

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 3779

11 August 2023

LEGAL PRACTICE ACT, 2014 (ACT NO. 28 OF 2014): AMENDMENT OF REGULATIONS

The Minister of Justice and Correctional Services has, under section 94(1) of the Legal Practice Act, 2014 (Act No. 28 of 2014), and after consultation with the Legal Practice Council, made the regulations in the Schedule.

SCHEDULE**Definitions**

1. In this Schedule any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it and, unless the context otherwise indicates— "the Regulations" means the regulations published by Government Notice No. R. 921 of 31 August 2018.

Amendment of regulation 2 of Regulations

2. Regulation 2 of the Regulations is hereby amended by—
- (a) the substitution for subregulation (2) of the following subregulation:
 - “(2) The election of members of the Council referred to in subregulation (1) must be conducted under the authority of the Council.”;
 - (b) the substitution in subregulation (3) for the words preceding paragraph (a) of the following words:

“(3) Only attorneys and advocates who are admitted to practise and who are enrolled on the Roll of practising legal practitioners contemplated in section 30(3) of the Act may—”;

(c) the substitution for subregulation (4) of the following subregulation:

“(4) (a) An election for members of the Council must be held, in the manner prescribed in these regulations, every third year following the year in which the first such election was held.

(b) The term of office of the members of the Council referred to in section 7(1)(a) of the Act—

- (i) commences on the date of announcement by the chairperson of their election;
- (ii) terminates upon the announcement of the results of the next succeeding election for members of the Council, unless terminated earlier in terms of the provisions of the Act; and
- (iii) there may not be an overlap of the terms of office of newly elected members of the Council and those elected members whose terms of office have terminated.

(c) An election for members of the Council must be conducted by—

- (i) electronic voting in the manner determined by guidelines published by the Council: Provided that the Council must appoint an independent electoral service provider for the purpose of managing the electronic voting platform;
- (ii) paper ballot in accordance with the provisions of these regulations; or
- (iii) both electronic voting and paper ballot.

(d) The Council must appoint an independent electoral service provider for the purpose of performing the duties assigned to an independent electoral service provider in these regulations.

(e) Within 90 days prior to, but no later than 60 days prior to, the third anniversary of the date of the announcement of the results of the immediately preceding election of members of the Council, the Council must dispatch a notice to every attorney and every advocate admitted to practice and enrolled on the practising Roll, calling for nominations of eligible attorneys and advocates for election to the Council, such nominations to be received not later than a date stipulated in the notice.

(f) Should a vacancy become available in the Council, the candidate who in the immediately preceding election received the most electoral votes following the votes received by a member of the Council who received the least votes, and who falls within the same category set out in Annexure A, in the case of attorney members, or

Annexure B, in the case of advocate members, as the departing member, must be appointed to fill the vacancy.

(g) If the person referred to in paragraph (f) is not available to fill that vacancy, the candidate in the immediately preceding election who received the next most electoral votes, and who falls within the categories referred to in paragraph (f), must be appointed to fill the vacancy.

(h) If no person is available to fill the vacancy the Council must conduct a by-election to fill the vacancy concerned.

(i) The term of office of the member appointed or elected, as the case may be, to fill a casual vacancy in the Council will terminate on the date on which the office of the member who was replaced by him or her would have terminated: Provided that the member so appointed or elected to fill such a casual vacancy will be eligible for re-election.

(j) The guidelines referred to in paragraph (c)(i) must include—

- (i) the period within which to cast the votes;
- (ii) the platform to be utilized for electronic voting; and
- (iii) directions on the completion of the declaration form and the electronic ballot.”;

(d) the substitution for subregulation (5)(b) of the following subregulation:

“(b) be sent by email to the email address of every practising legal practitioner, unless a practising legal practitioner has not provided the Council with an email address, in which case the notice must be sent by prepaid post.”;

(e) the substitution for subregulation (11) of the following subregulation:

“(11) If the number of candidates who are nominated exceeds the number to be elected as attorney members or as advocate members, as the case may be, the Council must, within 14 days after the last day on which nominations are required to be lodged in terms of subregulation (5), publish on the Council's website and send to every attorney or advocate, as the case may be, who is eligible to vote, by email to the legal practitioner's email address or, where the email address of a legal practitioner is not known to the Council, by prepaid post—

