

M. A. Sumanthiran, B.Sc., LL.M
President's Counsel

3/1 Daya Road
Colombo 6.
0777314628

3rd May 2020

The Chairperson and other members of
The Human Rights Commission of Sri Lanka,
Colombo 4.

To: Madam Chairperson and other members,

Imposition of "curfew"

I write this in the public interest.

However, at the outset I must declare my "interest" in a related matter. I appear as Counsel in the Nugegoda Magistrate's Court in Case No: B/1454/20 for Mr Ranjan Ramanayake, former Member of Parliament. In the course of my submissions made to court on 20th April 2020, I took up the position that no curfew has been declared in the country in terms of any applicable law. Having recorded my submission in this regard and while granting bail to my client, the learned Magistrate very specifically held that he was not making a determination as to the legality of the curfew at this point in time. It is pertinent to note that my client has not been accused of violating any curfew.

An island-wide "curfew" was declared from 6pm on 20th March 2020 and announced to the country by the President's Media Division (PMD), which has virtually been in force up to now with variations in certain districts and "curfew" being "lifted" and "re-imposed" at different times in different places.

I am of the opinion that restricting movement is desirable and necessary at this time in our country in order to meet the challenge presented by COVID-19. There is no gainsaying that such restrictions including curfew must be imposed legally under applicable provisions of law. Insofar as I have been able to ascertain, this has not been done under any extant legal provision. Such action therefore poses a grave threat to the Rule of Law and indeed to the well-being of the people of this country.

In these circumstances I wish to draw your attention to Section 10 (c) and (d) of the Act No. 21 of 1996, by which the Human Rights Commission is empowered to advise and make recommendations to the government and urge you to kindly address this particular situation which I detail below:

Curfews in this country have hitherto been imposed by the use of Emergency Regulations after bringing Part II of the Public Security Ordinance into operation by means of a proclamation. This has not been done in the present instance.

Further, there is provision under Section 16 of the Public Security Ordinance (which comes under Part III) to impose restrictions on movements of people by making publication in the Gazette to that effect. This also has not been done.

The Supreme Court of Sri Lanka has noted that any restriction on the freedom of movement guaranteed by Article 14(1)(h) of the Constitution must be prescribed by law:

“...[t]he right of citizens to travel on public highways and to have access to public places may only be curtailed by restrictions imposed in terms of Articles 15(6) and 15(7).” – vide *Vadivelu v. OIC Sithambarapuram and others* [2002] 3SLR 146.

In conclusion, Mark Fernando J. held:

“There is force in the respondent’s contention that the restrictions complained of were imposed in the interests of national security, and were reasonably necessary for that purpose. However, Article 15(7) required that such restrictions be imposed by a law, or by regulations made under the law relating to public security. Accordingly, the travel pass system constitutes a restriction not authorized by Article 15(7).

I hold that the petitioner’s fundamental right under Article 14(1)(h) had been infringed by executive action by the application to him of the travel pass system”

Article 15(7) of the Constitution very specifically provides:

For the purposes of this paragraph “law” includes regulations made under the law for the time being relating to public security.

There is also the question as to whether the law relating to public security can be utilized to impose curfew for exigencies of public health hazards. But leaving that question aside, there is at present no regulation made even under the Public Security Ordinance.

Thus, the present “curfew” has not been legally imposed, however desirable and necessary it may be. In fact, it is all the more important that the restrictions on the freedom of movement be properly and legally prescribed and enforced given the grave need for such in the present context and the need for certainty in this regard.

Although, in view of the above, it is not necessary to discuss the regulations made under the Quarantine and Prevention of Diseases Ordinance, I am annexing copies of same to show that in any case, none provide for the imposing of curfew.

I trust the Commission will give due consideration to the matters raised by me in view of the very serious public importance of this issue and advise the government on the need to rectify and regularise this matter without any further delay.

In view of the public importance of this matter, I am releasing this letter to the media.

Yours truly,

A handwritten signature in blue ink, appearing to be 'L. V. S.', with a horizontal line drawn through it.

Encl:



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය
අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka EXTRAORDINARY

අංක 2167/18 - 2020 මාර්තු මස 20 වැනි සිකුරාදා - 2020.03.20
No. 2167/18 - FRIDAY, MARCH 20, 2020

(Published by Authority)

PART I : SECTION (I) — GENERAL Government Notifications

L.D.B 40/1973 (I)

QUARANTINE AND PREVENTION OF DISEASES ORDINANCE (CHAPTER 222)

Notification under the Quarantine Regulations relating to the Storage of Grain and Regulations relating to Anchylostomiasis 1925 and the Quarantine Regulations 1960

BY virtue of the powers vested in me in terms of the Quarantine Regulations relating to the Storage of Grain and Regulations relating to Anchylostomiasis 1925 published in *Gazette* No. 7481 of August 28, 1925 and the Quarantine Regulations 1960 published in *Gazette* No. 12,125 of May 6, 1960 made under Sections 2 and 3 of the Quarantine and Prevention of Diseases Ordinance (Chapter 222), I, Pavithra Wanniarachchi, Minister of Health and Indigenous Medical Services do by this Notification declare that Coronavirus Disease 2019 (COVID -19) be a quarantinable disease.

PAVITHRA WANNIARACHCHI (M.P.) (ATTORNEY-AT-LAW),
Minister of Health, and Indigenous Medical Services.

Colombo,
20th March, 2020.





ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය

අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 2168/6 - 2020 මාර්තු මස 25 වැනි බදාදා - 2020.03.25
No. 2168/6 - WEDNESDAY, MARCH 25, 2020

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

L.D.B 40/1973(I)

QUARANTINE AND PREVENTION OF DISEASES ORDINANCE (CHAPTER 222)

REGULATIONS made by the Minister of Health and Indigenous Medical Services under section 2 and 3 of the Quarantine and Prevention of Diseases Ordinance (Chapter 222).

PAVITHRA WANNIARACHCHI,
Minister of Health, and Indigenous Medical Services.

Colombo,
25th March, 2020.



Regulations

1. Regulations relating to Storage of Grain and Regulations relating to Anchylostomiasis published in *Gazette* No.7481 of August 28,1925, the Regulations relating to Plagues published in *Gazette* No.7001 of July 7,1933, the Venereal Diseases Regulations published in *Gazette* No.9157 of August 13, 1943, the Mosquito-Bourne Diseases (Prevention) Regulation published in *Gazette* No.9570 of June 21,1946 and the Quarantine Regulations published in *Gazette* No.12,125 of May 6, 1960, as amended from time to time, are hereby further amended by the substitution for the definition of the expression “proper authority” of the following definition:-

“proper authority” means _

- (a) in respect of the whole of Sri Lanka the Director General of Health Service;
 - (b) in an area within the administrative limits of -
 - (i) a Municipal Council, the Mayor of that Council or the Medical Officer of Health or the Additional Medical Officer of Health of such area; and
 - (ii) an Urban Council the Mayor of such Urban Council or the Medical Officer of Health or the Additional Medical Officer of Health of such area;
 - (iii) a Pradeshiya Sabha the Chairman of the Pradeshiya Sabha or the Medical Officer of Health or the Additional Medical Officer of Health of such area; or
 - (iv) any Council or Pradeshiya Sabha in relation to which any Authority is created and established by or under any law to exercise, perform and discharge the powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharge by such Council or Pradeshiya Sabha, such Authority;
 - (c) in an area of a Port, the Director of Quarantine, Deputy Director of Quarantine or the Medical Officer of the Port Health Office;
 - (d) in an area of an Airport, the Director of Quarantine or the Medical Officer of the Airport Health Office;
 - (e) in any military, naval or air force establishment the medical officer of the establishment; and
 - (f) in any area other than an area referred to in paragraphs (b), (c), (d) and (e), the District Director of Health Services or the Regional Director of Health Services of such area.
2. Regulations relating to Storage of Grain and Regulations relating to Anchylostomiasis published in *Gazette* No.7481 of August 28, 1925, as amended from time to time, are hereby amended by the substitution for the definition of the expression “diseased locality” of the following definition:-
- “diseased locality “ means any locality infected or suspected of being infected with disease and declared to be diseased by the proper authority as a diseased locality for such period as the proper authority shall determine.
3. For the purposes of the regulations referred to in regulation 1 the expression “Port Health Officer” means any Medical Officer appointed to the Port Health Office.



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය
අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 2170/8 - 2020 අප්‍රේල් මස 11 වැනි සෙනසුරාදා - 2020.04.11
No. 2170/8 - SATURDAY, APRIL 11, 2020

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

L.D.B 40/1973 (I)

QUARANTINE AND PREVENTION OF DISEASES ORDINANCE (CHAPTER 222)

REGULATIONS made by the Minister of Health and Indigenous Medical Services under Section 2 and 3 of the Quarantine and Prevention of Diseases Ordinance (Chapter 222)

PAVITHRA WANNIARACHCHI,
Minister of Health and Indigenous Medical Services.

Colombo,
April 11, 2020.

Regulations

Regulations relating to Storage of Grain and Regulations relating to Anchylostomiasis published in *Gazette* No.7481 of August 28, 1925, as amended from time to time, are hereby further amended as follows: -

- (1) in regulations 46 thereof, by the substitution for the words “affected with any disease referred to in the preceding rule, shall” of the words “affected with any diseases shall,”;
- (2) in regulation 47 thereof, by the substitution for the words “in which a case of any of the diseases referred to in rule 45 occurs,” of the words “in which a case of any disease occurs,”;



- (3) in regulation 48 thereof, by the substitution for the words “any of the diseases referred to in rule 45 shall” of the words “any disease shall”;
- (4) by the insertion immediately after regulation 61 thereof, of the following new regulation: -

“61A. Cremation of Corpse of a person who has died of Coronavirus Disease 2019 (COVID-19)-

- (1) Notwithstanding the provisions of regulations 61 and 62, the corpse of a person who has died or is suspected to have died, of Coronavirus Disease 2019 (COVID-19) shall be cremated-
- (a) at the temperature of 800 to 1200 degrees Celsius for a minimum period of forty-five minutes to one hour for complete burning, for the purpose of prevention of any potential biological threat; and
- (b) at a cemetery or place approved by the proper authority under the supervision of such authority, in accordance with the directions issued by the Director General of Health Services.
- (2) No person shall handover the corpse of a person who has died or is suspected to have died of Coronavirus Disease 2019 (COVID-19) to any person except to persons who undertake the necessary duties of cremation, nominated by the proper authority.
- (3) The attire and the non-reusable personal protective equipment used by persons who handle the corpse at such cemetery or place, shall be incinerated by placing them with the coffin during cremation.
- (4) The reusable equipment shall be properly decontaminated and disinfected in accordance with the directions issued by the Director General of Health Services.
- (5) The ashes of the corpse may be handed over to the next of kin, at the request of such next of kin.”.