



COVID-19

Legal Insights no. 49

Regulation of the modification and renewal of the state of emergency decreed by the President of the Portuguese Republic

On 13 January 2021, the Decree of the President of the Portuguese Republic No. 6-B/2021 was published in the Portuguese Official Gazette, which i) amended the declaration of the state of emergency approved by the Decree of the President of the Republic No. 6-A/2021 of 6 January and ii) renewed the declaration of the state of emergency for 15 days, beginning at 00.00h on 16 January 2021 and ending at 23.59h on 30 January 2021, on the grounds of a situation of public calamity.

In this context, the Decree of the Presidency of the Council of Ministers no. 11/2020 of 14 January was, subsequently, approved and published, regulating the modification and extension of the state of emergency decreed by the President of the Portuguese Republic.

The above-mentioned Decree of the Presidency of the Council of Ministers establishes a set of sanitary and public health measures, as well as measures applicable to activities, establishments, services, companies or similar, among which we briefly highlight the following:

I. Sanitary and public health measures

1. Compulsory Confinement (lockdown)

- Patients with COVID-19 and those infected with SARS-CoV-2, citizens for whom active surveillance has been determined by the health authority or other health professionals, and citizens residing in residential structures for elderly people remain in mandatory confinement.
- Exceptionally, it is expressly established that citizens residing in residential structures for elderly people can move from such structures for the purpose of exercising their right to vote in the election of the President of the Portuguese Republic, preferably by means of early voting.

2. General duty to domiciliary retreat

- Citizens may not circulate in public spaces and streets and must remain at their domicile, except for authorised journeys as listed in Article 4(2) of the Decree in consideration. Among others, journeys are considered authorised for:
 - a) acquisition of essential goods and services;
 - b) access to public services;
 - c) participation in procedural acts before judicial entities;
 - d) access to health care;
 - e) assistance to vulnerable persons;
 - f) attendance at schools;
 - g) participation in religious ceremonies;
 - h) enjoyment of short periods of time in the open air and the walk of pets;
 - i) supply of essential goods to persons with disabilities or deprived of freedom of movement;
 - j) participation, in any capacity, in the electoral campaign or in the election of the President of the Republic, in particular for the purpose of exercising the right to vote;
 - k) access to post offices, bank branches and agencies of insurance or insurance intermediaries;
 - l) return home for the purposes of travel mentioned in the preceding paragraphs;
 - m) other activities of a similar nature or for other reasons of force majeure or urgent necessity, provided they are duly justified.

3. Teleworking and time-lagged organisation

- The adoption of the teleworking regime is mandatory, as long as it is compatible with the activity performed and the employee has the conditions to exercise it, without the need for agreement by the parties.
- When it is not possible to adopt the teleworking regime, the employer must organize different work shifts, as well as adopt the organizational measures that guarantee physical distance and the protection of employees.

4. Use of masks or visors

- The use of masks or visors is mandatory for access to or stay in workplaces and any other establishment whenever the physical distance recommended by the health authorities proves impracticable.
- The obligation to use masks or visors is not applicable to employees working in an office, room or equivalent, with no other occupants or where impermeable physical barriers are used to separate and protect workers.

5. Body temperature control

- Body temperature measurements may be taken by non-invasive means in controlling access to workplaces, services, educational establishments, commercial, cultural or sports venues, means of transport and health establishments, and access to such places may be prevented if the measurement is refused or if the result is above the normal body temperature, which is defined by the General Directorate of Health as equal to or above 38°C.
- In cases where entry into the workplace is prevented on the basis of recording a body temperature of 38°C or above, the absence is considered justified.
- The performance of temperature measurements does not prejudice the right to individual data protection, and the recording of body temperature associated with the identity of the person is expressly prohibited, unless expressly authorised by the person.

