

**PROPOSED DRAFT REGULATIONS FOR
THE PROTECTION OF FREEDOM AND SECURITY OF PERSON
IN RELATION TO COVID-19 AND RELATED MATTERS**

Prepared and Presented by [ACTION 4 FREEDOM (NPC) REG. 2021/160883/08]

PREAMBLE

WHEREAS the Constitution of the Republic of South Africa (Act 108 of 1996) as the Supreme Law of the Republic was adopted so as to establish a society based on democratic values, social and economic justice, equality and fundamental human rights and to improve the quality of life of all citizens and to free the potential of all persons by every means possible, including, amongst others, by the establishment of a fair and equitable application of the right to freedom and security of the person in respect of bodily and psychological integrity;

AND WHEREAS the Republic of South Africa is committed to give high priority to the rights of every individual citizen to their survival and to their protection and development as evidenced by its Membership of the United Nations since 7th November 1945 and its full acceptance and recognition of Human Rights, as per the Declaration by the United Nations General Assembly in Paris on 10th December 1948 (General Assembly Resolution 217 A);

AND WHEREAS, the commitment of the Republic of South Africa is further consolidated and exemplified by its being a signatory to and ratification of the African Charter on Human and Peoples Rights which is premised upon the duty to promote and protect human and peoples' rights and freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa as advanced by the Charter of the Organisation of African Unity, which stipulated that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

AND WHEREAS the application of Freedom and Security of Person in South Africa possibly falls short of the Republic's international obligations in terms of the said Declaration:

AND WHEREAS sections 6,7 and 8 of the National Health Act, Act 61 of 2003 and Regulations of 2017 at Regulations 14 and 15 contain provisions protective of rights and duties in regard to lawful consent;

AND WHEREAS SARS-CoV2 can be contracted and or transmitted to and by any person regardless of vaccination status and that any available treatment is unequivocally a lawful sole and final prerogative of the human subject needy of such treatment;

AND WHEREAS vaccinated people can shed spike protein to the unvaccinated;

AND WHEREAS in recognition of Ethical, Moral and necessary Lawful Duty to protect all persons from and against any actions contrary to the universally accepted provisions contained in the Nuremberg Code of 1947 affecting of Freedom and Security of Person to the extent that the individual person is able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion;

AND WHEREAS the President of the Republic, on 1st February 2021 unequivocally declared that: "Nobody will be forced to take this vaccine. Nobody will be forbidden from travelling, from enrolling at school, or from taking part in any public activity if they have not been vaccinated."

AND WHEREAS the South African Law Courts have cases unresolved in respect of the alleged violation of rights contrary to the Freedom and Security of Person pursuant to Chapter 2, Section 12 of the Supreme Law of the Republic, that such deliberations impact on all the citizenry on a matter of national importance and is affecting of broader freedoms of the individual as contained in Chapter 2 of Act No.108 of 1996;

AND WHEREAS it is considered necessary and in the public interest that, pending determination by a competent Court — that of the Constitutional Court of South Africa unless a High Court’s determination or outcome on cases involving the Freedom and Security of Person issues are settled and not appealed and overturned, for a reason justified by relevant and applicable law, the provisions of these regulations are adopted as law for certainty, emphasis and preservation of law and order that upholds the current rights, obligations and protections of, by and for each citizen or person in South Africa as provisioned in the South African Constitution and as a clear expression of the Government’s Duty of Care to discharge fair, necessary, adequate and proportionate application of its democratic mandate under the Constitution of South Africa.

THE PEOPLE’S DEMOCRATIC NOTICE

No. R 01/2022

April 2022

The people of South Africa, by way of this notice, democratically declare that the Minister of Health in collaboration with the Minister of Labour and Employment make the following Regulations under section 90(1)(a) of the National Health Act, (Act No. 61 of 2003) and section 43(1)(a) of the Occupational Health and Safety Act (Act No. 85 of 1993) and the Minister of Corporate Governance and Traditional Affairs, under the Disaster Management Act 2002, Amendment of Regulations in terms of Section 27(2) respectively:—

Definitions

1. In these people’s regulations, a word or expression to which meaning has been assigned in the Act bears the meaning so assigned, unless the context indicates otherwise.

