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NOTES ON THE AMENDED LEGAL PRACTICE ACT REGULATIONS (2021) MADE IN TERMS OF SECTION 94(1), READ TOGETHER WITH SECTIONS 97(1) AND 109(1) OF THE LEGAL PRACTICE ACT, 2014

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1. INTRODUCTION

- The Legal Practice Act 28 of 2014 (LPA) provides a “legislative framework for the transformation and restructuring of the legal profession and to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of [South Africa]”.¹
- The Select Committee on Security and Justice adopted the Legal Practice Amendment Bill [B11B – 2017] in November 2017, which amended the LPA.²
- The LPA was amended to *inter alia* provide for the further regulation of the duration of the National Forum of the Legal Profession (NF) until the coming into operation of the South African Legal Practice Council (“the Council”) in terms of the LPA, which also provided for the establishment, structure, functions and powers of Provincial Councils.³
- One of the tasks that the NF had to complete concerned the determination of practical vocational training rules that required discussion with legal professionals, and which had deadlocked at times. Consequently, four sets of Rules were eventually forwarded to the Minister, one each from the attorneys’ branch of the profession, the General Council of the Bar & Advocates for Transformation, the National Forum of Advocates; and a fourth, which was a compromise proposal.⁴
- The NF ceased to exist when the South African Legal Practice Council (“the Council”) came into operation.

¹ Whittle, P (2017)

² Ibid

³ Ibid

⁴ Ibid



- The LPA established the Council and Provincial Councils as umbrella bodies regulating both the advocates and attorneys professions, including the content and duration of vocational training and admission and enrolment of legal practitioners.
- The proposed amended Regulations currently before Parliament for approval oblige the Council to (a) determine the (i) course content of structured work programme modules and (ii) method of instruction of each module and (b) develop norms and standards in order to standardise the training provided in terms of the Regulations.
- The Council recently published “The South African Legal Practice Council Rules made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended)”, prohibiting *inter alia* attorneys to stipulate in an advertisement or include in a practical vocational training contract, that a candidate legal practitioner must have a valid driver’s licence, or own or have access to, the use of a vehicle for use in the course of his/her prospective employment as a candidate legal practitioner.⁵

2. PROPOSED AMENDMENTS TO REGULATIONS 6 AND 7

- The Minister of Justice and Correctional Services tabled the amended Regulations 6 and 7 of the Legal Practice Act Regulations in Parliament in April 2021, for approval.
- The amendments are done in accordance with section 94(1), read together with sections 97(1) and 109(1), of the Legal Practice Act 28 of 2014 (LPA).
- Section 94(1) of the LPA, provides that the Minister may make Regulations pertaining to *inter alia* “the establishment of a mechanism to provide appropriate legal education and training”.
- In terms of section 97(1)(a)(v) of the LPA, the National Forum (which ceased to exist when it was replaced by the National Legal Practice Council) had to make recommendations to the Minister in respect of “all the practical vocational training requirements that candidate attorneys or pupils must comply with before they can be admitted by the court as legal practitioners”.
- Section 109(1)(a) of the LPA provides that the Minister must “within six months after receiving recommendations from the National Forum [the Council] as provided for in section 97(1)(a), make regulations by publication in the Gazette, in consultation with the National Forum [the Council], in order to give effect to the recommendations”.
- The tabled amended Regulations give effect to the specified legal education and training recommendations and mainly deal with the (a) modules of the structured course work programme to be completed by pupils and candidate attorneys contemplating to be admitted as advocates and attorneys, (b) duration of vocational training they need to complete and (c)(i) qualifications and experience required of advocates and attorneys overseeing pupils and candidate attorneys and (ii) maximum number of pupils and candidate attorneys they can oversee at the same time.

3. MAIN PROVISIONS OF THE AMENDED REGULATIONS

3.1 Amendment of the Classification of the Regulations

- Because a new sub-clause “7A” is being inserted into the Regulations after Regulation 7, it is necessary to change the classification of the Regulations pertaining to the contents of the new sub-clause 7A.