6. Conducting diagnostic tests for SARS-CoV-2

- The following persons can be subject to SARS-CoV-2 diagnostic tests:
 - a) workers, users and visitors of health care establishments;
 - b) workers, students and visitors to educational, vocational education and training institutions and higher education institutions;
 - c) workers, users, professionals from therapeutic communities and social insertion communities, as well as from temporary reception centres and emergency accommodation centres, and, when applicable, visitors to residential structures for elderly people, integrated continuous care units of the National Network of Integrated Continuous Care and other structures and responses dedicated to elderly people, children, young people and people with disabilities, as well as to applicants and beneficiaries of international protection and the reception of victims of domestic violence and trafficking in human beings;
 - d) Prison inmates and young people in educational centres and those who wish to visit them;
 - e) Workers of the Prison Guard Corps and other workers of the General Directorate for Reintegration and Prison Services (DGRSP), in the performance of their duties and for their cause, for the purpose of access and permanence in the workplace and for access to other places for the purpose of transporting and guarding prisoners, namely health units and courts;
 - f) service providers and users of facilities related to the activity of the DGRSP, whenever they wish to enter or remain there;
 - g) Those who wish to enter or leave the continental territory or the Autonomous Regions by air or sea;

- h) Whoever wishes to have access to places determined for this purpose by the General Directorate for Health - DGS.
 - Whenever the result of the tests prevents the worker to have access to their place of work, the absence is considered justified.
- 7. Exceptional suspension of termination of employment contracts**
- The possibility of terminating the individual employment contracts of health professionals linked to the services and establishments integrated in the National Health Service (SNS) is suspended on a temporary and exceptional basis, due to imperative service needs.
- 8. Strengthening the screening capacity**
- To strengthen the screening capacity of public health authorities, the mobilisation of human resources for epidemiological surveys, contact tracing of patients with COVID-19 and follow-up of people in active surveillance can be determined.
 - During the period in which workers are mobilised, and provided that working conditions that especially ensure the protection of their health are guaranteed, the performance of duties at a place and time other than the usual may be determined.
- 9. Processing of personal data**
- In the context of screening, epidemiological inquiries and follow-up of persons under active surveillance, personal data (health data) may be processed for reasons of public interest in the field of public health, independently of the consent of the data subjects.

II. Measures applicable to activities, establishments, services, companies and the like

1. Closure of facilities and establishments

- The installations and establishments referred to in Annex I to the Decree in question are closed, namely:
 - a) any closed premises for leisure sporting activities;
 - b) Museums, monuments, palaces and archaeological or similar sites, without prejudice to workers' access for conservation and safety purposes;
 - c) libraries and archives;
 - d) art galleries and exhibition halls;
 - e) language schools and driving schools, without prejudice to tests and examinations, and tutoring centres;
 - f) Sports facilities, except for the practice of physical and sporting activities allowed under the Decree and school sports activities;
 - g) Casinos and gambling establishments, such as bingos or similar;
 - h) Restaurants and similar establishments, cafeterias, tea houses and similar, except for home delivery, directly or through an intermediary, as well as for the provision of meals or packaged products at the door of the establishment or at the counter (take-away);
 - i) Bars and equivalents;
 - j) Bars and restaurants in hotels, except for delivery to the guest rooms (room service) or for the provision of packaged meals or products at the door (take-away);
 - k) Spas or similar establishments.

2. Closure and suspension of activities of facilities and establishments

- Retail trade and service activities are suspended in establishments open to the public, or on an itinerant basis, with the exception of those providing basic necessities or other goods considered essential or providing basic services or other services considered essential in the present circumstances.
- The suspension determined under the terms of the preceding paragraph shall not apply to wholesale establishments and to establishments that wish to maintain their activity exclusively for the purpose of delivering goods to the home or making them available at the door of the establishment (home delivery and take-away), at the ware or through the service of collecting products previously acquired through means of distance communication (click and collect), in which case access to the inside of the establishment by the public is prohibited.
- Fairs and food markets may be held with the authorisation of the municipal council responsible for the area and in accordance with the rules laid down.
- Special authorisations or suspensions may be granted by order of the Government.
- Open establishments must comply with all safety rules imposed by DGS.

3. General provisions applicable to establishments or places open to the public

- In establishments which maintain their activity under the terms of the Decree in consideration, rules of occupation, continuance and physical separation must be observed, including, among others, the following:
 - a) The allocation of spaces accessible to the public must observe a maximum indicative occupation rule of 0.05 people per square metre of area, with the exception of establishments providing services;
 - b) The adoption of measures that ensure a minimum distance of 2 meters between people, unless special provision or guidance from the DGS;
 - c) The prohibition of waiting situations for service provision within service establishments, with economic operators preferably resorting to prior appointment mechanisms;
 - d) The definition, whenever possible, of specific entry and exit circuits in establishments and facilities, using separate doors.

