

Prevention and Control of Infectious Diseases Act 1988 [Act 342]

Prevention and Control of Infectious Diseases (Measures within
The Infected Local Areas) Regulations 2020 (P.U.(A) 91/2020)

for LexisNexis Resource Hub – COVID-19



Introduction

This document purports to provide a section-by-section annotation of the Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Regulations 2020 and to address frequently asked questions that may arise therefrom.

PREVENTION AND CONTROL OF INFECTIOUS DISEASES (MEASURES WITHIN THE INFECTED LOCAL AREAS) REGULATIONS 2020 (P.U.(A) 91/2020)

IN exercise of the powers conferred by subsection 11(2) of the *Prevention and Control of Infectious Diseases Act 1988 [Act 342]*, the Minister makes the following regulations:

NOTES

The right of every person to move freely throughout the Federation and to reside in any part thereof is guaranteed by the Federal Constitution article 9(2). However, art 9(3) conferred power on the Parliament to enact law imposing restrictions in respect of movement and residence on grounds related to public health. Hence, by virtue of section 11(2) of the Prevention and Control of Infectious Diseases Act 1988, the Minister issued the Prevention and Control of Infectious Diseases (Measures Within The Infected Local Areas) Regulations 2020 (**Regulations**). This Regulations imposed the movement control order (**MCO**) primarily aimed at flattening the infection curve of the Coronavirus disease (**COVID-19**) outbreak in the country. It took effect from 18 March to 31 March 2020, and has now been extended to 14 April 2020 and subsequently to 28 April 2020.

Updated as at 10 April 2020

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Citation and commencement

1. (1) These regulations may be cited as the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020.
- (2) These Regulations have effect for the period from 18 March 2020 to 31 March 2020.

NOTES

The Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 is a subsidiary legislation. Subsidiary legislation is defined as any proclamation, rule, regulation, order, notification, by-law or other instrument made under any Act, Enactment, Ordinance or other lawful authority and having legislative effect (the Interpretation Acts 1948 and 1967, s. 3). Section 24 of the Interpretation Acts 1948 and 1967 provides that anything done by virtue of any subsidiary legislation is deemed to be done under the Act or other written law under which the subsidiary legislation was made. In *Datin Azizah Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors and Another Appeal* [1992] 2 MLJ 393 (SC), Abdul Hamid Omar LP delivering the judgment of the Supreme Court stated:

In our view it is a settled policy of the legislature that an Act of Parliament lays down the general principles of the law and to delegate to subordinate authorities the power of making rules for the purpose of settling administrative details and of providing the necessary procedures for giving effect to the general principles of the Act. When, therefore, an Act of Parliament enables an authority to make regulations, a regulation which is validly made under the Act, must be regarded as though it were itself an enactment. But any rule made under an Act of Parliament cannot be intended to override the specific provisions of the Act itself. Under ss 23 and 87 of the Interpretation Acts 1948 and 1967 (Act 388), any rule which is inconsistent with an Act of Parliament is void to the extent of the inconsistency.

Again, in *Kerajaan Malaysia v Wong Pot Heng & Anor* [1997] 1 MLJ 437 (FC), Peh Swee Chin FCJ stated:

Any subsidiary legislation is in effect a transfer of power from Parliament to some other authority, eg from the administration with the executive authority of Malaysia vested in the Cabinet, down to any local authority. In order to protect the authority, dignity and standing of Parliament and at the same time, the man in the street, safeguards for such subsidiary legislation are essential and courts are part of such safeguards.

These Regulations initially were given effect from 18 March to 31 March 2020, but were further extended to 14 April 2020 *vide* the announcement by Prime Minister on 25 March 2020, and subsequently 28 April 2020 via announcement on 10 April 2020.

Interpretation

2. In these Regulations—

“infected local area” means any area declared to be infected local area under the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 [P.U. (A) 87/2020];

“essential services” means the services as specified in the Schedule.

