

**Summary of
Key Provisions
in the Amended
State of Emergency –
Covid-19 Regulations**



Summary of Key Provisions in the Amended State of Emergency – Covid-19 Regulations

Legal Assistance Centre

20 April 2020

1. Introduction

The State of Emergency – COVID-19 Regulations were issued in terms of **Article 26(5) of the Namibian Constitution**, after the President declared a State of Emergency because of the worldwide outbreak of the disease known as COVID-19. The initial regulations were issued on 23 March 2020 in Proclamation 9 of 2020 and amended on 18 April by Proclamation 13 of 2020.

2. Application of regulations

The amended regulations apply to the whole of Namibia during the extended period of **lockdown**, which is **from 23:59 on 17 April 2020 to 23:59 on 4 May 2020**. The regulations apply over any other laws which say something different.

Regs 2-3

3. Authorised officers

These persons are “**authorised officers**” in terms of the regulations:

- members of the Namibian Police
- members of the Namibian Defence Force
- correctional officers
- immigration officers
- customs and excise officers
- the Director: Disaster Risk Management and members of the public service appointed by that Director as authorised officers.

“**Authorised officers**” have the authority to use reasonable measures to enforce the rules in the emergency regulations. But excessive measures or unreasonable use of force could result in disciplinary steps or even criminal charges.

Reg 1

4. Closure of schools and higher education institutions

All schools and higher education institutions must stay closed during the lockdown – but the Minister of Education, Arts and Culture can arrange methods of learning for government schools that do not require learners to be physically present (for example, using tools such as the internet or radio programmes). The governing bodies of private schools and public or private tertiary institutions can take the same approach.

Reg 4

5. Public gatherings

A “**public gathering**” is a gathering of **more than 10 persons** for a **collective purpose**.

- It does *not* include a situation where more than 10 people simply happen to be in the same place, such as at a supermarket or in a queue at an ATM.
- It does *not* apply to situations where more than 10 people are together at their home because they all live in the same household.

The general rule is that public gatherings are prohibited during the lockdown. But there are some **EXCEPTIONS**:

- where a **funeral** is attended by fewer than 10 persons
- meetings of **government bodies** at national, regional and local levels (including Cabinet or Parliament) to address urgent matters or where some other law requires them to meet
- meetings relating to the **provision of critical services or essential goods**.

If a meeting is allowed by the emergency regulations, the people who gather must follow any measures for preventing the spread of COVID-19 specified in term of the regulations. (For example, some measures that can help prevent the spread of COVID-19 at a gathering include frequent hand-washing, staying at least 1 metre away from other persons and the use of face masks.)

An authorised officer may instruct a public gathering to disperse and may use “all reasonable measures” to get the people present to follow this instruction.

It is a **crime** to organise or facilitate a public gathering, or to refuse to obey an instruction to disperse. The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 5

6. Movement between zones

Travel from one zone to another is allowed only with a permit or if an exemption applies.

- (1) **Travel between zones with a permit:** A person can apply for a permit for travel from one zone to another –
- for essential medical treatment
 - to attend the funeral of a family member, acquaintance or dependant
 - to assist a family member, acquaintance or dependant who is ill or in a distressing situation
 - for any other reason approved by an authorised officer.

A person who wants a permit must apply to the nearest authorised officer, or at the point of exit from one zone or the point of entry into another zone.

- (2) **Exemptions:** A person can travel from one zone to another *without a permit* if the movement is necessary for one of these reasons -
- transporting essential goods
 - the enforcement of law or public order
 - facilitating the distribution of food or other necessities of life
 - maintaining or repairing infrastructure that is necessary or useful for providing essential goods or critical services
 - performing a critical service that cannot reasonably be postponed.

Any other travel out of one zone and into another is a **crime**. **An authorised officer who has a reasonable suspicion that a person is about to travel between zones illegally may instruct the person to stop.** Failing to comply with this instruction is a **crime**. The punishment for both crimes is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Zones

Namibia is divided into **10 zones** for the lockdown:

- Zone 1 = **Zambezi** region
- Zone 2 = **Kavango East and Kavango West** regions
- Zone 3 = **Ohangwena, Oshikoto and Oshana** regions
- Zone 4 = **Omusati** region
- Zone 5 = **Otjozondjupa and Omaheke** regions, *excluding* the areas in Zone 6 (Okahandja and the road from Okahandja to Windhoek)
- Zone 6 = **Khomas region together with the Rehoboth and Okahandja local authority areas**, the tarred roads connecting Windhoek and Rehoboth and between Windhoek and Okahandja, and strips of five kilometers on either side of these tarred roads
- Zone 7 = **Erongo** region
- Zone 8 = **!Karas** region
- Zone 9 = **Hardap** region, *excluding* the areas in Zone 6 (Rehoboth and the road from Rehoboth to Windhoek)
- Zone 10 = **Kunene** region.

