



## Questions and Answers

### Regulations Issued under the Quarantine and Prevention of Diseases Ordinance & how this impacts the COVID-19 response in Sri Lanka

Centre for Policy Alternatives (CPA)  
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Following the detection of a spate of new COVID-19 cases in Sri Lanka, regulations were made by the Minister of Health under Sections 2 and 3 of the Quarantine and Prevention of Diseases Ordinance (the Ordinance) by Gazette Extraordinary No. 2197/25 of Thursday, October 15, 2020. This guide briefly examines the legal framework relating to these regulations as well as other action taken to combat the COVID-19 pandemic.

The Centre for Policy Alternatives (CPA) has consistently reiterated the importance of the effort to tackle the pandemic adhering to constitutional governance and upholding the rule of law in Sri Lanka. Several other documents were issued previously by CPA on a range of legal and human rights issues linked to COVID-19 which are available on the [CPA website](#).

#### **1. What are the quarantine regulations which have been gazetted following the COVID-19 outbreak in Sri Lanka?**

- Gazette Extraordinary No. 2167/18 - Friday, March 20, 2020 declaring COVID-19 a quarantinable disease for the purposes of the existing Quarantine Regulations passed under the Ordinance in 1925 and 1960 making these regulations applicable to procedures taken in relation to COVID-19.
- Gazette Extraordinary No. 2168/6 of Wednesday, March 25, 2020 defining the proper authority and a diseased locality.

- Gazette Extraordinary No. 2170/8 of Saturday, April 11, 2020 on mandatory cremation of persons who die of COVID-19.
- Gazette Extraordinary No. 2197/25 of Thursday, October 15, 2020 on restriction of movement and guidelines to be followed in public places.

## 2. How do these regulations impact ordinary citizens?

These regulations have a direct impact on the lives of ordinary citizens as follows:

- The maximum occupancy rates for public buildings and public transportation may be limited to ensure adequate social distancing.<sup>1</sup>
- Where a proper authority has established and designated a hospital or place of observation, no unauthorized person may approach or come within one hundred yards of it.<sup>2</sup>
- A proper authority may “cause any person diseased, or *suspected to be diseased*<sup>3</sup>, in any house or place to be removed to some public hospital or other place provided for the purpose, for such period as may be directed” or direct such person for self-quarantine and obstructing this process is an offence under the Ordinance.<sup>4</sup>
- A proper authority may enter a house or premises for the purposes of ascertaining whether any of the occupants are suffering from any disease of a contagious, infectious or epidemic nature.<sup>5</sup>
- A person suffering from a contagious or infectious disease is prohibited from using public conveyance<sup>6</sup> (including taxis and ride-hailing options). The

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<sup>1</sup> Regulations 61 and 65 of the 1925 Regulations and Regulations 90, 94, 95 and 97 of the Regulations of October 2020.

<sup>2</sup> Regulations 43 and 44 of the Quarantine Regulations 1925

<sup>3</sup> Due to this, an individual may not refuse to report for quarantine on the basis that he was not symptomatic.

<sup>4</sup> Regulation 49 of the Quarantine Regulations 1925 and Section 4 (1) of the Ordinance; Regulation 91 and 92 of the Regulations of October 2020.

<sup>5</sup> Regulation 66 of the Quarantine Regulations 1925

<sup>6</sup> A Public Conveyance is broadly defined as any railroad car, street car, ferry, cab, bus, airplane or other vehicle which carries passengers for hire.

regulations also forbid an owner or driver of a public conveyance from carrying such a diseased passenger, without the sanction of a proper authority.<sup>7</sup>

- Every person in a public place or any other place where such person may come into close contact with another person, in any diseased locality must wear a face mask at all times and maintain social distancing of not less than one meter between two persons.<sup>8</sup>
- A person shall not open to the public any institution, place of business or any other similar premises in a diseased locality within the period determined by the proper authority, unless permitted by the proper authority. The proper authority may allow functioning of any institution, work place, super market, shop, sales outlet or any other place of business which provides essential services or any other service required for maintaining national security or public health in any diseased locality.<sup>9</sup>
- The employer or person in charge of any institution or work place or a person who owns or is in charge of a super market, shop, sales outlets or any other place of business providing essential services is authorized to;
  - a) Ensure that the maximum number of persons permitted within the premises is not exceeded and ensure that social distancing is maintained.
  - b) Ensure that all persons wear a face mask at all times.
  - c) Ensure that body temperature of all persons entering is measured.
  - d) Provide adequate handwashing facilities and ensure that all persons wash their hands before entering.<sup>10</sup>
- Where the body temperature of any person is more than the body temperature as determined by the proper authority, such person shall not be allowed to enter such premises.<sup>11</sup>

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<sup>7</sup> Regulation 69 of the Quarantine Regulations 1925

<sup>8</sup> Regulation 90 of the Regulations of October 2020.