- (a) directions to the legal practitioner as to the size and format of the two envelopes to be used by the legal practitioner, where voting is to be by ballot paper;
- (b) a declaration form containing appropriate spaces for—
 - (i) the surname and forenames of the voting legal practitioner;
 - (ii) a statement whether he or she is an attorney or an advocate;
 - (iii) his or her signature and the date of his or her signature; and

- (iv) a declaration by the legal practitioner above his or her signature that he or she has not already voted in the election concerned;
- (c) a ballot paper, in the case of the election of attorneys, in a form that substantially corresponds with Annexure A to these regulations or, in the case of the election of advocates, in a form that substantially corresponds with Annexure B to these regulations, containing the surnames and forenames in alphabetical order, by surname, of the nominated candidates and providing the information indicated in Annexure A or Annexure B, as the case may be, and nothing more;
- (d) a written notice in the form as the Council may direct—
 - (i) drawing the attention of legal practitioners to the fact that votes may be cast by ballot paper or by electronic means, whichever one or both may be applicable, and that legal practitioners may vote only once in the election and either by ballot paper or by electronic means;
 - (ii) advising the legal practitioner that, if he or she wishes to record a vote by ballot paper, he or she must —
 - (aa) place a cross on the accompanying ballot paper against the name of each candidate for whom the legal practitioner wishes to vote, so as to indicate a vote in favour of not more than the number of candidates for which there are vacancies, and to make no other mark or alteration on the ballot paper;
 - (bb) place the ballot paper in the envelope marked "ballot paper";
 - (cc) seal the envelope containing the ballot paper;
 - (dd) complete and sign the form of declaration;
 - (ee) place the completed and signed declaration, together with the envelope containing the ballot paper, in and seal the envelope marked "voting papers"; and
 - (ff) dispatch the envelope marked "voting papers" with its contents to the Council so as to reach the Council not later than a date referred to in the notice; and
 - (iii) advising the legal practitioner, if he or she wishes to record his or her vote by electronic means, to follow the guidelines referred to in subregulation (4)(c)(i):
Provided that—
 - (aa) an electronic identification system must be developed and established;

- (bb) legal practitioners will be required to identify themselves and authenticate their identification;
 - (cc) the electronic ballot must exactly resemble the ballot paper referred to in subregulation (11)(c); and
 - (dd) a legal practitioner must be given an overview of all his or her votes and be asked to confirm his or her choice before submitting the electronic ballot.”;
- (f) the substitution for subregulation (12) of the following subregulation:
 - “(12) The notice referred to in subregulation (11)(d) must—
 - (a) contain a warning that if—
 - (i) a vote is cast in favour of more than the number of names referred to in subregulation (11)(d)(ii)(aa);
 - (ii) any mark or alteration is made on the ballot paper other than the crosses indicating votes in favour of the candidates for whom the legal practitioner votes; or
 - (iii) the declaration referred to in subregulation (11)(b) is not duly completed and signed by the voting legal practitioner, the ballot paper will be void; and
 - (b) draw the attention of legal practitioners to the fact that the profiles of candidates, containing the information set out in subregulation (8), will be published on the website of the Council for a period of 30 days commencing on the date of the written notice referred to in subregulation (11)(d).”.
- (g) the substitution for subregulation (15) of the following subregulation:
 - “(15) In the case of paper ballots, on each day on which envelopes marked "voting papers" sent to the Council are received by the Council, or if it is not practicable on that day, as soon as practicable thereafter, the chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, must, in the presence of the referee, open each such envelope and remove its contents.”;
- (h) the substitution for subregulation (16) of the following subregulation:
 - “(16) The chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, and the referee must together note the name and surname of each legal practitioner who has submitted a declaration and envelope marked "ballot papers", as well as whether that legal practitioner is an attorney or an advocate, in a voting register kept by the referee.”;