Reg 6, Annexure A

7. Entry from other countries into Namibia

There are three categories of people who will be allowed to enter Namibia from another country during the lockdown:

- (1) These persons have a right to enter Namibia from other countries:
 - a **Namibian citizen**
 - a **permanent resident** of Namibia
 - a person who is **domiciled or lawfully resident** in Namibia
 - a person who is **providing medical services** in Namibia to help with COVID-19
 - **diplomatic or consular staff**
 - a **spouse or child of one of the persons listed above.**

- (2) In addition, the following persons may enter Namibia from other countries during the lockdown if their entry is otherwise lawful in terms of Namibia's immigration laws:
 - a **driver of a vehicle transporting goods** for normal business, trade or commerce
 - a **person performing any service relating to the operation of such a vehicle**
 - a **person performing any other necessary service relating to such transport.**

- (3) Persons who do not fall under any of the groups listed above may be allowed to enter Namibia if they meet the **requirements determined by the Minister responsible for immigration in directives issued under these regulations or under the Immigration Control Act.**

Reg 7

Quarantine

Anyone who enters Namibia from another country can be required to comply with whatever quarantine arrangements are agreed between that person and the authorised officer who permitted entry into Namibia.

Reg 8

8. Restriction of movement outside the home

During lockdown, **people are not allowed to leave their homes EXCEPT for these reasons:**

- performing a critical service
- obtaining essential goods
- seeking medical assistance
- attending a funeral of a family member, acquaintance or dependant (keeping in mind the rules on public gatherings)
- visiting a chemist, a store that sells food supplies, a court, a bank or some other provider of essential goods or critical services
- for physical exercise either alone or in groups of not more than three persons
- for any other justifiable reason.

An authorised officer may instruct a person to stop any conduct that breaks this rule or appears likely to break this rule. A person who disobeys such an instruction commits a **crime**. The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 9

9. Alcohol

During the lockdown, it is a crime to buy or sell liquor. The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

An authorised officer who suspects that any liquor has been illegally bought or sold may seize that liquor without a warrant. The seized liquor must be dealt with in the same way as seized liquor under the Liquor Act 6 of 1998.

Reg 11

What is “liquor” for this purpose?

- (a) spirits, wine or beer that is **at least 3% alcohol by volume**, excluding methylated spirits;
- (b) tombo or any other fermented, distilled, spirituous or malted drink, traditional or non-traditional, that is **at least 3% alcohol by volume**;
- (c) any drink or concoction which the Minister has declared to be liquor by notice in the *Government Gazette* under section 1 of the Liquor Act 6 of 1998.

“Liquor” does **not** include any item containing **alcohol that is manufactured or intended for medical purposes**. There is no restriction on buying and selling this kind of alcohol.

10. Critical services

There are special rules that apply to persons involved in “critical services”.

The head of the institution that provides a critical service (or a person delegated by the head) will decide what critical services will be performed during lockdown and what staff members are needed to do this.

The head of the institution (or the person they delegated) must issue a document to every staff member who will be needed. This document must include:

- the name and surname of the staff member
- his or her identification number
- the critical service being provided
- the name of the institution
- the signature of the head of the institution (or the person they delegated).

An authorised officer may demand to see the document authorising a person to carry out critical services.

An authorised officer may also screen any person who is authorised to perform critical services for COVID-19.

The head of the institution must make sure that persons who perform critical services follow any measures to combat, prevent and suppress the spread of COVID-19 specified under the regulations.

It is a **crime** to fail to produce the document giving authority to perform a critical service to an authorised officer, or to any person who is accessing the critical service. It is also a **crime** for a person who performs a critical service to refuse to be screened for COVID-19. The punishment for these crimes is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Critical services

1. Ambulance services
2. Casualties services
3. Theatre services
4. Intensive Care Unit (ICU) services
5. Hospital wards
6. Laboratory services
7. Pharmaceutical services
8. Dental services
9. Radiography services
10. Physiotherapy services
11. Mortuary services
12. Medical services including medical specialised services
13. Hospital kitchen services
14. Hospital laundry services
15. Emergency management services
16. Disaster management services
17. Potable water services
18. Waste water management services
19. Scientific services
20. Electricity distribution services
21. Electricity operation services
22. Electricity maintenance services
23. Electricity transmission services
24. Electricity network operation services
25. Electricity system operation services
26. Electricity system security and planning services
27. Electricity engineering services
28. Electricity energy trading services
29. Air navigation services
30. Air traffic management services
31. Communication navigation and surveillance system services
32. Search and rescue services
33. Aeronautical information services
34. Meteorological services for air navigation services.

