

(15 December 1999 - to date)

## **DOMESTIC VIOLENCE ACT 116 OF 1998**

*(Gazette No. 19537, Notice No. 1551, dated 2 December 1998. Commencement date: 15 December 1999  
[Proc. No. R97, Gazette No. 20469, dated 13 September 1999]).*

## **REGULATIONS UNDER THE DOMESTIC VIOLENCE ACT 116 OF 1998**

*Government Notice R1311 in Government Gazette 20601, dated 5 November 1999. Commencement date:  
15 December 1999.*

The Minister of Justice has under section 19 of the Domestic Violence Act, 1998 (Act No. 116 of 1998), made the regulations in the Schedule.

### **SCHEDULE**

1. Definitions
2. Notice containing information
3. Explanation of notice
4. Manner of application for protection order
5. Information to be given by clerk of the court
6. Issuing of interim protection order
7. Notice to show cause
8. Issuing of protection order
9. Issuing of warrant of arrest
10. Affidavit for further warrant of arrest
11. Affidavit regarding contravention of protection order
12. Written notice to respondent to appear before court
13. Application for variation or setting aside of protection order
14. Notice of variation or setting aside of protection order
15. Service of documents
16. Short title

### **ANNEXURE**

#### **1. Definitions**

In these regulations any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates -

**"the Act"** means the Domestic Violence Act, 1998 (Act No. 116 of 1998).

## **2. Notice containing information**

The notice contemplated in section 2(b) of the Act must contain the information provided for in Form 1 of the Annexure.

## **3. Explanation of notice**

For purposes of section 2(c) of the Act a member of the South African Police Service must -

- (a) explain to 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) his or her 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, so as to ensure his or her safety, health and well-being;
  - (iii) his or her right to lodge a criminal complaint; and
  - (iv) the purpose of the notice;
- (b) if the complainant is unable to read the notice, read the notice referred to in regulation 2 to the complainant, or take such reasonable steps as may be necessary to have the notice read to the complainant;
- (c) inquire from the complainant whether he or she -
  - (i) understands the contents of the notice; and
  - (ii) requires further information regarding his or her remedies in terms of the Act and the right to lodge a criminal complaint;
- (d) explain, to the best of his or her ability, to the complainant on request -
  - (i) any part of the notice which the complainant does not understand; and
  - (ii) his or her remedies in terms of the Act and the right to lodge a criminal complaint; and
- (e) inform the complainant to obtain further information from the clerk of the magistrate's court should questions of the complainant remain unanswered.

#### **4. Manner of application for protection order**

- (1) A complainant may apply to the court for a protection order in a form substantially corresponding to Form 2 of the Annexure.
- (2) The application referred to in subregulation (1) must be made by way of an affidavit in which must be stated -
  - (a) the facts on which the application is based;
  - (b) the nature of the order applied for; and
  - (c) the name of the police station where the complainant is likely to report any breach of the protection order applied for.
- (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 well-being 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 paragraphs (a) to (d) of section 4(3) of the Act, the written consent of the complainant.

#### **5. Information to be given by clerk of the court**

- (1) For purposes of section 4(2) of the Act, the clerk of the court must, if the complainant is not represented by a legal representative -
  - (a) hand to the complainant a written notice which contains the information provided for in Form 3 of the Annexure, which must, if reasonably possible, be in the official language of the complainant's choice;
  - (b) read the notice or cause the notice to be read to the complainant, if the complainant is unable to read the notice;
  - (c) inquire from the complainant whether he or she -
    - (i) understands the contents of the notice; and

- (ii) requires further information concerning the relief available in terms of the Act and the right to lodge a criminal complaint; and
- (d) on request of the complainant, further explain, to the best of his or her ability -
  - (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.

## **6. Issuing of interim protection order**

An interim protection order contemplated in section 5(2) of the Act must be in the form of Form 4 of the Annexure.

## **7. Notice to show cause**

The notice calling on the respondent to show cause on the specified return date why a protection order should not be issued, contemplated in section 5(4) of the Act, must be in the form of Form 5 of the Annexure.

## **8. Issuing of protection order**

A protection order contemplated in section 6(1) of the Act must be -

- (a) in the event that an interim protection order was issued, in the form of Form 6 of the Annexure;  
or
- (b) in the event that an interim protection order was not issued, in the form of Form 7 of the Annexure.

## **9. Issuing of warrant of arrest**

The warrant of arrest contemplated in section 8(1)(a) of the Act must be authorised and issued in the form of Form 8 of the Annexure.

## **10. Affidavit for further warrant of arrest**

An affidavit contemplated in section 8(3) of the Act for purposes of obtaining a second or further warrant of arrest must be in a form substantially corresponding to Form 9 of the Annexure.

