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EMERGENCY POWERS (COVID 19 PANDEMIC) (MANAGEMENT AND RECOVERY) REGULATIONS, 2021

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OFFICE OF THE GOVERNOR-GENERAL

S.I. No. 45 of 2021

EMERGENCY POWERS ACT (CHAPTER 34)

EMERGENCY POWERS (COVID 19 PANDEMIC) (MANAGEMENT AND RECOVERY) REGULATIONS, 2021

In exercise of the powers conferred by section 3 of the Emergency Powers Act (*Ch. 34*), the Governor-General makes the following regulations —

1. Citation and duration.

- (1) These Regulations may be cited as the Emergency Powers (Covid 19 Pandemic)(Management and Recovery) Regulations, 2021.
- (2) These Regulations shall come into force on the 14th day of May, 2021.
- (3) These Regulations shall cease to have effect when the proclamation of emergency in pursuant of which they have been made ceases to have effect.

2. Interpretation.

“**Competent Authority**” means the Prime Minister;

“**Covid 19**” means the coronavirus disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“**correctional officer**” has the same meaning as in the Correctional Services Act, 2014;

“**infected place**” has the same meaning as in the Quarantine Act;

“**isolation**” in relation to a person means the separation of that person from any other person in such a manner as to prevent infection or contamination with Covid 19 —

- (a) at an isolation station as defined under the Health Services Act (*Ch. 231*);
- (b) in that person’s home;
- (c) in a hospital; or
- (d) at another suitable place;

“**health officer**” has the same meaning as in the Health Services Act;

“**statutory purpose**” means the preservation of the public health, peace, maintenance of public order and the securing and regulating of the supply and distribution of food, water, fuel, light, power and other necessities.

3. Detention of persons.

- (1) Where —
 - (a) a health officer has reasonable grounds to believe that a person is, or may be, infected or contaminated with Covid 19; and
 - (b) the health officer considers that there is a risk that the person might infect or contaminate others; or
 - (c) a person has arrived in The Bahamas on an aircraft or ship from outside The Bahamas; and
 - (d) the person has left, or the health officer has reasonable grounds to believe the person has left, an infected place within the twenty day period immediately preceding the date of the person's arrival in The Bahamas,

the health officer may, for the purposes of screening, assessment and the imposition of any restrictions or requirements under regulation 4, impose on that person a requirement to be detained until the later of—

- (i) the end of the period of forty-eight hours beginning with the time from which the person's detention under this regulation begins; or
 - (ii) such time as any screening requirements imposed on or in relation to the person under regulation 4(1) have been complied with and the assessment referred to in that regulation carried out in relation to the person.
- (2) Where a special restriction or requirement is imposed under this regulation, the person imposing the restriction or requirement must express it to be contingent on the incidence or transmission of Covid 19 constituting a serious and imminent threat to public health.

4. Imposition of restrictions and requirements.

- (1) Where a person has been detained pursuant to regulation 3, the health officer may—
 - (a) orally or in writing, impose on or in relation to any person one or more screening requirements to inform an assessment, of whether such person presents or could present a risk of infecting or contaminating others;
 - (b) carry out such an assessment in relation to that person;
 - (c) following such an assessment, orally or in writing, impose on or in relation to that person any other restriction or requirement which the health officer considers necessary for the purposes of removing or reducing the risk referred to in subparagraph (a), including a special restriction or requirement.

- (2) A decision to impose a restriction or requirement under paragraph (1) may only be taken if the health officer considers, when taking the decision, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.
- (3) A restriction or requirement imposed under paragraph (1) by a health officer may be varied, orally or in writing, by the health officer.
- (4) Where a restriction or requirement under paragraph (1)(c) is imposed on or in relation to a child, a person who is a responsible adult in relation to the child must ensure that the child complies with the restriction or requirement, insofar as that person is reasonably able to do so.
- (5) Where a restriction or requirement is imposed orally on a person under this regulation, or a restriction or requirement imposed under this regulation is orally varied, the person (or, in the case of a child, a person who is a responsible adult in relation to the child) must be provided with a written notification of the restriction or requirement that has been imposed or varied as soon as reasonably practicable.
- (6) Where a special restriction or requirement is imposed under paragraph (1) (c), the person imposing the restriction or requirement must express it to be contingent on the incidence or transmission of Covid 19 constituting a serious and imminent threat to public health.
- (7) Paragraph (1) does not affect the exercise of any powers by virtue of regulation 5.