Providing **essential goods** is also a critical service. Essential goods are discussed in the next section.

Services can be added or removed from this list by the President by amendments to the regulations.

Annexure B

Other Critical Services

1. **Agriculture and forestry**

- agricultural production and value chains (including raising animals, and growing crops and gardens)
- involvement in supply of such products
- farming
- veterinary services
- services related to plant health
- pest control services
- providers of feed, chemical remedies and fertilizer
- millers
- related logistics services.

2. **Fishing**

- harvesting fish other than for leisure,
- cultivating fish
- value chain activities relating to fish, as part of food production for Namibia or for export
- maintaining fishing vessels
- maintaining fishing processing plants

3. **Mining and quarrying**

- mining and related activities to maintain mining operations, including critical maintenance work on plant and equipment
- normal mining operations, including value chain activities
- public health measures may be imposed on mines

4. **Manufacturing**

- manufacturing health-related products
- manufacturing hygiene and sanitary related items, including health products and supplements
- manufacturing food, non-alcoholic beverages and essential products (and the inputs for such products)
- includes production for export of these products
- production of disposable health and hygiene and sanitary related products
- production of packaging for essential health and food supply chains
- processing food, beverages and essential goods that support essential or critical business continuity services to fight COVID-19

5. **Electricity, gas, steam and air conditioning supply**

- public and private organisations, staff and service providers essential to the generation, transmission and distribution of electricity, fuel, gas, steam and air conditioning
- includes local authorities and regional councils
- includes suppliers of logistics, feedstock and maintenance required for security of electricity supply

6. **Water supply, purification, desalination, sewerage, waste management and remediation activities**

- public and private organisations, staff and service providers essential supply of bulk and drinkable water and sanitation
- includes local authorities and regional councils
- includes businesses involved in the supply of materials, chemicals and related equipment

7. **Construction**

- maintenance for retailers, manufacturers producing essential goods and support to medical services
- any construction that cannot be reasonably postponed
- plumbing and electrical services
- security installations and maintenance
- water treatment and sewerage
- building medical facilities and quarantine camps to fight COVID-19

- 8. Wholesale and retail trade, repair of motor vehicles and motorcycles**
 - retail and wholesale shops, supermarkets, open markets and informal traders that sell essential goods or provide critical services
 - home kiosks (such as spaza shops) for food and essential goods
 - essential hygiene goods include toilet paper, cleaners, sanitizers and disinfectants, personal hygiene products and essential supplies for those taking care of the sick and elderly and for people to remain healthy
 - services related to the repair of motor vehicles and motorcycles in as far as this supports the fight of COVID-19
- 9. Transportation, logistics and storage**
 - warehousing, transport (including courier services), distribution, cold storage and logistics for essential goods, production inputs and health-related goods
 - humanitarian and relief functions in the fight of COVID-19
- 10. Accommodation and food service activities**
 - allowed to the extent that they support essential or critical business continuity services relating to the fight of COVID-19, with restaurants to provide only take away and not dining on the premises
- 11. Information and communication**
 - communication and media services on screen, television, radio, print, broadcast and online.
- 12. Legal, financial, banking, social security and insurance activities**
 - legal, court, financial, banking and insurance services and health funders required to finance and support essential and critical business continuity and to provide short term bridging finance
- 13. Professional, scientific and technical activities**
 - professional, scientific and technical services to the extent that they support the COVID-19 response, or essential and critical services
- 14. Support service activities**
 - private services to the extent that they support the COVID-19 response, or essential and critical business continuity services
- 15. Public administration, defence, safety and security**
 - public office bearers, and personnel and functionaries at national, regional and local levels to the extent that they support the COVID-19 response, or essential and critical business continuity services
 - safety and security services protecting people and property
- 16. Human health and social work activities**
 - life and health services
 - energy, food and water supply
 - social, transactional, communications, law and order and international critical business continuity services
 - care services relating to the sick, frail, children, or other vulnerable persons, in a home or homestead
 - care facilities for children of critical service workers
- 17. Information communications technology**
 - data centres, fibre optic infrastructure, towers and antennae.

