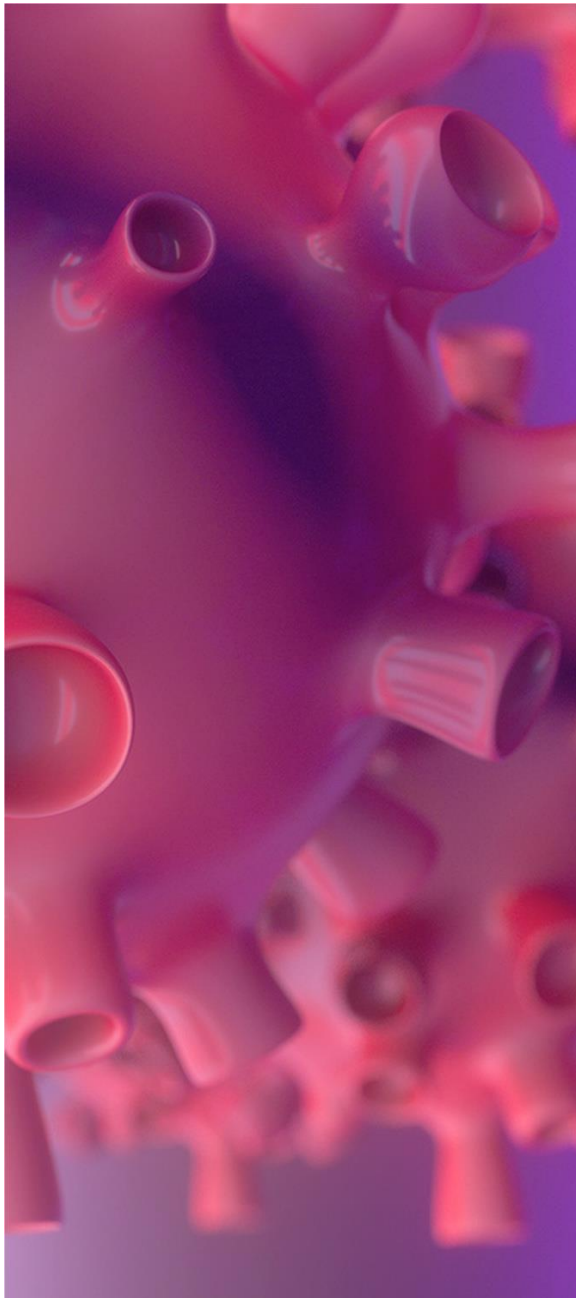

COVID-19 (No. 40)

Legal Flash | Portugal

January 14, 2020



- > **New general lockdown - Decree 3-A/2021 of January 14**



New general lockdown – Decree 3-A/2021 of January 14

The situation of calamity in Portugal caused by the COVID-19 pandemic has worsened considerably in recent days, with an alarming increase in the number of people infected and hospitalized, as well as in the number of deaths, added to the rise of other illnesses typical of the winter season, particularly with the cold wave we have been enduring.

It has become necessary to adopt measures more restrictive than those in force until now, to contain and reverse the accelerated growth of the pandemic and save lives.

Presidential Decree 6-B/2021 of January 13 has again renewed the state of emergency, enabling more burdensome restrictive measures to be introduced. At the same time, parameters have been established to adapt the rules to the current election period. The state of emergency applies to the whole country and will be effective until midnight, January 30, 2021.

Following the issue of this decree, the Portuguese government has regulated the measures applicable to mainland Portugal in Decree 3-A/2020 of January 14. Tightening restrictive measures has meant a return to many of the solutions adopted during the first wave of the pandemic in March and April 2020, notably imposing a new general lockdown.

It is considered that contact among individuals, as well as their movement, is a strong vector for contagion and the spread of the virus, so it must be kept to a minimum. People are being ordered to remain in their homes, the mandatory nature of remote working has been reinforced, and most commercial establishments and service companies have had to close again.