## **11. Affidavit regarding contravention of protection order**

An affidavit contemplated in section 8(4)(a) of the Act in which it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order must be in a form substantially corresponding to Form 10 of the Annexure.

**12. Written notice to respondent to appear before court**

(1) The written notice contemplated in section 8(4)(c) of the Act calling on the respondent to appear before a court on a charge of committing the offence referred to in section 17(a) of the Act must be in a form substantially corresponding to Form 11 of the Annexure.

(2) Any respondent who is called upon to appear before the court in accordance with a written notice referred to in subregulation (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,

shall be guilty of an offence and liable to the punishment prescribed under subregulation (3)(b).

(3)

(a) The court may if satisfied from the duplicate original of the notice referred to in section 8(4)(d) of the Act that 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 if satisfied that the respondent has failed to remain in attendance at the proceedings concerned, issue a warrant for the respondent's arrest.

(b) The court may when the respondent is brought before it, in a summary manner enquire into his or her failure so to appear or to remain in attendance and unless the respondent satisfies the court that his or her failure was not due to any fault on his or her part, convict him or her of the offence referred to in subregulation (2) and sentence him or her to a fine or to imprisonment for a period not exceeding six months.

**13. Application for variation or setting aside of protection order**

An application for the variation or setting aside of a protection order, contemplated in section 10(1) of the Act, must be made in a form substantially corresponding to Form 12 of the Annexure.

**14. Notice of variation or setting aside of protection order**

(1) The notice of the variation or setting aside of a protection order, contemplated in section 10(3) of the Act, must be in the form of Form 13 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 handing it to them personally or sending it to them by registered mail.

## **15. Service of documents**

- (1) Service of any document in terms of the Act or these regulations, except where the Act or regulations provide otherwise, must without delay be effected by -
- (a) the clerk of the court by handing or presenting for handing over a certified copy of the document to the person on whom the document is to be served or sending a certified copy of the document to that person by registered mail and endorsing the original document to this effect;
  - (b) the sheriff in terms of the provisions of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), and Rules published in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985); or
  - (c) a peace officer in terms of the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to the service of subpoenas.
- (2) The clerk of the court sending a copy of the document in terms of subregulation (1)(a) to the person on whom the document is to be served, must require that proof of receipt thereof be returned to him or her by the relevant postal authority.
- (3) A person authorised to effect service in terms of 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 a member of the South African Police Service to assist him or her with the service of 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 shall be responsible for the costs of such service: Provided that the clerk of the court may, after consideration of such proof as he or she may require, direct that the State must be responsible for the costs of any service in terms of the Act or these regulations if he or she is satisfied that the complainant or respondent as the case may be, or both the complainant and respondent, do not have the means to pay for such costs at the time when service is required.

## **16. Short title**

These regulations shall be called the Domestic Violence Regulations, 1999, and shall come into operation on 15 December 1999.

**ANNEXURE**

FORM 1	[Regulation 2]	NOTICE TO COMPLAINANT IN A CASE OF DOMESTIC VIOLENCE	SECTION 2(b)
FORM 2	[Regulation 4]	APPLICATION FOR PROTECTION ORDER	SECTION 4(1)
FORM 3	[Regulation 5]	INFORMATION NOTICE TO COMPLAINANT	SECTION 4(2)
FORM 4	[Regulation 6]	INTERIM PROTECTION ORDER	SECTION 5(2)
FORM 5	[Regulation 7]	NOTICE TO RESPONDENT TO SHOW CAUSE (SUBMIT REASONS) WHY A PROTECTION ORDER SHOULD NOT BE ISSUED	SECTION 5(4)
FORM 6	[Regulation 8(a)]	PROTECTION ORDER	SECTION 6
FORM 7	[Regulation 8(b)]	PROTECTION ORDER	SECTION 6
FORM 8	[Regulation 9]	WARRANT OF ARREST	SECTION 8(1)(a)
FORM 9	[Regulation 10]	AFFIDAVIT FOR PURPOSES OF FURTHER WARRANT OF ARREST	SECTION 8(3)
FORM 10	[Regulation 11]	AFFIDAVIT REGARDING CONTRAVENTION OF PROTECTION ORDER	SECTION 8(4)
FORM 11	[Regulation 12(1)]	NOTICE TO APPEAR BEFORE COURT	SECTION 8(4)(c)
FORM 12	[Regulation 13]	APPLICATION FOR VARIATION OR SETTING ASIDE OF PROTECTION ORDER	SECTION 10(1)
FORM 13	[Regulation 14(1)]	NOTICE OF VARIATION OR SETTING ASIDE OF PROTECTION ORDER	SECTION 10(3)

***(Please note that the forms listed above will be provided upon request. Kindly refer to our website for our contact details.)***