

Namibia

Namibian Constitution

Suspension of Operation of Provisions of Certain Laws and Ancillary Matters Regulations

Proclamation 16 of 2020

Legislation as at 28 April 2020

FRBR URI: /akn/na/act/p/2020/16/eng@2020-04-28

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PDF created on 20 February 2023 at 20:49.

Collection last checked for updates: 6 October 2022.

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Republic of Namibia
Annotated Statutes

Namibian Constitution

Suspension of Operation of Provisions of Certain Laws and Ancillary Matters Regulations Proclamation 16 of 2020

Published in [Government Gazette no. 7194](#) on 28 April 2020

Assented to on 28 April 2020

Commenced on 28 April 2020

**[This is the version of this document from 28 April 2020 and
includes any amendments published up to 6 October 2022.]**

Under the powers vested in me by Sub-Article (5) of Article 26 of the Namibian Constitution, I, subsequent to having declared by Proclamation No. 7 of 18 March of 2020 that a State of Emergency exists in the whole of Namibia following a worldwide outbreak of the disease known as Coronavirus Disease 2019 (COVID-19), make the regulations set out in the Schedule.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek, this 28th day of April Two Thousand and Twenty.

Dr. Hage G. Geingob

President

By Order of the President

Part 1 – Preliminary matters

1. Definitions

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 whose provisions are suspended or in any way affected by any provision of a regulation made under these regulations;

"**direction**" means direction issued by the Chief Justice under regulation 13 of the Regulations;

"**period of lockdown**" means the period of lockdown referred to in Regulation 3 of the Regulations, and includes the period of lockdown, commencing at 14:00 on 28 March 2020 and ending at 23:59 on 17 April 2020, that was imposed prior to the amendments to 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. 9 of 28 March of 2020.

2. Purpose of regulations

The purpose of these regulations is to -

- (a) suspend the operation of provisions of certain laws; and
- (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 period of lockdown or the State of Emergency, as applicable.

Part 2 – Suspension of operation of provisions of certain laws

3. Suspension of operation of provision of Employees' Compensation Act, 1941

- (1) The provisions of section 94(2) of the Employees' Compensation Act, 1941 (Act [No. 30 of 1941](#)), which require the Minister to publish a notice in the *Gazette* -
 - (a) about his or her intention to publish a notice amending the Schedule; and
 - (b) inviting persons to lodge objections to the notice, three months prior to the publication of the final notice, are suspended for the duration of the period of lockdown.
- (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 period of lockdown, resumes after the expiry of the period of lockdown and commences after the expiry of that period.

4. Suspension of operation of certain provisions of Magistrates Court Act, 1944

- (1) The procedures and time periods specified in the Rules of Court published under Government Notice No. R. 1108 of 21 June 1968, are suspended for the duration of the period of lockdown.
- (2) Despite subregulation (1), the Chief Justice may, for the duration of the period of lockdown, issue directions in relation to procedures and time periods applicable in the magistrates' courts.
- (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), where interrupted by the period of lockdown, resumes after the expiry of the period of lockdown and commences after the expiry of that period.
- (4) 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 period of lockdown.

5. Suspension of operation of provision of Price Control Act, 1964

The Minister may, 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, appoint a Price Controller for the duration of the period of lockdown, without complying with that requirement.

6. Suspension of time periods and time limits under Arbitration Act, 1965

- (1) Any time period or time limit -
 - (a) that is required for the completion of any process; or
 - (b) within which anything is required to be done, in terms of the Arbitration Act, 1965 (Act [No. 42 of 1965](#)), is suspended for the duration of the period of lockdown.
- (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 period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

7. Suspension of operation of certain provisions of Prescription Act, 1969

- (1) Despite anything to the contrary in the Prescription Act, 1969 (Act [No. 68 of 1969](#)), the running of prescription under any provision of that Act is deemed to be interrupted during the duration of the period of lockdown.
- (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 period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

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

- (1) Any provision, time period, time limit and process relating to the operations of the Magistrates Court 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") is suspended for the duration of the period of lockdown.
- (2) The time periods contained in sections 303, 306 and 310 of the Act are suspended for the duration of the period of lockdown.
- (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 period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

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

- (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 (Rules of the Supreme Court), will not run for the duration of the period of lockdown.
- (2) Despite subregulation (1), the Chief Justice may, for the duration of the period of lockdown, 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 by issuing directions.

