

## BUSINESS FOR SA: GUIDANCE NOTE

14 July 2020

### 1. Introduction

- 1.1 In his [national address](#) delivered on 12 July 2020, President Cyril Ramaphosa outlined government's response to the current surge in COVID-19 infections in South Africa. Read together with the latest [amendments](#) to the regulations in terms of the Disaster Management Act 57 of 2002 (**Regulations**), the President's address evinces a further shift in government's Alert Level (**AL**) 3 strategy as, on the one hand, the scientific understanding of the virus progresses and, on the other, the state tries to mitigate the economic effects of the lockdown.
- 1.2 The strategy entails implementing stricter health protocols and enforcing compliance with these, while aiming to permit as much economic activity as possible. Most businesses will continue to operate as they have been thus far under AL3, subject to additional prescribed health and safety obligations. However, employers and property owners should be aware that the amended Regulations pose greater risks of liability for non-compliance than under their previous iteration.

### 2. A shift in strategy

- 2.1 While the government has not entirely abandoned its risk-adjusted approach, it has taken clear steps in a different direction. First, the President has indicated that, despite COVID-19 infections peaking in Gauteng and the Eastern Cape, there is no prospect of either area reverting to AL4 or AL5. Second, the amended Regulations no longer contain a mechanism for declaring an area to be a "hotspot". The stated reasoning for this change in strategy is a combination of scientific advice that there are limited prospects of a lockdown significantly reducing the spread of infections at this stage, and that there is relative certainty that profound social and economic harm could result from renewed business closures. The amended Regulations therefore focus on individual personal responsibility, and on stricter enforcement of health and safety protocols.
- 2.2 Considerable attention is given in the amendments to increased reliance on masks.<sup>1</sup> Cloth facemasks or other appropriate items are required to cover both the nose and mouth and are mandatory in all public places. No person is permitted on public transport, in open spaces, such as streets and parks, or to enter a state-owned building to obtain a good or service, without a mask.<sup>2</sup> All employers are now required to ensure that every employee is wearing a facemask while performing their duties on the business's premises, regardless of whether the employee is exposed to the public in the course of their work.

---

<sup>1</sup> See regulation 5.

<sup>2</sup> An exception is made at regulation 5(2A) for a person undertaking "vigorous exercise" subject to directions on the meaning of "vigorous", provided they maintain a distance of at least three metres from any other person.

2.3 A manager or owner of a building commits a criminal offence if they fail to take reasonable steps to ensure each person in their building is wearing an appropriate mask; <sup>3</sup> and an employer is similarly liable if they allow an employee to perform their duties without wearing a facemask, <sup>4</sup> regardless of whether any infection occurs as a result. It is recommended that, to limit their liability, owners or landlords reiterate to security personnel or other designated officials the importance of each person wearing a facemask and wearing it correctly. This is not limited to a person "entering" a building; a person is not allowed to be "in" a building used by the public to obtain goods or services without wearing a facemask. Enforcement of this measure may require, for example, implementing patrols in larger shopping centres and displaying signs regarding the correct use of facemasks.

2.4 If convicted, both offences carry penalties of imprisonment not exceeding six months, a fine, or both such imprisonment and fine.

### 3. Relevant amendments

3.1 The amended Regulations reintroduce a daily curfew between 21h00 and 04h00. <sup>5</sup> Any employees required to work during those hours should be provided with a Form 2 permit, which is the standard form work permit under the Regulations to be issued by the head of the institution or his / her delegee. Movement is also permitted within the hours of curfew to attend to a medical or security emergency. Subject to those exceptions, it is an offence to break curfew. <sup>6</sup>

3.2 Additional relevant amendments include the stipulation that hotels, lodges, bed and breakfasts, timeshare facilities and resorts and guest houses for leisure purposes are a specific economic exclusion. This means that, while travel for leisure purposes is permitted provided it is within the individual's residential province, accommodation for leisure purposes in one's province of residence is prohibited. The [directions](#) pertaining to accommodation therefore apply only to accommodation required for work purposes or other permitted activities, such as overnight accommodation when attending a funeral or when permanently relocating.

3.3 The sale and transportation of liquor is also once again prohibited, unless for storage or export purposes, <sup>7</sup> and the sale of tobacco products remains similarly prohibited, though it has been clarified that sale between tobacco farmers, processors and manufacturers is permitted. <sup>8</sup>

3.4 All auctions are now permitted subject to strict adherence to health protocols and physical distancing measures. <sup>9</sup>

### 4. Conclusion

4.1 The shift to individual personal responsibility in government's strategy to address COVID-19 also places greater responsibility on employers and property owners and managers to ensure that safety measures

---

<sup>3</sup> Regulation 14(6).

<sup>4</sup> Regulation 14(7).

<sup>5</sup> Regulation 33(1 A).

<sup>6</sup> Regulation 48(2).

<sup>7</sup> Regulation 44.

<sup>8</sup> Regulation 45.

<sup>9</sup> Regulation 37(h).

are complied with in their businesses. Businesses and heads of institution are at risk of criminal liability for non-compliance if they do not take continuous measures to enforce the wearing of masks.

- 4.2 This requirement is in addition to and does not replace health and safety measures to restrict the number of people in a building and to implement physical distancing protocols. B4SA members are encouraged to take seriously this responsibility to contribute to curbing the spread of COVID-19 and to avoid penalties for non-compliance.