- (j) the substitution for subregulation (17) of the following subregulation:
- “(17) (a) The chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, and the referee must together–
- (i) examine each declaration form; and
- (ii) verify, to such extent as may appear necessary, the information contained therein against the records of the Council, and
- satisfy themselves that the declaration form has been duly completed and signed by the legal practitioner, failing which it will be regarded as invalid.
- (b) In the event of a disagreement between the chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, and the referee as to the validity or otherwise of any declaration form, the view of the referee prevails and his or her judgment on the matter is final.”;
- (j) the substitution for subregulation (19) of the following subregulation:
- “(19) The chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, must, in the presence of the referee, in respect of each declaration form found to be valid, place its accompanying envelope marked "ballot paper" unopened through a slot in a ballot box of a design and construction approved by the Council, one ballot box for ballot papers in respect of attorneys and one ballot box for ballot papers in respect of advocates, which must have been securely locked and sealed in advance by the chairperson.”;
- (k) the substitution for subregulation (20) of the following subregulation:
- “(20) After placing the last of such envelopes duly received in the ballot box the chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, must, in the presence of the referee, securely seal the slot, and must hand the key to the referee.”;
- (l) the substitution for subregulation (21) of the following subregulation:
- “(21) The chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, must keep the ballot box in a secure place, locked and sealed as contemplated in subregulations (19) and (20), and must deliver the ballot box in that condition to the scrutineers appointed in terms of subregulation (23) on the day following the date referred to in subregulation (11)(d)(ii)(ff).”;
- (m) the substitution for subregulation (22)(b)(iii) of the following subregulation:

- “(iii) separately retain the documents, in the same manner as is provided for in subregulations (19) to (21), for a period of three months after the date referred to in subregulation (11)(d)(ii)(ff);”;
- (n) the substitution for subregulation (23)(a) of the following subregulation:
- “(23) (a) Prior to or on the date referred to in subregulation (11)(d)(ii)(ff) the Council must, subject to paragraph (b), appoint not less than two legal practitioners and not more than ten legal practitioners, as scrutineers to examine the ballot papers placed in the ballot box and to count the votes received.”;
- (o) the insertion after subregulation (25) of the following subregulation:
- “(25A) (a) On each day on which electronic ballots sent to the Council are received by the Council, or if it is not practicable on that day, as soon as practicable thereafter, the chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, must, together with the referee, examine each electronic declaration form, must verify, to such extent as may appear necessary, the information contained in the electronic declaration form against the records of the Council, and must satisfy themselves that the electronic declaration form has been duly completed and signed by the legal practitioner, failing which it will be regarded as void.
- (b) In the event of a disagreement between the chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, and the referee as to the validity or otherwise of any electronic declaration form, the view of the referee must prevail and his or her judgment on the matter must be final.
- (c) The referee must maintain a record of each electronic declaration form found to be invalid, with the reasons for the invalidity, and endorse the record with his or her signature.
- (d) The chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, and the referee must together note the name and surname of each legal practitioner who has submitted an electronic declaration form and an electronic ballot, as well as whether that legal practitioner is an attorney or an advocate, in a voting register kept by the referee.
- (e) The chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, must—
- (i) in the presence of the referee, securely retain or save, in the form and manner approved by the Council, each electronic declaration form, as well as the accompanying electronic ballots which were found to be valid;