- (3) Any process of the court as may be identified by a direction of the Chief Justice, and the processes contemplated in rules 25, 26 and 28 of the Rules of the Supreme Court, are suspended for the duration of the period of lockdown.
- (4) The computation of any time period time limit or days required for the completion of any process or the doing of anything as contemplated in this regulation, where interrupted by the, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

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

- (1) The time period specified in section 24 of the High Court Act, 1990 (Act [No. 16 of 1990](#)) (hereafter "the Act") and any other time periods or time limits prescribed in the Rules of the High Court of Namibia published under Government Notice No. 4 of 17 January 2014 (Rules of the High Court), except for rules 2 and 73, will not run for the duration of the period of lockdown.
- (2) Despite subregulation (1), the Chief Justice may 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 by issuing directions for the duration of the period of lockdown.
- (3) Any process of the court as may be identified by a direction of the Chief Justice, and the processes contemplated in Parts 3, 4, 5, 7, 9, 10, 11, 13 and 14 of the Rules of the High Court, are suspended for the duration of the period of lockdown.
- (4) The computation of any time period or days required for the completion of any process or the doing of anything as contemplated in this regulation, where interrupted by the period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.
- (5) 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.

11. Suspension of time periods and time limits under Minerals (Prospecting and Mining) Act, 1992

- (1) Any time period or time limit -
 - (a) that is required for the completion of any process; or
 - (b) within which anything is required to be done,in terms of the Minerals (Prospecting and Mining) Act, 1992 (Act [No. 33 of 1992](#)), is suspended for the duration of the period of lockdown, except for those time periods or time limits as may be identified by the Minister responsible for mines in directives issued under regulation 14 of the Regulations.
- (2) The computation of any time period or limit or days required for the completion of any process or the doing of anything as contemplated in subregulation (1), where interrupted by the period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

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

- (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 any member of any of the funds who was registered on or before 17 March 2020 who has suffered financial losses due to the actual or potential impact of COVID-19 during the period of the State of Emergency.

13. Suspension of operation of certain provisions of Agricultural (Commercial) Land Reform Act, 1995

- (1) The provisions of section 17(5), (6), (6A)(a), (6A)(b)(i) and (6A)(b)(ii) of the Agricultural (Commercial) Land Reform Act, 1995 (Act [No. 6 of 1995](#)), which relate to the time periods or time limits, processes and procedures within which certain actions must be taken or things must be done, are suspended for the duration of the period of lockdown.
- (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 period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

14. Suspension of operation of certain provisions of Public Service Act, 1995

- (1) The provisions of -
 - (a) Part 3 of the Public Service Act, 1995 (Act [No. 13 of 1995](#)) (hereafter "the Act"), on the misconduct of staff members of the public service, and any related regulations made under section 34 of that Act, or staff rules made under section 35 of that Act; and
 - (b) section 33 of the Act which relate to time periods or time limits within which legal proceedings may be brought under that Act, are suspended for the duration of the period of lockdown.
- (2) Any misconduct committed by a staff member during the period of lockdown must be adjudicated upon after the expiry of the period of lockdown.
- (3) The computation of any time period time limit or days required for any disciplinary process as contemplated in subregulation (1) or (2), where interrupted by the period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

15. Suspension of operation of provision of Identification Act, 1996

The operation of section 14(2) of the Identification Act, 1996 is suspended for the duration of the period of lockdown, 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.

16. Suspension of operation of certain provisions of Liquor Act, 1998

- (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 period of lockdown.

- (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 period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

17. Suspension of operation of certain provisions of Standards Act, 2005

The Namibian Standards Institution may, during the State of Emergency, under section 20(1) 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.

18. Suspension of operation of certain provisions of Environmental Management Act, 2007

- (1) The provisions of Part VIII of the Environmental Management Act, 2007 (Act [No. 7 of 2007](#)) and related regulations made under that Act, in relation to the acquisition of environmental clearance certificates, and other matters relating to environmental clearance certificates, are suspended for the duration of the period of lockdown.
- (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 period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.

