

Saturday, September 12, 2020

DEPARTMENT OF SOCIAL DEVELOPMENT DIRECTIONS OF 11 SEPTEMBER 2020

Extra-mural providers:

The Department of Social Development's Directions of 10 July, direction 7, prohibited

- a) Outings and excursions
- b) Extramural activities
- c) Activities that are implemented by any external party that are not part of the staff establishment, and
- d) Open days for external persons to visit the programme or facility

All the Directions of 10 July have been withdrawn, including this one. The only restrictions on external people coming on to ECD premises are the screening protocols (direction 6(2)) of the Directions of 11 September 2020

This means that extra-mural providers can operate at ECD centres. They will have to wait for the go ahead from DBE to operate at primary schools.

The directions do not specify protocols for the extra mural activities. The Department of Health and Department of Employment and Labour Directions issued in terms of the Disaster Management Act apply, as they have throughout. The usual protocols would have to be in place i.e. masks, distancing, sanitising.

It is feasible that the services provided by extra mural providers could be described as part of an ECD programme, in which case all the directions (of 11 September 2020) pertaining to the ECD programme would apply to the activities of the extra mural providers as well i.e. hand washing, masks (according to age), social distancing.

There is no direction prohibiting visitors. Practically speaking however, the requirement to screen every person who enters the premises remains, which would hinder parents collecting children. But it would be possible, for example, to offer a school tour, with the screening protocols in place.

Inspections:

The 'verification and monitoring' process described in the previous directions, does not appear in these directions. It was never lawful to be forced to wait for an inspection to open, and it still isn't. You may operate if you comply with the safety measures as set out in these Directions and those that are relevant from other departments (Health, Labour, as before). You do not have to wait to 'reopen'. You do not have to wait for a date. You do not need an inspection. The Department of Social Development has the right to visit your ECD, as they always did before COVID, in terms of the Children's Act, but you do not need to undergo an inspection/verification process to operate.

You do not need to complete or submit a self-assessment form. All that is required is for you to sign a confirmation in Annexure A.

Annexure A: Declaration Confirming Compliance of an ECD Programme or Partial Care Facility:

The document requires a declaration of confirmation with:

Health, safety and social distancing measures set out in:

- Directions issued by Minister of Social Development
- The Department of Social Development's Standard Operating Procedures and Guidelines
- Regulations made in terms of section 27 (2) of the Disaster Management Act (DMA)

The relevant Directions are:

The Department of Social Development has withdrawn the previous Directions of 10 July, and issued new ones on 11 September 2020. Therefore the only Directions promulgated by the department in terms of the Disaster Management Act Regulations are those of 11 September 2020, as well as those of 9 May and 2 July, neither one of which is pertinent to ECDs, other than the undertaking that the department will continue to pay subsidies, contained in the directions of 9 May.

The reference to standard operating procedures and guidelines might be seen as an attempt to incorporate the circular of 21 June 2020, which includes standard operating procedures, by way of vague reference in the form in Annexure 1. The 'standard operating procedures' circular of 21 June is not specifically referenced and in any event is merely a circular which has not validly been promulgated and/or published as directions (i.e. not 'Gazetted'). Guidelines published on a website have no legal substance.

Finally, even if it were of legal import, the form requires a declaration of compliance with the *health, safety and social distancing measures* (my emphasis) set out in the Directions, the guidelines etc. That is to say, no more is required than compliance with the health, safety and social distancing aspects of these documents. There is no need to declare compliance with, for example, an undertaking to register within 6 months, participation in the Vangasali campaign or any other element which is not a health, safety or social distancing measure.

The Children's Act remains the only relevant legislation governing registration of an early childhood development programme and/or partial care facility. You do not need to make an undertaking to register within six months in order to operate.

Withdrawal of Directions of 10 July:

This means that all the directions of 10 July have been withdrawn. Only the directions of 9 May and 2 July (not relevant for the operation of an ECD, apart from the direction that subsidies will continue to be paid) and 11 September remain. Unless a direction appears in these directions, they are of no force and effect.

Other DSD facilities:

The regulations pertaining to old age homes (direction 11) and community nutritional centres (direction 13) do **not** have any relevance for ECD centres.

This is not an exhaustive list of notes, just an overview. We will endeavour to answer your questions as they crop up.



ANTONIE VAN WYK