However, unlike the first general lockdown, this time all schools have remained open, as have day centers, and visits to nursing homes, long-term care facilities and residences for people with disabilities are allowed. Religious ceremonies, including community celebrations, are also permitted.

The government has warned that these measures will likely be extended after the end of the term of the state of emergency that has just been decreed, and will be effective for at least 30 days.

To raise awareness of the need to comply with the measures, the government has resolved, through Decree Law 6-A/2020 of January 14, to reinforce the sanctions for failing to comply with the restrictive measures adopted to combat the pandemic. During the state of emergency, applicable fines have doubled. Also, breach of the obligation to operate remote working systems during the state of emergency in all cases where it is mandatory has been classified as a very serious offense.



MEASURES APPLICABLE TO INDIVIDUALS

Mandatory confinement

All persons suffering from COVID-19 and citizens subject to active surveillance are required to remain in mandatory confinement at health establishments or at home, or, if this is not possible, at a place to be defined by the appropriate authorities.

Categorization for the purpose of the presidential election: People resident in homes for the elderly and other institutions caring for senior citizens are considered subject to mandatory confinement for the purpose of exercising their right to vote in the election on January 24 to choose the President of the Republic. This means they can cast their vote early, and remotely, so they can vote without having to visit a polling station.

Duty to stay at home

The rest of the population is subject to the general duty to stay at home, which means staying at home, and not being allowed to circulate in public areas or streets, except:

- a) to purchase goods and services;
- b) to access public services and participate in proceedings in the courts and before notaries, attorneys, solicitors and registry officials;
- c) to carry out professional or similar activities when remote working is not possible, or to seek employment or respond to a job offer;
- d) to obtain health care or to transport persons who require health care, or to give blood;
- e) to provide urgent assistance to victims of domestic violence or people trafficking, and to intervene in the protection of children and young persons at risk;
- f) to assist vulnerable persons, the homeless, people with disabilities, children, parents, elderly persons and other dependent persons, or for other necessary family reasons, such as sharing parental responsibilities as agreed by parents or ordered by courts;
- g) for minors to attend schools or kindergarten, and travel with their accompanying persons, and for students to travel to higher education establishments or other schools;
- h) to attend training and take tests and exams, as well as for carrying out inspections;
- i) to attend establishments providing social assistance to people with disabilities;
- j) to perform physical and sports activities outdoors, under the conditions listed below;
- k) to participate in religious ceremonies, including community celebrations;



- l) to go outdoors for periods and to walk pets, which must be brief and take place within the area of the home, either unaccompanied or in the company of members of the same cohabiting group of family members;
- m) for veterinarians, municipally recognized kennels, and animal charity volunteers responsible for animals that need to travel to animal shelters, and municipal veterinarian services to pick up and assist animals, or to feed them;
- n) to participate in social volunteering actions;
- o) to visit residences for the elderly and for people with disabilities, long-term care homes forming part of the National Comprehensive Care Network, and other entities caring for the elderly, as well as for activities at daycare centers;
- p) to carry out authorized visits and deliver essential goods to people with disabilities and those deprived of freedom of movement;
- q) to carry out their duties as holders of government posts, leaders of social partners and political parties represented in the Assembly of the Republic, as well as those holding a *laissez-passer* issued under the law;
- r) for diplomatic missions, consular and international organization personnel based in Portugal to carry out official duties;
- s) to participate in any capacity in the election campaign and the election of the President of the Republic, and particularly to exercise the right to vote;
- t) to go to post offices and branches, banks and insurance brokers;
- u) to exercise freedom of the press;
- v) for necessary travel to enter and leave mainland Portugal, including travel to and from a place of lodging;
- w) for other similar activities, or for reasons of *force majeure* or urgent need, when justified;
- x) to return home after the movements listed in the above points.

For the above movements, it will be necessary to follow the recommendations and instructions of the health authorities and the security services, particularly regarding **social distancing and the mandatory wearing of face masks or visors.**



Private vehicles

The use of private vehicles is permitted for any of the above reasons or to refuel.