Annexure B

11. Closure of businesses

During lockdown, all businesses and other entities must stop operations EXCEPT those involved in manufacturing, supplying or providing essential goods or critical services – including the import and export of essential goods, or equipment and goods necessary for critical services.

All shops and businesses must be closed, except for any shop or business that sells essential goods or provides critical services.

All open markets, informal trading activities, shebeens, bars, pubs and nightclubs must be closed EXCEPT these:

- open markets that sell essential goods or provide critical services
- informal traders that sell essential goods or critical services

Restaurants, cafés and coffee shops may remain open but only for take-aways.

Businesses that are registered with the Business and Intellectual Property Authority and are involved in the manufacturing, distribution, supply or provision of essential goods or critical services can apply to the Minister of Industrialisation and Trade for confirmation of their right to continue operating during the lockdown.

Heads of institutions of businesses and entities that are allowed to continue operating during lockdown must make sure that they apply measures to prevent the spread of COVID-19.

A person who violates the lockdown rules regarding businesses and shops commits a **crime**. The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 12

Essential Goods

1. Food

- (a) food products, including water and non-alcoholic beverages;
- (b) animal food; and
- (c) chemicals, packaging and secondary products used to produce these food products.

2. Cleaning and hygiene products

- (a) toilet paper, sanitary pads, sanitary tampons
- (b) hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, personal protective equipment
- (c) chemicals, packaging and secondary products used to produce or preserve these items
- (d) products for the care of children
- (e) personal care products, such as body and face washes, roll-ons, deodorants, toothpaste and other hygiene products.

3. Medical

- (a) medical and hospital supplies, equipment and personal protective equipment;
- (b) chemicals, packaging and secondary products used to produce or preserve these items
- (c) pharmaceutical supplies, such as prescription medicine
- (d) contraceptives including condoms.

4. Fuel, including coal and gas.

5. Wood for cooking purposes

6. Basic goods, including airtime and electricity

7. Fish and fish products

8. Mining products

9. Coffins

10. Plumbing and electrical supplies

11. Educational materials

12. Goods necessary to provide critical services

Annexure C

12. Court proceedings

The Chief Justice is authorised to issue directions about the operation of the courts during lockdown. These directives have postponed all court cases that are not urgent. The courts will deal with these matters during lockdown:

- accused persons brought to a magistrates' court for a **first appearance**
- accused persons bringing a **bail application**
- **appeals against the refusal of bail**
- **urgent applications** in the High Court, the Labour Court or the Electoral Court
- **registration of deceased estates** less than N\$100 000
- **urgent child protection matters** under the Child Care and Protection Act 3 of 2015
- applications for **interim protection orders** under the Combating of Domestic Violence Act 4 of 2003
- applications for **search warrants**
- authorisations for **post mortem examinations** in terms of the Births, Marriages and Deaths Registration Act 81 of 1963.

Reg 13, Directions relating to Judicial Proceedings, GN 90/2020

13. Directives

The President may authorise a minister to issue directives that supplement or explain any of the regulations, or assist with their enforcement. These directives have the force of law if they are approved by the Attorney-General and published in the *Government Gazette*. Such directives can create criminal offences punishable by a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 14

14. Public and Environmental Health Act

The Public and Environmental Health Act 1 of 2015 was passed by Parliament but has not yet been brought into force. The emergency regulations have brought Part 3 of that Act into force with respect to COVID-19.

One of the important measures in that Part of the Act concerns individual rights and duties:

- **A person has a duty to take precautions to avoid contracting COVID-19.**
- **A person who suspects that he or she may have COVID-19 must try to find out if this is the case, and find out how to prevent infecting others.**

- **A person has the following rights, to the extent that these rights do not infringe on the well-being of other persons:**
 - the right to **protection against unlawful discrimination**
 - the right to **respect for his or her privacy**
 - the right to **information about the medical and social consequences of the disease**
 - the right to **access available treatment.**

Reg 15

15. Other offences

It is a **crime** –

- to falsely pretend to be an authorised officer
- to try to obstruct or improperly influence an authorised officer who is carrying out official powers or functions
- to give false or misleading information to an authorised officer
- to do anything aimed at improperly influencing an authorised officer
- to publish in any way, including on social media, any of these things:
 - false or misleading statements about COVID-19
 - any statement intended to deceive regarding the COVID-19 status of any person
 - any statement intended to deceive regarding the correct measures to combat COVID-19.

Intentionally spreading fake news about COVID-19 is a crime.

The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 16

This summary was produced by the Legal Assistance Centre with support from the Hanns Seidel Foundation.