**BILL WATCH 1/2021**

**[4th January 2021]**

Public Health Lock-down Order : New Clampdown

The national lock-down was extended and intensified by two SIs published in the past few days. SI 314 of 2020 *[*[*link*](http://www.veritaszim.net/node/4657)*]* extended the declaration of COVID-19 as a formidable epidemic disease, while SI 10 of 2021 *[*[*link*](http://www.veritaszim.net/node/4658)*]* re-imposed a tight lock-down on the whole country.

SI 314 of 2020

In terms of section 3(2) of the Public Health (COVID-19 Prevention, Containment and Treatment Regulations [SI 77 of 2020], COVID-19 was declared to be a formidable epidemic disease until the 1st January this year. After that date all regulations and orders issued under the Public Health Act to combat COVID-19 would have fallen away. The pandemic is by no means over so SI 314 of 2020 amended section 3(2) of the regulations to remove the time-limit on the declaration. COVID-19 remains a formidable epidemic disease until the declaration is terminated by notice in the Gazette.

SI 10 of 2021

The effect of this SI was explained by the Vice-President responsible for the Ministry of Health and Child Care in an admirably clear and concise press statement. After noting that there had been an alarming increase in COVID-19 cases, he said:

“In light of the recent surge in COVID-19 cases the following stiff lock-down measures are being put in place with immediate effect:

1. Gatherings are reduced to not more than 30 people at all funerals. All other gatherings at weddings, churches, bars, bottle stores, gymnasiums, restaurants etc are banned for 30 days.
2. The existing Covid-19 preventive health measures will be strictly enforced, that is to say correct wearing of face masks, social distancing, hand sanitization and temperature checks will be strictly enforced and offenders will be prosecuted.
3. Only essential services are to remain open such as hospitals, pharmacies and supermarkets, with only essential staff allowed to come to work. These services can only open at 8 am and must close at 3pm and will be subject to curfew that will start at 6 pm and end at 6 am. [Veritas note: the new curfew hours apply to everyone, other than those employed in essential services]
4. Of the other commercial services, only Part 4 lock-down order services such as mining, manufacturing and agriculture will operate as before. Other commercial services specified in Part 5 of the lock-down order, that is to say all formal businesses and registered informal traders, are suspended from Tuesday 5 January 2021 for 30 days.
5. Inter-provincial and inter-city transport services are restricted only to essential services and Part 4 commercial services.
6. People must stay at home save for buying food and medicines or transporting sick relatives. Other exceptions are as specified in the lockdown order.
7. As for schooling, only examination classes are to open now.
8. Cross-border traders are stopped forthwith save for commercial and transit cargo related to essential and critical services.
9. Air transportation remains unhindered and will continue as before with arrivals and returning residents being required to present COVID-19 free certificates. As for land access, only returning residents and essential service drivers will be admitted subject to presentation of COVID-19 free certificates. These certificates must have been issued at least 48 hours before departure.
10. Just to be clear, restaurants, bottle stores and bars are closed for 30 days except for bars and restaurants serving hotel residents. Also, tourist facilities and national parks will operate as before subject to the usual health precautions.”

“Exemption letters” for Workers in Essential Services

As stated by the Vice-President, essential services will be allowed to open for the next 30 days, and essential staff in those services will be permitted to pass through police roadblocks to go to work. The only other businesses allowed to be open are tobacco auctions and mines.

Essential services are defined in section 2 of the Lock-down Order and the main ones are:

* Hospital services
* Medical supply services
* Transport, communications and telecommunications services, including the Government’s V.I.D. and Ethiopian Airways
* Services relating to the supply and distribution of electricity and water
* Sanitary services
* Services relating to the production, supply and distribution of food including supermarkets and food stores)
* Banks, bureaux de change, money transfer agencies and stock exchanges
* Fire brigades and ambulance services
* Coal mining
* Communications services
* State and private security services
* Courts
* Funeral services
* Agriculture and veterinary services, including the supply of agricultural inputs, stock feeds and veterinary requirements
* Educational services connected with the conduct of public examinations
* Parliament of Zimbabwe
* The Zimbabwe Electoral Commission

Employees in those services, and persons connected with tobacco auctions and mines, will be allowed to go to and from their work.

The National Police Spokesman is reported to have said that workers in essential services should be provided with letters of identification allowing them to pass through police roadblocks. In his words:

“Remember last time on issues to do with essential services, companies were supposed to issue exemption letters and these letters were verified at checkpoints. … Officers on checkpoints will have to verify if one is an essential service worker or not.

