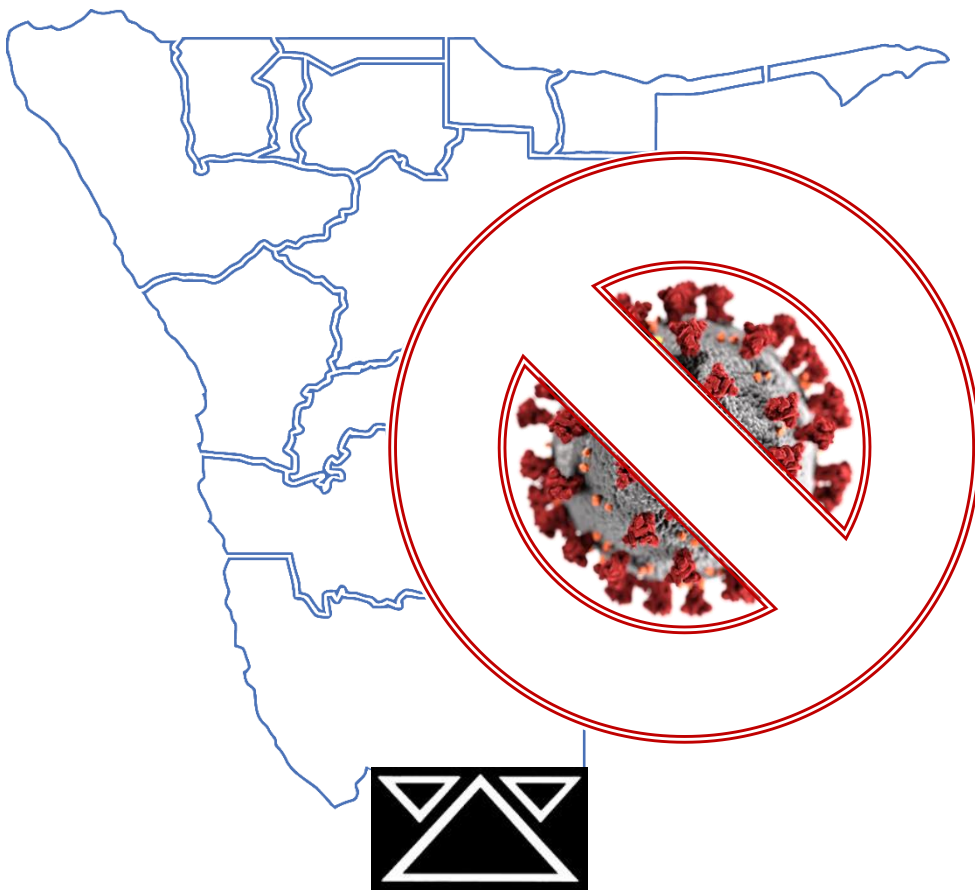


Summary of Key Provisions in the **STAGE 2:** **State of Emergency – Covid-19 Regulations**



Legal Assistance Centre

11 May 2020

Summary of Key Provisions in the STAGE 2: State of Emergency – Covid-19 Regulations

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 2020 by Proclamation 13 of 2020. This first set of emergency regulations expired at the end of lockdown on 4 May 2020, They were then replaced with a new set of “Stage 2” State of Emergency – COVID-19 Regulations issued in Proclamation 17 dated 4 May 2020.

2. Application of regulations

The Stage 2 regulations apply to the whole of Namibia during **Stage 2**, which is **from 23:59 on 4 May 2020 to 23:59 on 1 June 2020**. The regulations apply over any other laws that may contradict with the regulations.

Regs 2-3

3. “Authorised officers”

The definition of “authorised officers” in the Stage 2 regulations remains the same as before:

- 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

Reg 1

4. Closure of schools and higher education institutions

All schools and higher education institutions remain closed during the Stage 2 period – but the Minister of Education, Arts and Culture can arrange alternative 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 programs). The governing bodies of private schools and public or private tertiary institutions can take the same approach.