- (ii) retain each electronic declaration form and electronic ballot in the same manner for a period of three months after the date of closing of casting of votes, whereafter he or she must destroy all such electronic declaration forms and electronic ballots, unless ordered otherwise by an order of court: Provided that should there be a dispute regarding the validity of the electronic declaration form or the electronic ballot, the electronic declaration forms and electronic ballots must be retained until the dispute has been resolved; and
- (iii) keep a separate record of the number of electronic declaration forms and electronic ballots retained as contemplated in paragraph (ii).
 - (f) The independent electoral service provider must count the votes recorded in the electronic voting system and record the result in the presence of the scrutineers and the referee, whereafter the chairperson must securely retain or save the electronic records in the manner determined by the Council in these regulations.”;
- (p) the substitution for subregulation (29) of the following subregulation:
 - “(29) Upon completion of the counting of the electronic votes and paper ballots and the scrutiny by the scrutineers, the scrutineers must immediately report the result of the election in writing to the chairperson and referee.”;
- (q) the substitution for subregulation (32) of the following subregulation:
 - “(32) The chairperson must, after receipt of the report of the scrutineers referred to in subregulation (29) and the declaration from the referee referred to in subregulation (31)—
 - (a) dispatch a notice to every attorney and every advocate admitted to practice and enrolled on the practising Roll, announcing the result of the election;
 - (b) publish the result of the election on the Council's website; and
 - (c) cause every candidate to be advised on the result of the election.”; and
- (r) the substitution for subregulation (35) of the following subregulation:
 - “(35) The chairperson or, if the chairperson has been nominated for election, the executive officer of the Council, must retain the ballot box in a secure place in that condition for a period of three months after the date referred to in subregulation (11)(d)(ii)(ff), after which date he or she must break the seal, unlock the box, empty it of its contents and destroy the contents and the valid declaration forms received by the Council, unless ordered otherwise by an order of court: Provided that should there be a dispute regarding the validity of the electronic declaration form or the electronic ballot, the electronic declaration forms and electronic ballots must be retained until the dispute has been resolved.”.

Substitution for Annexure A to the Regulations

3. Annexure A to the Regulations is hereby substituted for the following Annexure:

**“ANNEXURE A
(Regulation 2)
BALLOT PAPER - ATTORNEYS**

Every attorney who is on the Roll of Practicing Attorneys may vote for a maximum of ten candidates from the candidates listed below.

Please note, however, that in order to comply with section 7(2)(a) of the Legal Practice Act, 2014 (Act No. 28 of 2014) and subject to the availability of the candidates, the four black women, three black men, one white woman and two white men with the highest number of votes in their respective categories will constitute the ten attorneys who will serve as members of the Legal Practice Council.

A short profile of each candidate is available on the Council’s website.

A

B

C

When voting, please take into account the provisions of section 7(2) of the Legal Practice Act:

“When constituting the Council, the following factors must, as far as is practicable, be taken into account:

- (a) the racial and gender composition of South Africa;*
- (b) the objects of the Council;*
- (c) representation of persons with disabilities;*
- (d) provincial representation; and*
- (e) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*
 - (iii) legal education and training;*
 - (iv) consumer affairs;*
 - (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*

- (vi) *the maintenance of professional standards of persons who provide legal services;*
- (vii) *the handling of complaints; and*
- (viii) *competition law."*

NOTE:

The term "Black" has the same meaning as in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), read with the Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act No. 46 of 2013) as a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent, or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date and such other persons as may be categorised as black persons for purposes of that legislation."

Substitution for Annexure B to the Regulations

4. Annexure B to the Regulations is hereby substituted for the following Annexure:

"ANNEXURE B**(Regulation 2)****BALLOT PAPER – ADVOCATES**

Every advocate who is on the Roll of Practising Advocates may vote for a maximum of six candidates from the candidates listed below.

Please note that in order to comply with section 7(2)(a) of the Legal Practice Act, 2014 (Act No. 28 of 2014) and subject to the availability of the candidates, the two black women, two black men, one white woman and one white man with the highest number of votes in their respective categories will constitute the six advocates who will serve as members of the Legal Practice Council.

A short profile of each candidate is available on the Council's website.

A

B

C

When voting, please take into account the provisions of section 7(2) of the Legal Practice Act:

“When constituting the Council, the following factors must, as far as is practicable, be taken into account:

- (a) the racial and gender composition of South Africa;*
- (b) the objects of the Council;*
- (c) representation of persons with disabilities;*
- (d) provincial representation; and*
- (e) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*
 - (iii) legal education and training;*
 - (iv) consumer affairs;*
 - (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
 - (vi) the maintenance of professional standards of persons who provide legal services;*
 - (vii) the handling of complaints; and*
 - (viii) competition law.”.*

NOTE:

The term “Black” has the same meaning as in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), read with the Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act No. 46 of 2013) as a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent, or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date and such other persons as may be categorised as black persons for purposes of that legislation.”.

Commencement

5. These Regulations come into operation on the date of publication in the *Government Gazette*.