5. Isolation of persons suspected to be infected with Covid 19.

- (1) A health officer may require a person to be kept in isolation in accordance with this regulation, if the health officer —
 - (a) has reasonable grounds for believing that a person is, or may be, infected or contaminated with Covid 19; and
 - (b) considers that it is necessary and proportionate to do so in order to reduce or remove the risk of that person infecting or contaminating others.
- (2) Where a health officer decides that a person should be required to be kept in isolation under paragraph (1), he shall —
 - (a) notify that person (or where the person is a child, a responsible adult in relation to that child) of —
 - (i) the decision requiring his isolation and the conditions of his isolation;
 - (ii) the reason for his isolation;
 - (iii) the power under which he is to be kept in isolation;

- (iv) any steps required to be taken during isolation and by whom;
 - (v) the obligation of the health officer to keep the continued isolation of that person under review;
 - (vi) the penalty for absconding or attempting to abscond from isolation; intentionally or recklessly providing false information to the health officer; or refusing to comply with any restriction or requirement specified by the health officer.
- (b) cause the person to be kept isolated in the same house or part of a house in which the person then is, until he is satisfied that the person is no longer infected or contaminated with Covid 19, if in his opinion such house or part of a house is such as to be an effectual place for the isolation of such person, and such house shall be deemed an isolation station;
 - (c) cause the person to be removed to another isolation station or hospital and to be isolated there until he is satisfied that the person is no longer infected or contaminated with Covid 19, if in his opinion, the person cannot be effectually isolated in the house or part of the house in which he then is; or
 - (d) cause the person required to be kept in isolation to be detained in an isolation station where the person fails to comply with any of the conditions of his isolation.
- (3) Where the health officer makes a decision that a person should be kept in isolation under this regulation, he may impose on or in relation to that person, special restrictions or requirements including screening requirements.
 - (4) The health officer shall give to a person who is required to be kept in isolation an isolation card that outlines the circumstances of the isolation including—
 - (a) place of isolation;
 - (b) length of time he will be in isolation; and
 - (c) any restrictions or requirements that the person must adhere to, and the isolation card shall be signed by that person and a copy retained by the health officer.
 - (5) For the purposes of these Regulations, “an isolation station” is as defined in the Health Services Act (*Ch. 231*).

6. Violation of isolation.

- (1) A person kept in isolation by a health officer under this regulation, who —
 - (a) absconds, or attempts to abscond from isolation;

- (b) intentionally or recklessly provides false information to the health officer;
- (c) fails to comply with any condition, restriction or requirement of his isolation imposed by the health officer,

commits an offence and is liable upon summary conviction to a fine not exceeding two hundred and fifty dollars or a term of imprisonment not exceeding two years or to both such fine and imprisonment.

- (2) Where the police have reasonable grounds to believe that a person has committed an offence under this regulation, the police may arrest and detain that person for up to 48 hours at a police station, an isolation station or hospital, and shall bring him before a Magistrate to be charged within the said 48 hours from his arrest.
- (3) A Magistrate may order the person charged to be remanded to an isolation station until he is no longer infected or contaminated by Covid 19 and thereafter may remand him to a correctional facility pending trial.
- (4) A hearing under this regulation may be conducted via video link.
- (5) A person remanded under this regulation may be granted bail provided he is no longer infected or contaminated with Covid 19.

7. Causing infection to another.

Where a person knows or reasonably believes that he is infected with the Covid 19 virus and causes another to be exposed or infected that person commits an offence and upon summary conviction is liable to a fine not exceeding one thousand dollars in respect of each person who has been exposed or infected.

