

16 April 2020

To all valued members

Disaster management interpretation

Over the last couple of weeks we have had a number of our members querying the ruling and interpretation of what constitutes an essential service and what services are able to trade during the current lockdown.

As you know the RMI has submitted application to Government in this respect as well as appealing for an alternative funding solution to sustain businesses and employees in our critical sector. No response has been received yet and the RMI continue to engage and lobby with government.

In the interim to avoid any confusion amongst our members we have summarised the relevant sections of law which pertain to work during this period, specifically the interpretation of Essential Services.

Please note that there are 7 small annexures that are referenced in this document, these annexures are all included as part of this document

Interpretation of Disaster Management Act.

Provision of Essential Services

- The Disaster Management Act refers to the Labour Relations Act for definition of essential services. **(annex 1)**
- The Labour Relations Act also sets out unambiguously what products and services are deemed essential. **(Annex 2 & 3)**
- The Department of Health, whom is charged with responsibility for the regulation, note - not the enforcement, of the COVID-19 Lockdown, provided a document in which these same details of products and services are listed.
- Regulations have expanded this definition over time to include, for instance, primary agriculture and agricultural processing.

Summary of latest documents

Therefore, without needing to read all three documents we have summarised the latest set of regulations from the Department of Health published on 25 March, amended on 26 March, and again amended on 02 April 2020.

1. The main items of concern under **11A (below)** are the list of Essential Goods, which limits the typical motor industry related products from being sold to anyone.
2. The list of Essential Services under **11B (below)** refers in **category 24** in particular to the **Only** area where the Motor Industry may provide support in the following circumstances:
 - a. To an official Essential Service Provider as listed (**Annex1**).
 - b. The service to be provided must be in the event of a critical maintenance and repair in relation to the rendering of an Essential Service including components and equipment.
3. Section **11B (4)** sets out the places that are restricted to everyone other than for Essential Service providers. In particular item (b) which declares **any place or premises normally open to the public where goods other essential goods are procured, acquired, disposed of or sold.** (**Annex 4**)

The situation as at 16 April 2020

The latest release of COVID -19 Regulations by COGTA refers.

Despite media confusion around the topic of Parts dealers and Workshops, it is regrettable to note that these revised regulations have not brought about any material change to the original interpretation and advice previously provided to RMI members. (**Annex 5 & 6**)

In both cases the services and supply remain solely for the purposes of maintaining the listed essential services, with the addition for parts dealers who now need to keep a register of products sold.

(Annex 5)

Please also note that any parts or components are only allowed to be sold to: Qualified Artisans, Business entities & Persons directly engaged in emergency repairs for Essential Service providers.

(Annex 7)

Our interpretation of these regulations unfortunately remains unchanged so far:

Any work, or supply of goods not listed as essential, may only take place in the event of a critical maintenance and repair for an Essential Service Provider, which does not include public or any other entity not operating as an Essential Service



We trust that this document helps to clarify any uncertainty regarding the regulations and appeal to all members to strictly adhere to these guidelines.

This is a difficult time for everyone and we all need to take accountability and responsibility to heed the President's call in this regard.

Thank you for your support during these highly challenging times.

Jakkie Olivier
CEO

Annex 1

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. 1216

12 September 1997

NOTICE PUBLISHED BY THE ESSENTIAL SERVICES COMMITTEE

Under section 71 (8) of the Labour Relations Act, 1995 (Act No. 66 of 1995), the essential services committee hereby gives notice that—

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1. it has designated the following services as essential services:

- (a) Municipal traffic services and policing;
- (b) municipal health;
- (c) municipal security;
- (d) the supply and distribution of water;
- (e) the security services of the Department of Water Affairs and Forestry;
- (f) the generation, transmission and distribution of power;
- (g) fire fighting;
- (h) the payment of social pensions one month after they fall due;
- (i) the services required for the functioning of courts;
- (j) correctional services; and
- (k) blood transfusion services provided by the South African Blood Transfusion Service.

2. it has designated the following parts of sanitation services as essential services:

- (a) The maintenance and operation of water-borne sewerage systems, including pumping stations and the control of discharge of industrial effluent into the system;
- (b) the maintenance and operation of sewage purification works;
- (c) the collection of refuse of an organic nature;

○



- (d) the collection of infectious refuse from medical and veterinary hospitals or practices;
- (e) the collection and disposal of refuse at a disposal site; and
- (f) the collection of refuse left uncollected for 14 (fourteen) days or longer, including domestic refuse and refuse on public roads and open spaces.

3. it has designated as essential services until 31 March 1998 the following services provided by the public sector:

- (a) Emergency health services and the provision of emergency health facilities to the community or part thereof.
- (b) nursing; and
- (c) medical and paramedical services.