⁵ GG No. 44068, 15 January 2021.



- Consequently, the Classification of Regulations of the LPA Regulations is amended by the insertion after 7 of the following: “7A. Programme of structured course work”.

3.2 Amendment of Regulation 6

- Regulation 6 is amended by the substitution of a new sub-regulation, Regulation 6(6), and the deletion of sub-regulations 10 and 11 (Regulation 6(10) and 6(11)).
- The new Regulation 6(6) regulates the minimum number of years’ experience required for an attorney overseeing or “engaging” a candidate attorney.
- Regulation 6(6) provides that an “attorney engaging a candidate attorney...must have practised as an attorney for a period of not less than three years, or for periods of not less than three years in the aggregate, during the preceding four years.”
- *The new Regulation 6(6) no longer contains reference to attorneys engaging candidate attorneys doing practical vocational training in the employ of Legal Aid South Africa or other institutions. Why not?*
- *The deleted Regulation 6(10) dealt with the prescribed modules of the programme of structured course work that the Council must standardise and make uniform throughout South Africa, while the deleted Regulation 6(11) required that the Council set norms and standards in order to standardise the training provided in terms of the Regulations. These provisions are now contained in the new inserted Regulation 7A in the amended Regulations, discussed below.*

3.3 Amendment of Regulation 7

- Regulation 7 is amended by the substitution of new sub-regulations, Regulations 7(1), 7(5), 7(7) and 7(8); and the deletion of sub-regulations 9 and 10 (Regulation 7(9) and 7(10)).
- **The new Regulation 7(1) regulates the minimum uninterrupted period that a person (pupil) must serve under a practical vocational training contract if he or she has met all the requirements of a degree stipulated in section 26 of the LPA, and intends to be admitted and enrolled as an advocate.**
- To qualify for admission as an advocate, section 26(1)(a) of the LPA requires the completion of an LLB degree obtained in South Africa, while section 26(1)(b) provides for the completion of a law degree in a foreign country that is equivalent to an LLB degree and is recognised by the South African Qualifications Authority established by the National Qualifications Framework Act 67 of 2008.
- **The minimum uninterrupted period of service under a practical vocational training contract for admission and enrolment as an advocate is 12 months.**
- **In terms of Regulation 7(1)(a), the pupil must also complete a programme of structured course work of not less than 150 notional hours** during the period of service under a vocational training contract, or within a maximum period of 12 months after the termination of such training contract.
- In terms of the definitions of the LPA Rules, 2018 the average time it would take for a person to complete the coursework or “**notional hours**” for purposes of Regulations 6 and 7, means “**the notional duration allocated to a learning activity to be undertaken by a candidate legal practitioner in order to achieve a specified learning outcome, irrespective of the actual time taken by that person to achieve that outcome**”.



- If a pupil fails to complete the programme of structured course work within a period of 36 months after the date of registration of a practical vocational training contract, he or she will have to repeat the course work programme.
- In terms of Regulation 7(1)(b), a pupil who has served a **minimum of 400 notional hours duration in the aggregate, over a maximum period of six months prior to the registration of a practical vocational training contract**, and has completed a programme of structured course work comprising compulsory modules, **must also serve for an uninterrupted period of 12 months.**
- **The amendment substitutes sub-regulation 5 to prescribe the minimum number of years' experience required of an advocate overseeing or "engaging" a pupil.**
- Regulation 7(5) requires that an "advocate engaging a pupil...must have practised as an advocate for a period of not less than three years, or for periods of not less than three years in the aggregate during the preceding four years."
- **The amendment substitutes sub-regulation (7) to limit the number of pupils an advocate may engage or retain under a vocational training contract.**
- In terms of Regulation 7(7), an advocate may not "have more than six pupils in the aggregate engaged or retained in terms of a practical vocational training contract".
- **The amendment substitutes sub-regulation (8) to provide for circumstances under which (a) a practical vocational contract can be ceded and (b) more than two or six pupils, respectively, can be engaged under contract.**
- In terms of Regulation 7(8), when an advocate "dies, retires from practice or is struck off the Roll any advocate who complies with the requirements of these regulations may take cession of the practical vocational training contract of the pupil, despite the fact that the cessionary may then have more than two or six, as the case may be, pupils, under contract".
- *The deleted Regulation 7(9) dealt with the compulsory course work that the Council must standardise and make uniform throughout South Africa, while the deleted Regulation 7(10) required that the Council set norms and standards in order to standardise the training provided in terms of the Regulations. These provisions are now also contained in the new inserted Regulation 7A in the amended Regulations, discussed below.*