19. Suspension of operation of certain provisions of Labour Act, 2007

- (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, during the lockdown -
 - (a) dismiss an employee or terminate any contract of employment or serve a notice of intended dismissal in terms of section 34 of the Act for reasons related to the actual or potential impact of COVID-19 on the operation of the employer's business;
 - (b) force an employee to take unpaid leave or annual 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 lockdown; or
 - (c) reduce the remuneration of any employee for reasons related to the actual or potential impact of COVID-19 on the operation of the employer's business or to the implementation of a provision of any regulation which is intended to give effect to the lockdown.
- (2) Despite subregulation (1)(c), if, during the period of lockdown, an employer wishes to reduce or defer payment of full remuneration because of its inability to pay full remuneration due to 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,
- (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) If an employer has, prior to the commencement of these regulations, dismissed an employee or employees or forced an employee to take unpaid leave or annual leave due to the actual or potential impact of COVID-19 on their business operations, that employer must, as soon as practicable -
 - (a) reinstate such dismissed employees; and
 - (b) engage the dismissed employees in negotiations about their conditions of employment during the lockdown period.
- (5) 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.
- (6) 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 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 lockdown period, unless a later date is specified in the notice.
- (7) If, after the period of lockdown, an employer wishes to dismiss employees for reasons related to the actual or potential impact of COVID-19, the employer 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.
- (8) An employer or any other person who -
 - (a) dismisses an employee or terminates any contract of employment or serves a notice of intended dismissal in contravention of subregulation (1)(a);
 - (b) forces an employee to take unpaid leave or annual leave in contravention of subregulation (1)(b);
 - (c) reduces the remuneration of any employee without following the process outlined in subregulation (2);
 - (d) fails or refuses to reinstate a dismissed employee or to engage a dismissed employee in negotiations in contravention of subregulation (4); or
 - (e) dismisses an employee without complying with the requirements of subregulation (7), commits an offence and on conviction is liable to a fine not exceeding N\$10 000, or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.
- (9) Parts A to C of Chapter 8 of the Act and regulations, rules or codes of conduct made under that Act, insofar as they 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 period of lockdown.

- (10) 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 period of lockdown.
- (11) Despite subregulations (9) and (10), the Chief Justice may 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 by issuing directions for the duration of the period of lockdown.
- (12) 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 this regulation, where interrupted by the period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.
- (13) For the purposes of subregulation (11), 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.

20. Suspension of operation of provision of Correctional Service Act, 2012

The provisions of section 77(1)(a) of the Correctional Service 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 of the State of Emergency.

21. Suspension of operation of certain provisions of Electoral Act, 2014

Parts 1 and 2 of Chapter 5 of the Electoral Act, 2014 (Act [No. 5 of 2014](#)) are suspended for the duration of the period of lockdown.

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

- (1) Despite the provisions of Part 6 of the Public Procurement Act, 2015 (Act [No. 15 of 2015](#)) (hereafter "the Act"), the Board or a public entity may not undertake or continue any procurement process or contract management of goods, works or services or the letting or hiring of anything or the acquisition or granting of the right for or on behalf of the public entities during the period of lockdown.
- (2) Despite subregulation (1), the Board or a public entity may, during the period of lockdown, only -
 - (a) procure critical services and essential goods as specified in Annexure B and Annexure C to the Regulations; and
 - (b) let and hire anything incidental to or required for the prevention and combating of the spread of COVID-19.
- (3) The period referred to in subregulation (1) may not be included in the computation of any time period provided for the validity of any step in the procurement process, review or any other action required in terms of the Act.
- (4) Despite subregulation (3), the computation of time periods or time limits or days required for any processes in terms of the Act, excluding the period contemplated in subregulation (1), resumes where it ended on the date before the commencement of the period referred to in subregulation (1).

Part 3 – General provisions relating to time periods and related matters

23. Provisions relating to expiry of licenses, permits and other authorisations

- (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 expires during the period of lockdown, is deemed to be valid for the duration of the period of lockdown.
- (2) Subregulation (1) does not apply to any licence, permit or other form of authorisation which expired before the period contemplated in subregulation (1).
- (3) Any penalty applicable for failure to renew any licence, permit or authorisation is suspended for the duration period contemplated in subregulation (1).

24. Suspension of time periods or time limits for institution of legal proceedings

- (1) Where any law provides for a time period or time limit within which -
 - (a) legal proceedings must be initiated or commenced against any public entity;
 - (b) a notice of intention to bring legal proceedings referred to in paragraph (a), if required, must be given,
the running of that time period or time limit is suspended for the duration of the period of lockdown.
- (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 subregulations (1), where interrupted by the period of lockdown, resumes after the expiry of the period of lockdown, and commences after the expiry of that period.
- (3) For purposes of this regulation a public entity means -
 - (a) the Government of the Republic of Namibia or any component of it, including the administrative organs at the regional or local levels of government;
 - (b) a public enterprise as defined in section 1 of the Public Enterprise Governance Act, 2019 (Act [No. 1 of 2019](#));
 - (c) any other functionary or institution -
 - (i) exercising a power or performing a function in terms of the Namibian Constitution;
or
 - (ii) exercising a public power or performing a public function in terms of any law.

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

- (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.