4. Restaurants and similar

- Catering and similar establishments can only operate for the purpose of confectionery intended for consumption outside the establishment through home delivery, directly or through an intermediary, as well as for the provision of meals or packaged products at the door of the establishment or at the counter (take-away).

5. Sale and consumption of alcoholic beverages

- The sale of alcoholic beverages at gas stations remains prohibited and in the retail trade it is only allowed until 8 pm.
- The consumption of alcoholic beverages in public spaces is also prohibited.

6. Fees and commissions charged by intermediary platforms in the catering and similar sectors

- During the period of validity of the Decree in consideration, intermediary platforms for the sale of goods or the provision of restaurant services are prevented from charging economic operators service charges and commissions which exceed 20 % of the retail value, nor can they

increase the prices of the commissions which they have charged to date both to consumers and to operators.

7. Maximum price regime for bottled liquefied petroleum gas

- A maximum price regime is established for bottled liquefied petroleum gas (GPL), in standard steel tanks, in typologies T3 and T5, as established in article 8 of Decree-Law no. 5/2018, of 2 February.

8. Electronic communication services

- Companies offering public communications networks or publicly available electronic communications services should give priority to the continued provision of critical services such as calls, messages and access to emergency services, also giving priority to governmental customers (Ministry of Health) and SNS network services, and network and traffic management, including capacity reservation on the mobile network, may take place.

9. Private vehicles with a capacity of more than five seats

- Private vehicles with a capacity of more than five seats can only drive, unless all occupants are in the same household, with two thirds of their capacity, and the occupants must wear a mask or visor.

10. Funerals

- The holding of funerals is conditioned to the adoption of organisational measures to avoid the crowding of large numbers of people and to allow the control of safety distances, namely the setting of a maximum attendance limit, to be determined by the municipal authorities.

11. Rules applicable to air traffic and airports

- ANA, S.A. must carry out infrared body temperature screening at the Portuguese airports it manages for all passengers arriving in mainland Portugal.
- National citizens and foreign citizens legally resident on mainland Portugal who do not have proof of having a screening test for infection by SARS-CoV-2 with a negative result must carry out this test on arrival, before entering mainland Portugal, bearing the costs and, to this end, will be forwarded by the competent authorities.
- The citizens referred to above may leave the airport provided they grant their contact details and remain in compulsory isolation and confinement at their places of destination until the result of the laboratory test is received.

12. Public services

- Public services continue to provide face-to-face service by appointment, and the provision of services through digital means is maintained and strengthened.

13. Measures in the framework of residential and other reception structures and responses

- The protection of residents in residential structures for elderly people, long-term care units and other similar structures should involve, among other measures:

- a) self-monitoring of symptoms of illness by professionals affiliated to these units, as well as surveillance of symptoms of residents and their regular screening in order to identify suspicious cases;
- b) mandatory wearing of surgical masks by all professionals in these structures;
- c) testing of all residents if a positive case is detected;
- d) permission for visits to users, in accordance with the rules defined by the DGS, or suspension of visits for a limited time and in accordance with the specific epidemiological situation, in conjunction with the local health authority;
- e) isolation and clinical follow-up of COVID-19 patients whose clinical situation does not require hospitalization by health professionals and operationalization of rapid intervention teams, composed of direct action helpers, general services assistants, nurses, psychologists and doctors with the capacity for immediate action in the containment and stabilization of outbreaks of COVID-19 disease.

14. Physical and sporting activity

- Only physical activity and individual outdoor sports are allowed, as well as all professional training and competitive activities, without public and following DGS guidelines.

15. Events

- The celebration of any events or a celebration other than religious ceremonies, including community celebrations and events in connection with the election campaign and the election of the President of the Portuguese Republic, is prohibited.

This Decree came into force at 00:00h on January 15th, 2021 and will remain in force until 23:59h on January 30th, 2021.

To access the full text of Decree 3-A/2021 of 14 January, please click [here](#).

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