“It means companies or institutions that fall under essential services must also assist by providing the letters so that their workers can produce them at checkpoints to avoid inconveniences.”

The same, presumably, applies to employees in tobacco auctions and mines.

Comment

It is as well that the Vice-President explained the new lock-down measures, because without his press statement SI 10 of 2021 would have been difficult to follow. His explanation was clear and accurate, as we have said, but the following additional points should be made:

Duration of the new measures

The new measures will last for 30 days from the 3rd January, so they will expire at midnight on the 2nd February. This does not apply to the new curfew hours of 6 p.m. to 6 a.m., which will remain in effect until they are expressly amended or the curfew is revoked.

Number of people permitted to gather in public

A previous amendment to the Lock-down Order permitted up to 100 people to gather in public places *[See Bill Watch 84/2020 of the 16th December 2020 – [*[*link*](http://www.veritaszim.net/node/4651)*]* but that number has now been reduced to two. So the general rule is that public gatherings of more than two people are prohibited, except that:

* Up to 100 people can gather to queue for public transport *[section 5(1)(a) of the Order]*
* Up to 30 people may attend a funeral, as the Vice-President said
* Up to 100 people can gather in supermarkets, food stores, hospitals and pharmacies and for the purpose of obtaining or supplying essential services *[section 5(1)(d)-(g) of the Order as read with the definition of “gathering” in section 2 of SI 77 of 2020]*
* Up to 100 people can gather for the purpose of tobacco auctions and mining *[section 5(1)(h) of the Order as read with the definition of “gathering”]*.

There is no mention in the new SI of sports so presumably up to 100 people can gather to participate in and/or watch non-contact sports.

In all these cases, people must wear face masks and observe social distancing.

Business hours

Supermarkets, essential services and businesses supplying goods and services are allowed to open daily from 8 a.m. to 3 p.m., as the Vice-President said. Funerals however can be conducted until 4:30 p.m. and so can sporting events and any other gatherings permitted by the Lock-down Order *[section 25(5)(b) & (c) of the Order].*

Constitutionality of the amendments

Although the validity of the amendments might be challenged on at least two grounds, any challenges would be unlikely to succeed for reasons given below:

**Lack of consultation**: The latest amendments were published without prior consultation between the Government and interested parties such as transport operators, vendors and representatives of commerce and industry. Section 141 of the Constitution requires Parliament to ensure that interested parties are consulted about Bills before they are enacted, and the same must apply to regulations and orders made under statutory powers delegated by Parliament. On the other hand, section 141 allows consultation to be dispensed with if it is inappropriate or impracticable, and that seems to have been the case here: there was a need to deal quickly with the spike in COVID-19 cases.

The lack of consultation has however meant that interested parties have not been given adequate time to prepare for the new measures. For example, employers in essential services have not had time to write exemption letters to enable their employees to pass through police road-blocks. The spike in COVID-19 cases was foreseeable and the Government should have anticipated it in sufficient time to allow everyone concerned to be consulted and warned about what would be expected of them. As it is many vendors, cross-border traders and others in the informal sector are faced with economic devastation without any warning or provision for compensation, and without the protection of social security safety nets.

**Infringement of fundamental rights**: Section 60 of the Constitution guarantees everyone the right to practise their religion in public, i.e. to attend religious services. The new amendments seem to infringe this right by banning religious services for the next 30 days. However the ban can probably be justified in terms of section 86 of the Constitution, which allows fundamental freedoms such as religious freedom to be limited where necessary in the interests of public health amongst other things. Also the ban is not permanent but will last for only 30 days.

The amendments might also be challenged on the ground that they infringe the right of assembly and the freedom to demonstrate, guaranteed by sections 58 and 59 of the Constitution: previously up to 100 people could attend political meetings or hold public demonstrations *[see Bill Watch 84/2020 of the 16th December 2020 –* [*link*](http://www.veritaszim.net/node/4651)*]* but now only two people are allowed to meet in public. However this can probably be justified on the same grounds as we suggested above in relation to the ban on religious services.

Updated consolidated versions are available of the COVID-19 regulations [SI 77/2020 *[*[*link*](http://www.veritaszim.net/node/4659)*]*] and National Lockdown Order *[*[*link*](http://www.veritaszim.net/node/4660)*]*.

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