4. it has designated as essential services until 31 March 1998 the following services in support of the services referred to in paragraph 3:

- (a) Catering;
- (b) medical records;
- (c) security;
- (d) porter and reception;
- (e) pharmaceutical and dispensary;
- (f) medicine quality control laboratory;
- (g) forensics;
- (h) laundry;
- (i) clinical engineering;
- (j) hospital engineering;
- (k) waste removal;
- (l) mortuary; and
- (m) pest control.



5. it has designated as essential services the following services provided by the private sector which are funded by the public sector:
 - (a) Emergency health services and the provision of emergency health facilities to the community or part thereof;
 - (b) nursing; and
 - (c) medical and paramedical services.
6. it has designated as essential services the following services in support of the services referred to in paragraph 5:
 - (a) Boiler; and
 - (b) water purification.
7. it has designated as essential services the following services provided by nursing homes which are registered as welfare organisations in terms of the National Welfare Act, 1978 (Act No. 100 of 1978), to patients in need of moderate (level 2) and maximum (level 3) care:
 - (a) Emergency health services and the provision of emergency health facilities;
 - (b) nursing; and
 - (c) medical and paramedical services.
8. it has designated as essential services the following services in support of the services referred to in paragraph 7:
 - (a) Physiotherapy;
 - (b) dispensary;
 - (c) catering;
 - (d) laundry;
 - (e) boiler;
 - (f) transport; and
 - (g) security.
9. it has designated as essential services the following services provided by the following civilian personnel in the Department of Defence to support the South African National Defence Force:
 - (a) The Secretariat for Defence;
 - (b) the Intelligence Division;
 - (c) the Finance Division;
 - (d) the parachute seamstresses of the South African Army;
 - (e) the parachute packing operators of the South African Army;
 - (f) the military intelligence functionaries of the South African Army;
 - (g) the storemen in the South African Navy;
 - (h) the provisioning officers and clerks in the South African Navy;
 - (i) the technical personnel in the South African Navy;
 - (j) the tugboat personnel in the South African Navy;
 - (k) the surveyors in the South African Navy;
 - (l) the South African Medical Service;
 - (m) those serving in military posts in the South African National Defence Force;
 - (n) the cryptographers in the South African National Defence Force; and
 - (o) the maintenance services in the South African National Defence Force.

Annex 2

ANNEXURE B CATEGORISATION OF ESSENTIAL GOODS AND SERVICES DURING LOCKDOWN Regulation 11A

A. GOODS

1. Food
 - (i) Any food product, including non-alcoholic beverages;
 - (ii) Animal food; and
 - (iii) Chemicals, packaging and ancillary products used in the production of any food product.
2. Cleaning and Hygiene Products
 - (i) Toilet Paper, sanitary pads, sanitary tampons, condoms;
 - (ii) Hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, and personal protective equipment; and
 - (iii) Chemicals, packaging and ancillary products used in the production of any of the above.
3. Medical:
 - (i) Medical and Hospital Supplies, equipment and personal protective equipment; and
 - (ii) Chemicals, packaging and ancillary products used in the production of any of the above.
4. Fuel, including coal and gas
5. Basic goods, including airtime and electricity.



Annex 3

B. SERVICES

Categories of essential services shall be confined to the following services:

1. Medical, Health (including Mental Health), Laboratory and Medical services;
2. Disaster Management, Fire Prevention, Fire Fighting and Emergency services;
3. Financial services necessary to maintain the functioning of the banking and payments environment, including the JSE and similar exchanges, as well as Insurance services;
4. Production and sale of the goods listed in category A, above;
5. Grocery stores, including spaza shops;
6. Electricity, water, gas and fuel production, supply and maintenance;
7. Critical jobs for essential government services as determined by Head of National or Provincial Departments in accordance with the guidance by the DPSA, including Social Grant Payments;
8. Birth and death certificates, and replacement identification documents;
9. Essential municipal services;
10. Care services and social relief of distress provided to older persons, mentally ill, persons with disabilities, the sick, and children;
11. Funeral services, including mortuaries;
12. Wildlife Management, Anti-poaching, Animal Care and Veterinary services;
13. Newspaper, broadcasting and telecommunication infrastructure and services;
14. Production and sale of any chemicals, hygiene products, pharmaceuticals for the medical or retail sector;
15. Cleaning, sanitation, sewerage, waste and refuse removal services;
16. Services related to the essential functioning of courts, judicial officers, the Master of the High Court, Sheriffs and legal practitioners required for those services;
17. Essential SARS services defined by the Commissioner of SARS;
18. Police, peace officers, traffic officers, military medical personnel and soldiers, correctional services officials and traffic management services;
19. Postal services and courier services related to transport of medical products;
20. Private security services;
21. Air-traffic Navigation, Civil Aviation Authority, Cargo Shipping and dockyard services;
22. Gold, gold refinery, coal and essential mining;
23. Accommodation used for persons rendering essential services, quarantine, isolation and the lockdown;
24. Production, manufacturing, supply, logistics, transport, delivery, critical maintenance and repair in relation to the rendering of essential services including components and equipment;
25. Transport services for persons rendering essential services and goods, and transportation of patients;
26. Services rendered by the Executive, members of Parliament, Members of the Provincial Legislature, Members of Local Councils, the Judiciary, traditional leaders and National Office Bearers of Political Parties represented in Parliament;
27. Commissioners of the South African Human Rights Commission, Gender Commission, and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Public Protector and Deputy Public Protector; and
28. Transport and logistics in respect of essential goods as set out in A above to neighboring countries.