Reg 4

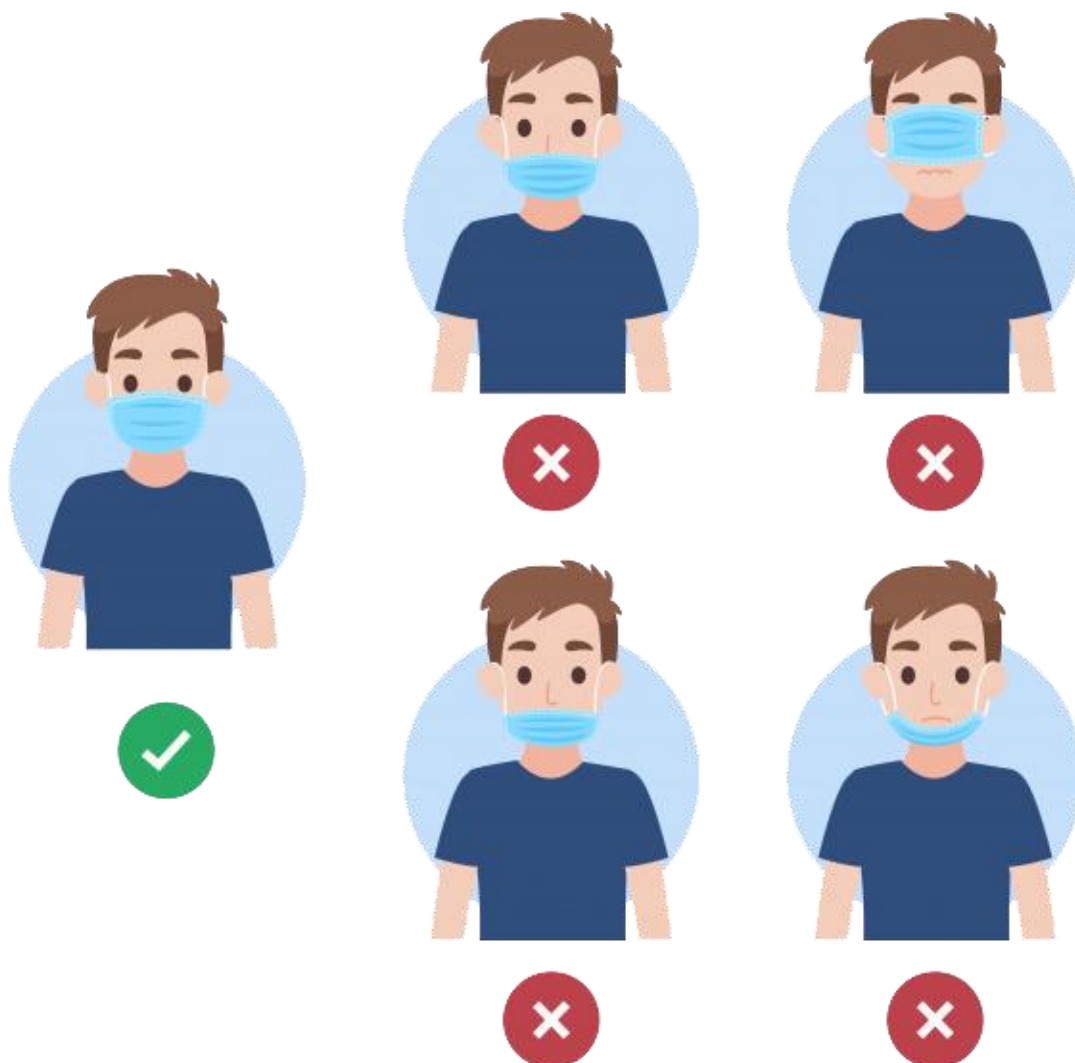
5. Masks

All persons must wear masks in public places during State 2. A mask is a covering made of any suitable material that covers a person's nose and mouth for purposes of preventing the transmission of the coronavirus.

What can happen to a person who is not wearing a mask in a public place? An authorised officer may ask that person to wear a mask or to leave the public put a mask on, to make sure that the mask is covering the nose and mouth or to leave the public place.

It is a **crime** to refuse to comply with such an instruction. The punishment is a fine of up to up to N\$2 000 or imprisonment for up to six months or both.