8. Screening requirements.

- (1) For the purposes of these Regulations, the screening requirements in relation to a person means the person must —
 - (a) answer questions about the person's health or other relevant circumstances, including travel history and information about other individuals with whom the person may have had contact;
 - (b) produce any documents which may assist a health officer in assessing the person's health;
 - (c) allow a public health officer, or such person designated by the public health officer to take a biological sample of the person, including a sample of the person's respiratory secretions or blood, by appropriate means including by swabbing the person's nasopharyngeal cavity, or provide such a sample; and

- (d) provide sufficient information to enable the person to be contacted immediately by a health officer during such period as the health officer may specify.
- (2) Where a person is a child and accompanied by a responsible adult, the responsible adult must —
 - (a) ensure that the child answers questions in accordance with paragraph (1)(a);
 - (b) answer the questions if the child is unable to do so or cannot reliably do so;
 - (c) produce any documents, required under paragraph (1)(b), on such child's behalf;
 - (d) allow the health officer to take a biological sample of the child, including a sample of such child's respiratory secretions or blood, by appropriate means including by swabbing such child's nasopharyngeal cavity, or provide such a sample; and
 - (e) provide information under paragraph (1)(d) to the health officer as required.

9. Regulation of care providers.

The Competent Authority may by order, regulate the sector of persons providing medical, therapeutic and other patient care.

10. Power to requisition any building, ship or aircraft, etc..

- (1) Where the Competent Authority is satisfied that it is reasonably required for any statutory purpose so to do for the duration of the emergency or any period therein, the Competent Authority may give notice, in writing, to the person having control of any building, ship, or of any aircraft or article of any description in The Bahamas, of having requisitioned a building, ship, aircraft or article.
- (2) Where the Competent Authority requisitions any building, ship, aircraft or article under paragraph (1) the Competent Authority may, by itself, its servants or agents, take possession of the building, ship, aircraft or article and do to or in relation to such building, ship, aircraft or article, anything which might lawfully have been done by the owner of such building, ship, aircraft or article as if such building, ship, aircraft or article had not been requisitioned under these Regulations, and may use such building, ship, aircraft or article for any purpose for which such building, ship, aircraft or article might lawfully have been used if it had not been so requisitioned.

- (3) At the conclusion of the requisition, the Competent Authority shall make prompt and adequate compensation in the circumstances to the owner or occupier of such building, ship, aircraft or article.

11. Power to requisition essential services.

- (1) Where the Governor-General is satisfied that it is reasonably required so to do for the duration of the emergency or any period therein, he may give notice in writing for the requisition of any essential service to the person having the management or control of any essential service requisitioning such service with effect from such date as may be specified in such notice.
- (2) Where any essential service is requisitioned under paragraph (1), the Governor-General shall by instrument in writing appoint some person as controller of the service requisitioned.
- (3) Upon the appointment of some person as controller of any essential service, such person shall be entitled to take possession of all premises and assets of every description (other than money or securities for money) which, immediately before the giving of the notice by which such service was requisitioned, were used or intended to be used for the purposes of such service and, in relation to any premises and assets so taken possession of, and in relation to the service so requisitioned, to do or cause to be done any act or thing which might lawfully have been done by the person having control of such service if the service had not been so requisitioned.
- (4) For the purposes of these Regulations, “essential service” means any service established, maintained or operated by the Government, or by any public or private enterprise, or otherwise, for —
 - (a) the collection, storage, purification or distribution of water for use by the public or any class of the public;
 - (b) the collection, storage, treatment and disposal of sewage or garbage or refuse;
 - (c) the manufacture, storage or distribution of gas for use by the public or any class of the public; or
 - (d) the removal, handling or burial of deceased persons or disposal of dead animals.
- (5) The provisions of regulation 10(3) shall apply *mutatis mutandis*.

12. Power to waive procurement rules.

- (1) In the interest of protecting the public safety and health, the Competent Authority, in consultation with the Minister of Finance, may by order,

waive the application of any rules or law governing the procurement of goods and services.

