service stating that fact.

(b) Upon receipt of the return of non-service contemplated in paragraph (a), the clerk of the court must contact the person requiring service and request such person to obtain the relevant new details in order to effect service.

(c) Upon receipt of the information contemplated in paragraph (b), the clerk of the court must –

- (i) amend the address or details concerned;
- (ii) sign next to the amendments effected; and
- (iii) send the document to the police station or the sheriff serving the area where the respondent resides, studies, carries on business or is employed.

(14) If any person intended to be served cannot be served by any of the means provided in this regulation, the clerk of the court must immediately, after receipt of the return of non-service, notify the person requiring service, to be able to apply for substituted service as contemplated in section 13(1)(c) of the Act.

(15) In the event of subregulation (14), a person who seeks service of a document –

- (a) may request the court, on a form which corresponds substantially with Form 41 of the Annexure, to authorise the alternative manner of service; and
- (b) must provide the court with reasons as to why, if an alternative manner of service is proposed, the said alternative manner of service will result in the successful service of the document on the person intended to be served.

(16) If an alternative manner of service is authorised, the court must issue an order on a form which corresponds substantially with Form 42 of the Annexure.

(17) The clerk of the court must –

- (a) if the amended document is a document listed in regulation 9(1) capture the document on the integrated electronic repository; and
- (b) capture any amended document, update the information on the ICMS and update the relevant information relating thereto in the integrated electronic repository.

(18) Any document served electronically under this Act is regarded as an original and does not need to be certified.

33. Appeals and reviews (section 16)

(1) The clerk of the court must maintain a register for appeals and reviews relating to protection orders.

(2) The following must be captured in the register contemplated in subregulation (1):

- (a) All notices of appeals and reviews;
- (b) the outcome of all appeals and reviews; and
- (c) any court order relating to appeals and reviews.

(3) The clerk of the court must –

- (a) capture any notice of appeal or review and court orders on the outcome of such appeals and reviews on the ICMS; and
- (b) upload and capture the notice of appeal or review and the outcomes of such appeals and reviews on the integrated electronic repository.

34. Financial assistance (section 19(1)(b))

(1) Notwithstanding regulation 32(3), the court may, after consideration of such proof as the court may require, make an order directing the State to pay the costs of any service in terms of the Act or these Regulations, if the court is satisfied that the complainant or respondent, or both the complainant and respondent, do not have the means to pay for such costs at the time when service is required.

(2) The provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) apply in respect of financial assistance to a witness who attends any proceedings in terms of the Act.

35. Granting of legal aid (section 19(1)(c))

The regulations promulgated in Government Notice No. R. 745 of July 2017, in so far as they may be applicable to domestic violence cases in terms of the Act and the application for a protection order, shall apply to a complainant, respondent, a person with a disability, an older person or a child contemplated in the Act and these Regulations.

36. Repeal and transitional provisions

(1) The regulations published under Government Notice No. R. 1311 of 5 November 1999, are hereby repealed.

(2) Anything done under a provision of the repealed regulations referred to in subregulation (1), and which could have been done under a corresponding provision of these Regulations, is regarded as having been done under the said corresponding provision of these Regulations.

37. Short title and commencement

These Regulations are called the Domestic Violence Regulations, 2022, and come into operation upon the date of publication hereof in the Gazette.