Reg 5 read with Reg 1 (definition of "mask")



6. Gatherings

A “gathering” is a group of **more than 10 persons** for a **common 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 gatherings are prohibited during Stage 2. But there are some **EXCEPTIONS**:

- where persons are gathered at their workplace
- where a **funeral** is attended by fewer than 10 people
- 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
- the gathering is for the proceedings of a court or tribunal.

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 the people at a prohibited public gathering to disperse and may use “all reasonable measures” to get the people present to follow this instruction.

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

Reg 6

7. Alcohol

During Stage 2, 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.

This prohibition applies to **all alcoholic drinks, regardless of the level of alcohol it contains. THIS IS A CHANGE FROM THE LOCKDOWN PERIOD.** Liquor is now defined as **any spirits, wine, beer, cider or other beverage containing alcohol and intended for human consumption.**

The buying and selling of liquor is **permitted** for purposes of **import or export.**

The definition of “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.

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 7 read with Reg 1 (definition of “liquor”)

8. Restrictions relating to certain businesses, operations and activities

All businesses, operations and activities are permitted during Stage 2 **except:**

- cinemas and theatres
- contact sports and sporting events
- casinos and gambling houses
- nightclubs
- liquor outlets
- bars and shebeens
- entertainment events and concerts
- gyms and exercise centres

- seminars, conferences, workshops and summits where the number of persons in attendance does not exceed 10 people.

Accommodation establishments and other businesses that sell food – including kapana sellers – must operate only on a take away basis. No food can be sold for consuming on-site

The persons in charge of permitted businesses, operations and activities must make sure that the persons accessing their services follow measures for preventing the spread of COVID-19 at all times (such as wearing masks, using hand sanitiser and exercising social distancing).

It is a **crime** to violate any of the rules on businesses, operations and activities. The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 8

9. Additional provisions relating to workplaces

The Stage 2 regulations include some suggestions for good practices at workplaces.

Heads of institutions are encouraged to **allow vulnerable employees to work from home**, subject to suitable arrangements between the employer and employee. “**Vulnerable employees**” are:

- pregnant women
- nursing mothers
- employees with pre-existing conditions that might compromise their immune systems (such as heart disease, high blood pressure, respiratory problems, obesity, diabetes, or tuberculosis).

Heads of institutions are encouraged **to provide masks to employees**.

Heads of institutions *must* ensure that employees follow measures to prevent the spread of COVID-19.

Reg 9

Measures that can help to prevent the spread of COVID-19 in the workplace include:

- ensuring that employees wear masks properly
- regular cleaning and disinfecting of surfaces
- keeping a clientele log to assist with contact tracing
- encouraging hand washing and social distancing
- reminding employees to avoid touching their faces.

10. 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:
 - **Namibian citizen**
 - **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:
 - **the operator of a vehicle (including a train, aircraft or ship[ping vessel) transporting goods**
 - a **person performing any service relating to the operation of such a vehicle**
 - a **person performing any other necessary service relating to the transport of goods.**

(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 10

11. Quarantine

Anyone who enters Namibia from another country can be required to comply with quarantine arrangements set out in directives issued under the regulations. It is a **crime** for a person to unreasonably refuse to be quarantined. The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 11

12. Transportation of goods and persons

During Stage 2, public transportation operations for the transport of goods and persons are allowed to operate within Namibia – but the transportation of goods is permitted only where it is part of normal business, trade or commerce.

Owners and operators of public transportation must ensure that measures to combat the spread of COVID-19 are followed at all times by their operations, their employees and the persons accessing their services.

Violating any of these rules is a **crime**. The punishment is a fine of up to N\$2 000 or imprisonment for up to six months or both.

Reg 12

13. 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 13

14. Court proceedings

The Chief Justice is authorised to issue directions about the operation of the courts during Stage 2.

Reg 14

15. 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 15

16. 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:
 - any false or misleading statement about the COVID-19 status of any person
 - any false or misleading statement about the correct measures to combat COVID-19.

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

Reg 16

17. Transitional provisions

Anything done under the provisions of the previous State of Emergency Regulations (such as an arrest or the issue of directives) will be treated as if was done under these new replacement regulations with respect to Stage 2 instead of the lockdown period.

Reg 17

18. Regulations bind the State

These regulations apply to government in the same way as they apply to private persons and businesses.

Reg 18

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