3.4 Insertion of Regulation 7A

- **The amendment inserts a new sub-regulation 7A after Regulation 7.**
- Consequently, it necessitated a change to the classification of the Regulations pertaining to the contents of the new sub-regulation 7A.
- The Classification of Regulations of the LPA Regulations is thus amended by the insertion after 7 of the following: "7A. Programme of structured course work".
- Regulation 7A(1) requires that the "Council must standardise the programme of structured course work referred to in regulations 6(1) and 7(1) and make [them] uniform throughout the Republic".
- Regulation 7A(2) prescribes the 23 modules of the programme of structured course work (including drafting legal documents, pleadings and motions, drafting of contracts; matrimonial matters and divorce, customary law and introduction to cyber law), "all of which require satisfactory completion by persons intending to be admitted and enrolled as legal practitioners, namely attorneys, advocates, and advocates with Fidelity Fund certificates as contemplated in section 34 of the [Legal Practice Act]".
- "The primary purpose of the Legal Practitioners Fidelity Fund ('the Fund') is to reimburse clients of Legal Practitioners who may suffer pecuniary loss due to the theft of money or



property entrusted to an attorney [or advocate] in the course of his/her practice as such, or where an attorney acts as executor or administrator in a deceased estate, or as a trustee in an insolvent estate”.⁶

- In terms of section 34 of the LPA, an advocate can “render legal services in expectation of a fee, commission, gain or reward as contemplated in [the LPA] or any other applicable law—(i) upon receipt of a brief from an attorney; or (ii) upon receipt of a request directly from a member of the public or from a justice centre for that service”.
- However, in terms of section 34(2)(b), an advocate can only receive a request to render legal services directly from a member of the public or from a justice centre if he or she “(i) is in possession of a Fidelity Fund certificate [and] (ii) has notified the Council thereof”.
- Finally, Regulations 7A(3) and 7A(4) provide that the Council must determine the (i) course content of structured work programme modules and (ii) method of instruction of each module and (b) develop norms and standards in order to standardise the training provided in terms of the Regulations.

3.5 Commencement of Amended Regulations

The Regulations come into operation on the date of publication in the Government Gazette.

4. CONCLUSION

- The LPA requires the Minister to make Regulations in consultation with the Council.
- The tabled amended Regulations on vocational education and training of advocates and attorneys flowed from extensive discussions with various sectors of the legal profession.
- Although Parliament is required to approve the proposed amended Regulations in terms of section 94(3) of the LPA, it cannot amend the tabled amendments.
- It is recommended that Parliament approve the amended Regulations.

⁶ Legal practitioners Fidelity Fund (2021).



5. SOURCES

Legal Practice Act 28 of 2014

Legal practitioners Fidelity Fund (2021). Official website at <http://www.fidfund.co.za/our-history-our-story/>. Accessed 27 May 2021.

Regulations in terms of Sections 94(1) read together with sections 97(1) and 109(1) of the Legal Practice Act 28 of 2014

Regulations in terms of Section 109 of the Legal Practice Act 28 of 2014

The South African Legal Practice Council Rules made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended). GG No. 44068, 15 January 2021. Available at <https://lpc.org.za/legal-practitioners/rules-regulation/>. Accessed 27 May 2021.

Whittle, P (2017). Portfolio Committee Amendments to the Legal Practice Amendment Bill [B11B – 2017]. Research Unit. Knowledge and Information Division. Parliament of South Africa.

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