NOTES

‘Infected local area’ The Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 specified these ‘infected local area[s]’ as follows: Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Sabah, Sarawak, Selangor, Terengganu, Federal Territory of Kuala Lumpur, Federal Territory of Putrajaya and Federal Territory of Labuan: see http://www.federalgazette.agc.gov.my/outputp/pua_20200317_PUA87.pdf

‘essential services’ In these Regulations, ‘essential services’ means ‘services as specified in the Schedule and includes any activity and process in the supply chain of such essential services.’ The list of essential services was included in the Federal Gazette – Prevention and Control of Infectious Diseases (Measures within Infected Local Areas) (No 2) Regulations 2020, published on March 31.

Under the latest gazette, signed by Health Minister Datuk Seri Dr Adham Baba, the 10 essential services are as follows:

1. Food;
2. Water;
3. Energy;
4. Communications and Internet;
5. Security and defence;
6. Solid waste and public cleansing management and sewerage;
7. Healthcare and medical including dietary supplement;
8. Banking and finance;
9. E-commerce; and
10. Logistics confined to the provision of essential services.

Essential services listed in the March 18 gazette that are not in the latest gazette include port, dock and airport services; prison; refining, storage, supply and distribution of fuel and lubricants; wildlife; immigration; customs; and hotels and accommodations: see 'MCO 2.0: Only 10 listed as essential services' *News Straits Times*, 10 April 2020 at <https://www.nst.com.my/news/nation/2020/04/580558/mco-20-only-10-listed-essential-services>

Control of movements and gatherings

3. (1) No person shall make any journey from one place to another place within any infected local area except for the following purposes:
- (a) to perform any official duty;
 - (b) to make a journey to and from any premises referred to in regulation 5;
 - (c) to purchase, supply or deliver food or daily necessities;
 - (d) to seek healthcare or medical services; or
 - (e) any other special purposes as may be permitted by the Director General.

NOTES

During the MCO period, travelling from one place to another place within an infected local area is restricted. There are however exceptions, as follows:

- (i) A person can only travel for formal/official duties.
- (ii) A person can only travel to places providing 'essential services'.
- (iii) A person can leave home to purchase food/daily necessities. For example, grocery shops/pharmacies/post offices/banks etc.
- (iv) The supply and delivery service of food/groceries/other daily necessities is allowed.
- (v) A person is allowed to go to clinics, hospitals and medical centres to seek health care services.

However, the Director General may from time to time issue orders allowing journeys for other purposes. It must be added that on the advice of the Ministry of Health, the government may execute an Enhanced Movement Control Order (EMCO) where residents from certain areas are prohibited from exiting the premises, while non-residents and visitors are not allowed to enter, as all entry and exit points of the area are sealed. Currently, the following areas are placed under the EMCO namely: (i) two villages in Simpang Renggam, Kluang, Johor; Batu 21 to Batu 24 Sungai Lui, Hulu Langat, Selangor; (ii) Menara City One in Jalan Munshi Abdullah; and (iii) two buildings namely, Selangor Mansion and Malayan Mansion in Jalan Masjid India in Kuala Lumpur.

Below are some frequently asked questions pertaining to these essential services:

1. What is the scope of 'official duty'?

This must be read together with regulation 5 (essential services). A letter of approval from the DG / company is required.

2. Will I still be able to shop for groceries or will the restaurants be open?

Yes, you will still be able to purchase groceries. Restaurants will still be in operation but only for takeaway purposes, and not for dining in. However, please observe the recommendation for only the head of the family or for ONE family member to go out for this purpose.

You are also encouraged to check on the opening hours of your local grocery/restaurant since this might vary according to state regulations.

3. Will food delivery services still operate?

Yes, however you are encouraged to opt for cashless payments and to provide options for your orders to be dropped at your doorstep to minimise contact with your delivery driver.

4. I live with an elderly family member/child who needs regular check-ups at hospital. Will I be able to take them to these appointments?

Yes, healthcare will still be accessible in this period. Due to the growing number in Covid-19 cases, you are encouraged to check with the hospital before you go. Practise the necessary precautions such as using sanitizer, face masks and gloves when you and your family member are at the hospital.

Control of movements and gatherings (continued)

- (2) **No person shall gather or be involved in any gathering within any infected local area whether for religious, sports, recreational, social or cultural purpose.**

NOTES

Large gatherings of above 50 people or more are not allowed during the MCO period.