Amendments on 26 March to include into Services:

- (e) the addition of the following paragraphs after paragraph 28 of Part B:
 - "29. Tow trucks and vehicle recovery services;
 - 30. Call centres necessary to provide health, safety, social support, government and financial services;
 - 31. Harvesting and storage activities essential to prevent the wastage of primary agricultural goods;
 - 32. Implementation of payroll systems to the extent that such arrangement has not been made for the lockdown, to ensure timeous payments to workers; and
 - 33. Critical maintenance services which cannot be delayed for more than 21 days and are essential to resume operations after the lockdown."

The Amendments on 02 April 2020 which are not related to the Motor Industry

Amendment of Annexure B to the Regulations

- 7. Annexure B of the Regulations is hereby amended by—
 - (a) the substitution for subparagraph (i) of paragraph 3 of Part A of the following subparagraph:
 - "(i) Medical and Hospital Supplies, medicine, equipment and personal protective equipment; and";
 - (b) the substitution for paragraph 4 of the following paragraph:
 - "4. Fuel, including coal, wood and gas.";
 - (c) the substitution for paragraph 5 of Part A of the following paragraph:
 - "5. Basic goods, including airline, electricity and the withdrawal of cash.";
 - (d) the substitution for paragraph 3 of Part B of the following paragraph:
 - "3.1 (a) The following services necessary to maintain the functioning of a financial system as defined in section 1(1) of the Financial Sector Regulation Act, only when the operation of a place of business or entity is necessary to continue to perform those services:
 - (i) the banking environment (including the operations of mutual banks, co-operative banks, co-operative financial institutions and the Postbank);
 - (ii) the payments environment;
 - (iii) the financial markets (including market infrastructures licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012);
 - (iv) the insurance environment;



Annex 4

ANNEXURE D PLACES AND PREMISES CLOSED TO THE PUBLIC Regulation 11B(4)

The following places and premises are closed to the public:

- (a) Any place or premises normally open to the public where religious, cultural, sporting, entertainment, recreational, exhibitional, organisational or similar activities may take place;
- (b) any place or premises normally open to the public where goods other than essential goods are procured, acquired, disposed of or sold;
- (c) any place or premises normally open to the public such as—
 - (i) public parks, beaches and swimming pools;
 - (ii) flea markets;
 - (iii) open air food markets;
 - (iv) fêtes and bazaars;
 - (v) night clubs;
 - (vi) casinos;
 - (vii) hotels, lodges and guest houses, except to the extent that they are required for remaining tourists confined to hotels, lodges and guest houses;
 - (viii) private and public game reserves except to the extent that they are required for remaining tourists confined to private and public game reserves;
 - (ix) holiday resorts except to the extent that they are required for remaining tourists confined to such holiday resort;

Annex 5 Spares dealers

Amendment of regulation 11B of the Regulations

8. Regulation 11B of the Regulations is hereby amended by—

(a) the substitution for item (bb) of subparagraph (iii) of paragraph (a) of subregulation (1) of the following item:

"(bb) transportation of—

(bbA) essential goods;

(bbB) transportation of cargo from ports of entry to their intended destination; and

(bbC) cargo currently at ports of entry, for export of goods to decongest the ports;"

(b) the insertion of the following paragraph after paragraph (f) of subregulation (1):

"(g) Stores selling hardware products and vehicle components must maintain a register of persons buying essential goods listed in Part A of Annexure B, and must keep a record of a signed declaration, which corresponds substantially with Form 4 of Annexure C by the buyer of goods attesting that the goods are essential goods as defined in the Regulations."



Annex 6 Workshops

- (f) the addition in Part B of the following paragraphs after paragraph 33:
34. Trades necessary for the rendering of emergency repair work, including plumbers, electricians, locksmiths, glaziers, roof repair work;
 35. Trades necessary for emergency automobile repairs for persons rendering essential services;
 36. Information and Communication Technology services rendered to entities and institutions engaged in delivering essential services in terms of these Regulations."

Annex 7

Amendment of Annexure B to the Regulations

14. Annexure B to the Regulations is hereby amended by—
 - (a) the addition in Part A after paragraph 5 of the following paragraphs:
 - "6. Hardware, components and supplies required by any qualified tradespersons solely for the purpose of emergency repairs at residential homes;
 - 7 Hardware, components and supplies required by any entity engaged in the provision of essential services for any project related to the provision of water, electricity or other essential services;
 8. Components for vehicles under-going emergency repairs where such vehicle is used by a person engaged in essential services work.";