<sup>9</sup> Regulation 92 and 93 of the Regulations of October 2020.

<sup>10</sup> Regulation 94 and 95 of the Regulations of October 2020.

<sup>11</sup> Regulation 96 of the Regulations of October 2020.

- The driver, conductor and the owner of a vehicle used for public transportation in any diseased locality shall ensure social distancing between passengers and follow other disease preventive measures.<sup>12</sup>

### **3. Who is the Proper Authority?**

The Director General of Health Services was designated as the “Proper Authority” in respect of the whole of Sri Lanka by Gazette Extraordinary No. 2168/6 dated 25 March 2020.

According to Regulation 1 of the regulations issued by the above Gazette, the Director General of Health Services **may delegate** some of his powers to the Medical Officer of Health as well as the Chairpersons of the local authorities, medical officers in ports, airports and in any military, naval or air force establishment and the District Director of Health Services or the Regional Director of Health Services.

However, the Attorney General in a letter addressed to the Acting Inspector General of Police (IGP), has stated that the Director General of Health Services has delegated his powers as the proper authority to the Acting IGP.<sup>13</sup> Although this letter has been used to sanction the legitimacy of several actions carried out by the police as part of the COVID-19 response, it is not clear under what legal provisions and/or regulations that the powers of the proper authority have been delegated to the Acting IGP.

### **4. What is a diseased locality? Who can identify a diseased locality?**

Under the Quarantine and Prevention of Diseases Ordinance, ‘diseased’ is defined to mean infected or suspected of being infected with disease.

Gazette Extraordinary No. 2168/6 dated 25 March 2020 defines a ‘diseased locality’ as any locality infected or suspected of being infected with disease and declared to be

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<sup>12</sup> Regulation 97 of the Regulations of October 2020.

<sup>13</sup> MENAFN, ‘Sri Lanka- AG approves steps enforced by Police’ available at <https://menafn.com/1100099455/Sri-Lanka-AG-approves-steps-enforced-by-Police> accessed 04 November 2020.

diseased by the Proper Authority as a diseased locality for such period as the Proper Authority shall determine.

According to these regulations, the Proper Authority must identify a diseased locality. However, at present the public communications identifying diseased localities are issued by the police, which is not identified as a Proper Authority under the Gazette.

#### **5. Who has the power to carry out the quarantine process under the regulations?**

According to Regulation 91 and 92 of the Regulations issued in October 2020, a Proper Authority may “cause any person diseased, or suspected to be diseased, in any house or place to be removed to some public hospital or other place provided for the purpose, for such period as may be directed” or direct such person for self-quarantine.

However, at present, the quarantine process is being carried out by the Police and/or the military, which is not identified as a Proper Authority under the Regulations. This raises concerns about the accountability of the process and potential abuse of power.

#### **6. What are the procedures to be followed when directing a person to a quarantine centre or for self-quarantine?**

Under the Quarantine Regulations 1925, a Proper Authority may enter a house or premises to ascertain whether any of the occupants are suffering from any contagious disease.<sup>14</sup> Obstructing this process would be an offence under the Ordinance.

However, in view of a variety of complaints and expressions of concerns received relating to the process, the Human Rights Commission of Sri Lanka (HRCSL) has issued guidelines to be followed in the quarantine process.

The HRCSL recommends that the quarantine process be regularized under the law by;

- Transparency in delegation of powers by the “Proper Authority”
- Vest powers of testing on designated qualified personnel

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<sup>14</sup> Regulation 66 of the Quarantine Regulations 1925

- List the places designated as quarantine centres and the designating authority.
- Clarify the period of required quarantining
- Create a receipt system for quarantined persons including the reason for quarantine, the place they are being taken to and the length of isolation
- External scrutiny of quarantine centres, especially by the “Proper Authority”
- Prohibit those handling quarantine from informing the media of the proposed quarantining efforts, exposing those being quarantined to public gaze as though they were offenders rather than unfortunate victims of a virulent virus.

The HRCSL also makes the following recommendations to ameliorate the hardships imposed by the quarantining process.

- Ensuring quarantined period is considered paid/ duty leave
- Ensuring financial or any other assistance to families of those in quarantine
- The Grama Niladhari be immediately informed when a person is quarantined
- In the circumstances where the vulnerable dependents in the families are left behind due to quarantine process, the Grama Niladhari to ensure provision of all necessary support to vulnerable persons including alerting the proper authorities.