(a) **“Accountable”** means to be liable for any act or omission of duty and responsibility contrary to obligations in regard to these regulations;

(b) **“African Charter”** means the African Charter on Human and Peoples Rights;

(c) **“Age of majority”** means the age of 18, as read in terms of the definition of a child in Section 28 of the Constitution of the Republic of South Africa;

(d) **“Business”** means any juristic or natural person employing or deploying any number of persons, for paid or voluntary work in the provision of any function or service for profit whether such function or service is operated in, from within or to South Africa, whether via the internet, from any location in or outside South Africa, and includes activities, functions and communication automated by electronic means;

(e) **“Child/Children”** means anyone or, collectively, group of people under the age of 18 as contemplated in Section 28 of the Constitution of the Republic of South Africa;

(f) **“Coercion”** means any form of communication asserting a condition of vaccination status and testing and making (i) any offer of any incentive or; (ii) any offer of favourable or less favourable treatment on account of vaccination status and or testing;

(g) **“Constitution”** means Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

(h) **“Constitutional rights”** means any and or all provisions under Chapter 2 of the Constitution;

- (i) **“Detriment”** means loss of employment, or any service, or any status, or any benefit or any right;
- (j) **“Forced”** means any statement, act or omission with the effect of denial of service or access to any business premises or service, institution, organisation or public space on account of vaccination status or that of testing;
- (k) **“Gathering”** means a coming together of a group of people, including, but not limited to faith-based or religious, social, political and cultural groups, meeting together at restaurants, bars, shebeens and taverns, conferences, exhibitions, dining, gyms, fitness centers, casinos and entertainment facilities, venues hosting any type of auction, sporting activities, including professional and non-professional, social and competitive sporting events regardless of whether hosting entity is deemed to be professional or not;
- (l) **“Institutions”** means any entity or organisation employing or deploying any number of persons for any paid or voluntary work or service in the operating of any function or service in, from, within or to South Africa, whether via the internet or any physical location in or outside South Africa, whether for profit or not, and includes activities, functions and communication automated by electronic means;
- (m) **“Offence”** adoption or perpetuation of any policy and or practice amounting to coercion;
- (n) **“OHS Act”** means the Occupational Health and Safety Act, 1993(Act No.85 of 1993);
- (o) **“Organisation”** means any entity rendering any function or service to any person whether for profit or not, including registered or unregistered voluntary organisations;
- (p) **“Person”** means a natural or juristic person;
- (q) **“POPI Act”** means the Protection of Personal Information Act (Act 3 of 2013);
- (r) **“Regulations”** means Regulations for the Protection of Freedom and Security of Person in Relation to Covid-19 and Related Matters;
- (s) **“Relevant place”** means any indoor, outdoor or public space, including any mode of transportation.
- (t) **“Sanitizing”** means use of a substance said to reduce or eliminate pathogenic agents such as what is referred to as SARS COV2;
- (u) **“Testing”** means any form or manner of examination conducted for the purposes of determination of what is referred to as SARS-CoV2 infection and tested shall have the same meaning;
- (v) **“The Act”** means National Health Act, Act No.61 of 2003;
- (w) **“UDHR”** means Universal Declaration of Human Rights;
- (x) **“Vaccines”** means any one or any combination of medical products and/or medical or scientific intervention(s) purported to be vaccines aimed at addressing a condition called Covid-19 ;
- (y) **“Vaccination”** means injection and/or any other manner of inoculation with any substance in any format whatsoever, for the supposed prevention and/or treatment of SARS-CoV2 and vaccinated shall have the same meaning;
- (z) **“Vaccination status”** means to be or not be inoculated with any Covid-19 vaccine

Objects of the Regulations

2. The objects of these regulations are to ensure the lawful, fair and equitable protection of the right to freedom and security of each person, to whom these regulations apply, by ensuring that:

- (a) nobody is required to declare or provide any proof in any form whatsoever, whensoever, wheresoever or howsoever, of their covid 19 vaccination status or testing as:
 - (i) a condition of employment or deployment in any role, function or service; or
 - (ii) a condition of access to any premises; or
 - (iii) a condition of access to any institution of learning; or
 - (iv) a condition of participation in any event or activity; or
 - (v) a condition of service for or by any person;
 - (vi) a condition of participation in any process, role, function or office of the legislature;
 - (vii) a condition of travel from or to the Republic of South Africa.

Scope of Application

3. These Regulations shall be of equal force, application and applicability, in the public and private sectors, to:

- (a) all departments of government, be it at national, provincial or local level;
- (b) all institutions;
- (c) all businesses operating, offering or receiving any service in or to the Republic of South Africa;
- (d) all employers;
- (e) all organisations, including, but not limited to, not for profit organisations and any other registered or unregistered voluntary organisations; and
- (f) all persons.