Below are some frequently asked questions pertaining to gatherings:

1. Will pre-planned activities such as sporting events, concerts and weddings be exempted?

No, this is not allowed. Weddings may still be conducted but attendance must be kept to a minimum.

2. Will I be able to attend my weekly religious service?

This is not permitted. However, the funeral prayers for non-COVID-19 deaths during the MCO can still be performed but may only be held at home or private premises and attended by mosque officials and immediate family members. However, no gatherings for '*tahlil*' recital should be held throughout the MCO period.

3. Will I still be able to go for walks or exercise at the park in my housing area?

Residents are advised to abide by the rules set by the Malaysian National Security Council (NSC) and this includes not going outdoors. The public is not allowed to go hiking, jogging, cycling or do any other health-related activities outdoors. In fact, the MPSJ Park Bylaw 2005 for example, has ordered the closure of all parks in Subang Jaya with immediate effect and anyone found flouting the bylaw can be ordered to vacate the park and be charged. If convicted, the offender can be fined up to RM2,000 or face jail time up to a year or both. For continuous offences, there will be an additional fine of no more than RM200 per day for each day of the offence.

Control of movements and gatherings (continued)

- (3) Notwithstanding subregulation (2), a person may gather or be involved in a gathering for purpose of funeral ceremony provided that the number of attendees to such ceremony shall be kept to the minimum.

NOTES

I have to attend a funeral that will require me to travel interstate. Is this allowed?

The police may allow someone to travel interstate if they have a valid reason for example, if they want to attend the funeral of a family member or a relative provided that prior permission is obtained from the nearest police station.

Control of movements and gatherings (continued)

- (4) No person shall make a journey from one infected local area to another infected local area except with the prior written permission of a police officer in charge of a police station.

NOTES

I live in the city and am concerned for my parents who live out of state. Can I visit them over the weekend?

No one is allowed to travel interstate or also from one district to another under the MCO. However, the police may allow someone to travel interstate if they have a valid reason for example, if someone wants to attend family or a relative's funeral (see above) or if a family member has been involved in an accident or if they are seeking medical treatment. Prior permission is required for this purpose from the nearest police stations.

Requirement to undergo health examination upon arrival in Malaysia

4. A citizen or permanent resident of Malaysia returning from overseas shall undergo health examination upon arrival in Malaysia before proceeding for immigration clearance at any point of entry and shall comply with any order issued by an authorized officer.

NOTES

1. I am a business owner and am expecting the arrival of foreign workers during this period. Is this permissible?

While airports will continue to operate during the MCO, being categorised as an essential service, any travel to receive the foreign worker would require prior approval from the nearest police station. Permission may be given upon showing their previous flight ticket and identity certification or passport.

2. I have recently applied through an agency for a foreign domestic worker who is expected to arrive during this time. Is this permissible?

A: No, you are encouraged to contact your agencies for further details.

Essential services

5. (1) Any premises providing essential services may be opened provided that the number of personnel and patron at the premises shall be kept to the minimum.

- (2) Any premises not providing essential services may be opened provided that the owner or occupier of the premises obtains the prior written permission of the Director General and the Director General may impose any conditions as he thinks fit.
- (3) Any premises involved in food supply chain or in selling food and beverages by way of drive-through, take away and delivery may be open subject to any conditions imposed by the Director General as he thinks fit.

NOTES

1. I am a restaurant owner. As business will be impacted, I do not require all my staff to be at work. Can I put them on unpaid leave or reduce their salary slightly?

The Department of Labour (Kementerian Tenaga Kerja) has issued [Guidance](#) that does not encourage workers being put on unpaid leave, or for base salary to be reduced for official work hours.

No employer may deduct any portion of an employee's wages except when it is authorised by the law or where the employer has written authorisation from the employee for such deduction. Any unilateral deduction of an employee's wages would amount to a significant breach going to the root of the contract. An employee placed in the aforementioned circumstances would have been placed in a position he had been given no choice but to leave the company, and thereafter may allege constructive dismissal. The Employment Act 1955 imposes penalties on the employer for any non-compliance with the law and may even provide for criminal prosecution.