## **7. What is the legal basis for the curfew imposed in some areas at present?**

The legal validity of the curfew imposed in response to the COVID-19 health emergency had been previously questioned.<sup>15</sup>

The present curfew is often referred to as a “Quarantine Curfew”. However, the Quarantine and Disease Prevention Ordinance does not make provision for the

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<sup>15</sup> Centre for Policy Alternatives, ‘Curfew in response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka’ available at <<https://www.cpalanka.org/curfew-in-response-to-covid-19-legal-framework-and-relevant-questions-in-sri-lanka/>> accessed 03 November 2020. ; Human Rights Commission of Sri Lanka, ‘HRCSL Recommendations on Regularizing the Imposition of Curfew’ available at <<https://www.hrcsl.lk/wp-content/uploads/2020/02/curfew.HRCSL-recommendation-final.pdf>> accessed 03 November 2020.

imposition of any type of 'curfew'. The term 'Curfew' can only be found in Section 16 of the PSO to be imposed by the President.

- Section 21(2) of the PSO stipulates "the provisions of subsection (3) of section 2 shall, *mutatis mutandis*, apply to an order made under section 12, **section 16** or section 17".
- Section 02(3) of the PSO prescribes, "where a Proclamation is made under the preceding provisions of this section, the occasion thereof shall forthwith be communicated to Parliament, and, if Parliament is then separated by any such adjournment or prorogation as will not expire within ten days, a Proclamation shall be issued for the meeting of Parliament within ten days".

Therefore, in accordance with the law, the President is obliged to officially gazette the imposition of curfew and thereafter disclose the details of the gazette to the Parliament.

#### **8. Who has the power to conduct random temperature checks of the public?**

Media reports indicate that military mobile squadrons patrolling and carrying out random temperature checks. Army Spokesman Brigadier Chandana Wickremesinghe said, "Army squadrons are carrying out temperature checks in all parts of Colombo at random. This is to ensure vigilance and awareness for possible positive cases. In addition, impromptu roadblocks were also operating in the Colombo and Gampaha Districts, checking around 2,500 vehicles each day. Up to now, we have checked up to 25,000 vehicles and few less than 100 have been directed to hospitals."

The Gazette Extraordinary No. 2197/25 authorizes<sup>16</sup> an employer or person in charge of any institution or work place and a person who owns or is in charge of a supermarket, shop, sales outlets or any other place of business to ensure that the body temperature of every person is measured before entering such premises.

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<sup>16</sup> Regulations 94, 95 and 96 of the Regulations of October 2020.

There is no provision for the military to conduct temperature checks as per the gazettes issued to date under Ordinance.

**9. What is the legal procedure to be followed where there is failure by a person to comply with the regulations under the Quarantine and Prevention of Diseases Ordinance?**

The Ordinance makes it a punishable offence for any person, without lawful authority or excuse, to contravene any regulation promulgated under the Ordinance. Where a person fails to comply with the regulations he may be charged before a Magistrate's Court, and if convicted be sentenced to a term of rigorous or simple imprisonment not exceeding six months, to impose a fine, or both.

Alternatively, he may be charged under section 262 of the Penal Code which makes it an offence to unlawfully or negligently do any act which is likely to spread the infection of any disease dangerous to life or section 264 of the Penal Code which makes it an offence to knowingly disobey any rule made and promulgated by the Government for regulating the intercourse between places where an infectious disease prevails and other places.

**10. What is the legal position on mandatory cremation of persons who die of COVID-19?**

Section 3(1)(i) of the Ordinance authorizes the Minister to make regulations for prescribing the mode of burial or cremation of any person dying of disease. Regulations issued by Gazette Extraordinary No. 2170/8 of Saturday, April 11, 2020 makes it mandatory to cremate the body of a person who has died or is suspected to have died of COVID-19.

There is WHO Interim Guidance dated 24 March 2020 on Infection Prevention and Control for the Safe Management of a Dead Body in the Context of COVID-19. The Guidance states that 'cadavers do not transmit disease' and that 'It is a common myth that persons who have died of a communicable disease should be cremated, but this



is not true. Cremation is a matter of cultural choice and available resources'. The Guidance further advises the authorities to 'manage each situation on a case-by-case basis, balancing the rights of the family, the need to investigate the cause of death, and the risks of exposure to infection'. Where disposal is concerned, the Guidance says that 'People who have died from COVID-19 can be buried or cremated'. The Government has recently stated that they will reconsider the mandatory nature of cremation as per Regulation No 2170/8.