Responsibilities for Protections

4. It shall be the responsibility and obligation of all persons, to whom such authority lies, to ensure full adherence to all or any of the provisions of Regulation 2 above, and such persons include but are not limited to:

- (a) all organs of State and any person employed by the State at any level and in any capacity whatsoever;
- (b) all institutions of learning, be it basic or higher education, public and private;
- (c) any person in any role of any employment;
- (d) any business, organisation or institution, including, but not limited to, not for profit organisations and any other registered or unregistered voluntary organisations;

- (e) all airlines and travel operators and their agents operating any aspect of a domestic or international service from within or to the Republic of South Africa;
- (f) any department of law enforcement.

Freedom and Security of Person

5. (1) Covid 19 vaccination status and covid 19 testing is solely the choice of any person who has reached the age of majority, and such person shall;

- (a) be entitled to full discharge of provisions under section 6, 7 and 8 of the Act;
- (b) be entitled to their right to informed consent;
- (b) not be offered or subjected to any incentive in relation their vaccination status or testing;
- (c) not be offered or subjected to any disincentive in relation to their vaccination status or testing;
- (d) not be subjected to any detriment on account of their vaccination status;
- (e) have unfettered benefit of right pursuant to section 15(1) of the Constitution;
- (f) not be restricted to exercise rights conferred by section 16(1)(a), (b), (d) of the Constitution any or any other rights flowing out of such rights;

(2) All children shall, by default, be protected from any imposition or compulsion to be vaccinated against Covid 19, and

- (a) shall not be subjected, in any form or manner whatsoever, howsoever or whensoever, to make a decision about such vaccination;
- (c) shall not be exposed to any form of marketing, advertising or information promoting such vaccination;
- (c) any parent or legal guardian opting for their child/children to be vaccinated against Covid 19 must benefit from Section 6, 7 and 8 of the Act;
- (d) parents or legal guardians must be afforded as much time as they deem necessary to consult a registered healthcare professional about vaccination of their children before deciding whether or not to vaccinate their child/children against Covid 19;
- (e) parents or legal guardians must obtain written advice and a prescription from a registered healthcare professional if they choose to have their child/children vaccinated against Covid 19;
- (f) all healthcare professionals shall exercise a professional duty of care, in line with the Hippocratic Oath, and assert professional liability in the ordinary course of their duties where advice and a prescription for vaccination against Covid 19 is given and/or acted upon;
- (g) if a parent or legal guardian decides to have their child/children vaccinated against Covid 19, the vaccination must, after ensuring that the parent or guardian has given informed consent, be administered by the same registered health professional, healthcare service or healthcare institution who gave that advice and prescription;
- (h) full and proper records must be kept as is ordinarily required by registered and regulated healthcare professionals in respect of the advice, prescription, informed consent and administration of any vaccine;

(i) no child, parent or legal guardian shall be subjected to any detriment on account of the child's vaccination status.

(3) Right to freedom and security of person shall apply to any and all aspects of any intervention affecting any natural person's bodily and psychological integrity pursuant to Sections 10 and 12(2) (b) and (c) of the Constitution, and Articles 4 and 6 of the African Charter and such rights shall:

(a) not be limited to vaccination;

(b) be applicable to testing;

(c) give full effect of Regulations 5(1) and 5(2) in respect of Regulation 5(3)(a) and 5(3)(b) above.

Departments of Government

6. (1) All departments of government, national, provincial and local, and all persons employed and/or deployed for the discharge of any function shall have the duty and responsibility to ensure that:

(a) all communication and publications in relation to Covid 19 vaccines, vaccination and vaccination status must comply with provisions set out at Regulations 3, 4 and 5 of these Regulations;

(b) all communication and publications in relation to Covid 19 vaccines, vaccination and vaccination status must state clearly:

i. the nature of the detailed Covid 19 vaccines, including, but not limited to the ingredients of each of the said approved vaccines;

ii. the benefits of such Covid 19 vaccines;

iii. the risks of such Covid 19 vaccines;

iv. the benefits of early treatment, in the case of infection with Covid 19;

v. the risks of early treatment, in the case of infection with Covid 19;

vi. comply with provisions set out at Regulations 3, 4 and 5 of these Regulations

(b) unambiguity of information about any person's right to decline any medical or scientific intervention without detriment;

(c) clear written advice in support of regulation 6(1)(b) is made publicly available to all persons, free of charge;

(d) advice in regard to Regulation 6(1)(c) is available and accessible to the public free of charge;

(e) any person opting to be vaccinated against Covid 19, receives such intervention free of charge, after giving informed consent;

(f) nobody is charged for any testing in relation to SARS CoV2;

(g) clear communication that discourages and prohibits the forcing and/or coercion of anybody as regards Covid 19 vaccination or testing;

(h) communication contemplated in regulation 6(1)(a to g) of these Regulations has equal proportional exposure of publication and dissemination across all departments' resources.