- (2) The Minister of Finance shall within six weeks of the expiration of the Proclamation of Emergency lay a report before the House of Assembly detailing —
 - (a) the total expenditure of the goods and services procured;
 - (b) the suppliers of the goods and services procured;
 - (c) the reasons for the use of the suppliers of the goods and the providers of the services.

13. Power to waive fees.

The Competent Authority may by order waive or vary the payment of any fees for the testing and medical services rendered at any public hospital or health care facility in relation to Covid 19.

14. Reporting requirements.

The Minister of Health, the Managing Director of the Public Hospital Authority and the person charged with responsibility for directing the day to day operations of any other entity or public body charged with responsibility for protocols with respect to Covid 19, shall report to the Competent Authority during the continuance of the public emergency.

15. Revocation or suspension of permits for use of public open spaces.

The Competent Authority may by order, cause to be revoked or suspended all permits for the use of public open spaces in any particular area, or an entire island or the country as a whole in the interest of public health safety.

16. Prohibition of assembly.

The competent authority may by order prohibit the assembly of two or more persons in a public place in any area specified, in the interest of public health safety.

17. Imposed social distancing or isolation.

- (1) The Competent Authority may by order, impose isolation on all individuals within a particular area, island or the entire country in the interest of public health safety.
- (2) Where isolation has been imposed, the Competent Authority may —
 - (a) require the closure of all educational or religious institutions in the area so specified;

- (b) require the closure of any business or organization that caters to the general public in the areas so specified, unless permitted otherwise by the order;
 - (c) prohibit the visitation by persons at all residential care establishments;
 - (d) prohibit the visitation by persons at all correctional facilities;
 - (e) require every person to confine himself at his place of residence, unless otherwise specified by the order;
 - (f) permit the travel of persons to a grocery store, gas station, pharmacy, doctor, hospital or such other place as may be specified in the order.
- (3) An order made pursuant to paragraph (1)(e), shall not prohibit a person from going outdoors within the enclosed yard space of that person's residence.
 - (4) The Competent Authority may by order issue guidelines on social distancing and isolation, which shall have the force of law.

18. Curfew.

The Competent Authority may, by order, require every person within any area specified in the order to remain within doors between such hours as may be specified in the order, and any person who within any area so specified is or remains outdoors between such hours without a permit in writing from the Competent Authority, or some person duly authorized by the Competent Authority, commits an offence.

19. Restriction of access to any area.

- (1) The Competent Authority may, by order, prohibit a person from residing or entering any area specified in the order if such person is suspected of acting or of having acted, or of being about to act, in a manner prejudicial to —
 - (a) the public safety;
 - (b) the supply or distribution of any necessity of life; or
 - (c) the preservation of the peace,
 and the Competent Authority is satisfied that it is desirable that such person should be prohibited from residing in or entering any particular area, the Competent Authority may, by order, prohibit him from residing or entering any such area or areas as may be specified in the order.
- (2) Upon the making of an order under paragraph (1), the person to whom the order relates shall, if he resides in any area so specified, leave that area

within such time as may be specified in the order, and shall not subsequently reside in or enter any area so specified during such time as may be specified in the order.

20. Power to stop, detain and arrest.

- (1) Where an authorized person has reasonable cause to believe that a person is in violation of these Regulations, he may stop, detain, question and arrest such person if he considers it necessary so to do.
- (2) Any person who assaults, obstructs, hinders or resists or uses any threatening or abusive language or aids or incites any other person to assault, obstruct, hinder or resist any authorized person in the execution of his duty under this regulation, commits an offence.
- (3) For the purposes of these Regulations, an authorised person means —
 - (a) any member of the The Royal Bahamas Police Force or a peace officer; or
 - (b) any person authorized by the competent authority to do the act in relation to which the expression is used.