In relation to leave from work, an employee is entitled to annual leave, sick or medical leave, maternity leave, paternity leave, compassionate leave, **emergency leave**, calamity leave and **unpaid leave**. Such leave however cannot be claimed as of right but is subject to the discretion of the employer, the granting of which is subject to the applicable rules and regulations of the organisation. The leave is not granted automatically or indiscriminately because many factors and circumstances must be taken into consideration before leave applied for is approved. In the current circumstances however, the employer may ask its workers to take unpaid leave and this would require prior consent of the worker. An employer who unilaterally forces its workers to take unpaid leave is not only deemed to have violated the Employment Act, but also, the affected worker may resign and claim constructive dismissal. It is suggested that the employee should act reasonably during this challenging period by cooperating with their employer who might be facing serious financial constraints that require immediate financial adjustments to prevent liquidation or bankruptcy.

2. I have been placed on unpaid leave by my employer. Is there any recourse for me?

An employee who is governed by the Employment Act 1955 may lodge a complaint with the local Labour Department closest to their place of residence.

The efforts of the Malaysian government to inject RM250 billion (US\$58 billion) under the "*Bantuan Prihatin Nasional*" economic stimulus package (PRIHATIN ESP) is intended to assist vulnerable groups, especially those in the B40 income group. These groups will receive direct cash assistance as well as other reliefs, including a six-month moratorium on loan repayments.

Request for information

6. Where an authorized officer requests for any information relating to prevention and control of infectious disease from any person, the person shall comply with the request.

NOTES

1. I still have to travel for work under the exemptions in these Regulations. There are multiple roadblocks on my route, what can I prepare to expedite the process?

Obtain a letter from your company specifying that you are gainfully employed by them and that you are required to travel to work in this period.

2. I am a single parent with young children at home. I need to go out for groceries or to buy food and it is difficult to get someone to watch my children while I go out. What can I do?
3. I am a senior citizen living alone and am concerned about over-exposure when I got out for necessities. What can I do?

Opt for food or grocery delivery options to minimise exposing yourself or your family members. If you do need to go out with your children, you are encouraged to exercise precautions such as shopping during non-peak hours. Some supermarkets have also opened shopping slots just for senior citizens to enable ease of access to daily necessities.

Effective 1 April to 28 April 2020, the National Security Council (NSC) has mandated that only the head of the family is allowed to do the grocery shopping and thus, only one person would be allowed to travel in a privately-owned car.

Offence

7. (1) Any person who contravenes any provision of these Regulations commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.
- (2) If an offence is committed by a body corporate, any person who, at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—
- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
 - (b) where the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

- (i) **that the offence was committed without his knowledge, consent or connivance; and**
- (ii) **that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.**

NOTES

The penalty for non-compliance with these regulations are as follows:

- Fine of not more than RM 1,000.00; or
- Jail term of not more than 6 months; or
- Both.

Effective 8 April 2020, the police have begun issuing compound notices that come with a RM1,000 fine with no room for discount to MCO violators. The violators will be brought to the nearest police station or district police headquarters and the compound notice will be issued there.

If an offence is committed by a company, the entity/director/manager/secretary or other duly authorised officers of the company acting on behalf of the company can be charged separately or alongside the proceedings against the company, and if the company is found guilty, the abovementioned individual will also be found guilty unless they can prove that the non-complying conduct happened without their knowledge or consent or involvement; and that they have taken all practicable precautions to prevent such misconduct.

SCHEDULE
ESSENTIAL SERVICES
[Regulation 2]

1. Banking and finance
2. Electricity and energy
3. Fire
4. Port, dock and airport services and undertakings, including stevedoring, lighterage, cargo handling, pilotage and storing or bulking of commodities
5. Postal
6. Prison
7. Production, refining, storage, supply and distribution of fuel and lubricants
8. Healthcare and medical
9. Solid waste management and public cleansing
10. Sewerage
11. Radio communication including broadcasting and television
12. Telecommunication
13. Transport by land, water or air
14. Water
15. E-commerce
16. Defense and security
17. Food supply
18. Wildlife
19. Immigration
20. Customs
21. Hotels and accommodations
22. Any services or works determined by the Minister as essential or critical to public health or safety

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DATO' SRI DR. ADHAM BIN BABA

Minister of Health

In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.

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