(2) No organ or office of State or legislature shall be absolved from duty to comply with the Regulations contained in these Regulations.

Institutions, Business, Organisation and Other Persons

7. (1) All institutions, businesses and organisations, including, but not limited to, not for profit organisations and any other registered or unregistered voluntary organisations are required to ensure that:

(a) any policy or procedure in place, for the discharge of any role, function, service or statutory obligation, is in strict compliance with all provisions set out in Regulations 3, 3(b),(c),(d), (e) and Regulations 5(1),(2),(3) of these Regulations;

(b) all policies are updated to reflect benefit and application of information as is contemplated in Regulation 6(1) above;

(2) any service or participation in any activity or offer of service or participation in any activity or attendance or participation in any gathering or access to any of the premises of any institution, business or organisation must not be limited or denied to any person on condition of:

(a) Covid 19 vaccination status;

(b) the production or proof of a certificate in any form or manner whatsoever, howsoever or whensoever, related to Covid 19 vaccination status;

(d) any proof or evidence of SARS COV2 testing whatsoever, howsoever or whensoever;

(e) wearing or not wearing a mask;

(f) sanitizing or not sanitizing of hands;

(g) any covid 19 related limitation on the number of people allowed to be in attendance at in any venue whatsoever, howsoever or wheresoever;

(e) involuntary disclosure of any health information.

(3) No person shall have the right to require and or enforce an obligation upon any person, in any manner whatsoever, howsoever or whensoever, to do anything in breach of the provisions set out in Regulations 6(1) or 6(2);

(4) No person shall require any person to submit to involuntary medical examination and or medical treatment contrary to the consent provisions of the Act;

(5) The discharge of OHSWA obligations by any person must be in strict compliance with the provisions of regulations 7(1),(2),(3),(4),(6),(7),(8);

(6) Wearing of masks in any relevant place whatsoever and whensoever is optional and shall be at the sole discretion of each person to wear or not to wear a mask;

(7) Wearing of masks in any relevant place must be in strict compliance with provisions at regulations 7(2)(d) and 6(6);

(8) Children may not be required, under any circumstances whatsoever, to wear masks;

Privacy

8. (1) Due regard must be given for any person's Section 14 constitutional right, and the POPI Act, not to disclose any health-related information, about their reason for wearing or not wearing a mask or as to their Covid 19 vaccination status.

(2) The disclosure of any medical reason why any person either wears or does not wear a mask or as to their Covid 19 vaccination status, shall be entirely a voluntary disclosure informed by personal consent.

(3) An employer, business or any organisation may, subject to the provisions of these Regulations and the POPI Act, keep record of people wearing or not wearing masks or as to their Covid 19 vaccination status, but is not obligated to do so, and where it does, it must:

(a) make such the scheme entirely voluntary;

(b) disclose, in writing, the necessity and purpose for keeping such records;

(c) make provision and allowance for any person to decline such disclosure without any detriment;

(d) not require any detail or explanation about any person's health condition from either the person themselves or that of any healthcare professional in substantiation of any information the person may or may not voluntarily disclose;

(e) not require anyone to apply for approval or exemption from vaccination or wearing of a mask.

Movement

9. All persons, in keeping with and in line with Section 21 of the Constitution and Article 12 of the African Charter shall be free to go anywhere in the Republic of South Africa and travel out of and to the Republic under lawful provisions of exit and entry and shall not be deemed to be in breach of any of the provisions of these regulations or any other regulations or law simply by virtue of not being in possession of a Covid 19 vaccination certificate.

Offences and penalties

10. (1) Any person who contravenes or fails to comply with any provisions of these Regulations shall be guilty of an offence and liable, on conviction, to a fine or imprisonment for a period not exceeding 12 months or both and, in the event of a continuous offence, to an additional fine of R250 000 for each day on which the offence continues or additional imprisonment of one day on which the offence continues: Provided that the imprisonment shall in no case exceed 90 working days.

(2) The accrual of the fine shall continue till such time that the offence complained of has been discontinued.

Short Title

11. These Regulations shall be called Regulations for Protection of Freedom and Security of Person.

Commencement

12. These regulations shall come into operation on adoption by the People of South Africa, gazette or not.