21. Obstruction.

No person shall obstruct any health officer, public officer, any member of the Royal Bahamas Police Force, the Defence Force, any peace officer, or any correctional officer, acting in the course of his duty as such, or any person exercising any powers or performing any duties conferred or imposed on him by or under any of these Regulations, or otherwise discharging any lawful functions in connection with the performance of any statutory purpose.

22. Publication of false statements.

No person shall publish or cause to be published, posted or re-posted, over any media platform inclusive of social media, any purported news or report, or purported statement of fact, knowing or have reasonable cause to suspect that the same —

- (a) is untrue or false; and
- (b) may incite public fear, panic or ethnic hatred.

23. Power to suspend or apply enactments.

- (1) Subject to paragraph (2), the Competent Authority may by order, provide for —
 - (a) the suspension of the operation or part thereof of any enactment; and

- (b) the application of any enactment or part thereof with or without modification.
- (2) An order to suspend or apply an enactment under paragraph (1) shall only be made to defer any obligation —
 - (a) on any person or legal entity to do any act or thing required by any enactment;
 - (b) on any government entity or statutory corporation to carry out any function imposed by any enactment,
which by virtue of the public emergency cannot physically be done.

24. Governor-General may authorise international or regional forces.

The Governor-General may authorize such international or regional military or police forces as may be requested by the Government to serve as peace officers and assist in —

- (a) the storage, safe keeping or distribution of relief supplies;
- (b) the provision of any essential services; and
- (c) the maintenance of public order.

25. Publication of order.

- (1) Any order made pursuant to these Regulations may be published —
 - (a) by announcement on any television or wireless transmission by any media duly licensed to operate for transmission and reception in The Bahamas;
 - (b) by notice affixed to the outside of magistrate courts, police stations located in The Bahamas and to the outside of every Administrator's office on the Family Islands to which the order applies; or
 - (c) by notice on the official website of the Government,
except that as soon as practicable thereafter the order shall be published in the Gazette.
- (2) The means of authentication for an order published pursuant to subsection (1) shall be —
 - (a) in the case of media announcements under paragraph (1)(a), the voice of the Prime Minister;
 - (b) in the case of posted notices under subsection (1)(b) and (c), the actual or electronic signature of the Prime Minister.
- (3) Notwithstanding the provisions of sections 31 and 32 of the Interpretation and General Clauses Act (*Ch. 2*), an order made under these Regulations shall have effect notwithstanding that the order has not been published in the Gazette or laid before the House of Assembly.

26. Flee clauses.

Wherever there is a provision (a “flee clause”) in a trust instrument governed by Bahamian law to the effect that the trust in question shall, in the event of a proclamation of a state of emergency in The Bahamas, cease to have —

- (a) Bahamian law as its governing law;
- (b) The Bahamas as its forum and situs of administration; or
- (c) as its trustee, a trustee in The Bahamas,

such trust instrument shall be treated (despite any provision in the trust instrument that might be considered a contrary provision) as having from its date contained immediately thereafter the following provision —

“Provided always that the flee clause does not extend to the proclamation of a state of public emergency as a result of a pandemic; and provided further that any actions carried out without taking account of this proviso shall be null and void from the outset.”

27. Power to control trade of personal protection equipment.

The Competent Authority may by order, control the sale and importation of personal protection equipment including surgical masks.

28. Repugnancy with other enactments.

These Regulations shall have effect notwithstanding anything inconsistent therewith contained in any enactment, and any provision of an enactment which may be inconsistent with these Regulations or any such order made in accordance with these Regulations shall, whether or not that provision has been amended, modified or suspended in its operation under section 3 of the Act, to the extent of such inconsistency have no effect so long as these Regulations or any such order remains in force.

29. General penalty.

Where no other penalty is provided, any person who contravenes the provisions of any of these Regulations or any order made or notice given thereunder or incites or attempts to incite any other person to contravene any of these Regulations or any order made or notice given thereunder commits an offence and is liable upon summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment for a term not exceeding eighteen months or to both.

Dated the 14th day of May, 2021.

**Signed
CORNELIUS A. SMITH
Governor-General**