Private vehicles with more than five seats will only be able to operate at two-thirds of capacity, and occupants must wear face masks or visors, unless all occupants are members of the same family group.

Celebrations and other events

During this new state of emergency, all forms of celebration and events are forbidden, except:

- a) religious ceremonies, including community celebrations; and
- b) events relating to the election campaign and the election of the President of the Republic.

In justified circumstances, government authorities responsible for internal affairs and for health will be able to jointly authorize other celebrations or events, setting their conditions.

In the absence of guidance from the Directorate-General for Health (DGS), it will be necessary to follow the rules on occupancy, permanence and social distancing applicable to establishments and premises open to the public, with the necessary adaptations, and participants must use face masks or visors.

Funerals

Funerals will be conditional on measures being adopted to ensure large groups are avoided and social distancing rules are enforced, with each municipal district setting the maximum number of people allowed to attend. The limit established should not prevent spouses or legal partners, parents, children or relatives of the deceased from attending the funeral.

Remote working

At this stage of the fight against the pandemic, one of the government's main measures is to strengthen the requirement for remote work.

Remote work has again become mandatory across mainland Portugal, regardless of the employment link, modality or nature of the legal relationship, as long as it is compatible with the activity performed and the worker has the necessary resources available, with no need to reach any agreement between the parties.



Decree 3-A/2020 of January 14 expressly states that activities carried out by the following workers are not considered compatible with remote working:

- a) Utility workers required to provide assistance in person.
- b) Workers directly involved with the Portuguese Presidency of the Council of the European Union.
- c) Workers designated by members of the government responsible for government services according to their management authority.

When it is not possible to implement remote working, and regardless of the number of workers they have, employers must stagger workplace arrival and departure times and implement technical and organizational measures to ensure physical distancing and worker protection.

Use of face masks or visors has also been made mandatory when accessing and remaining in workplaces that continue to operate when the physical distancing rules recommended by the health authorities prove impracticable. This obligation will not apply to workers when they work in an office, room or similar space that has no other occupants, or when impermeable protection barriers have been set up to separate workers.

MEASURES APPLICABLE TO BUSINESSES

As with the rules applicable to individuals, the measures adopted for businesses are similar to those implemented during the previous lockdown in March and April 2020.

The closure has again been ordered of a series of establishments and facilities that generally tend to encourage large gatherings, and most retail trade activities and services provided in establishments open to the public or on an itinerant basis have been suspended, except for those providing basic necessities and services or other goods or services considered essential.

This suspension **does not apply to** (i) **wholesale establishments** or (ii) establishments continuing to operate by **supplying goods outside the retailer's premises or providing home delivery, take-away, or click and collect services**. In these cases, members of the public will be prohibited from entering the premises.

Further details on these new rules are below.



I. Shutting facilities and establishments

During this period, the following facilities and establishments are to remain closed:

- **Recreation, leisure and entertainment activities:** discotheques, bars, and dance and party halls and salons; circuses, leisure parks and recreation parks, and similar activities for children; water parks and zoos (but staff are allowed to take care of the animals); all indoor premises for leisure sport activities; and all other similar facilities.
- **Cultural and artistic activities:** auditoriums, except for election campaign activities for the election of the President of the Republic; cinemas, theaters and concert halls; museums, monuments, palaces and archaeological or similar sites (e.g., interpretation centers and caves), whether national, regional or municipal, public or private, but workers have access for maintenance and safety purposes; libraries and archives; bullfighting rings, premises and installations; art galleries and exhibition halls; and convention centers, multipurpose auditoriums, meeting rooms and multifunctional pavilions, except when used for election campaign activities relating to the election of the President of the Republic.
- **Educational and training activities:** leisure activities; language academies and driving schools (although tests and examinations are allowed), and coaching academies.
- **Sports facilities** (except to practice individual outdoor sporting activities, professional training and competition, and similar activities): soccer, rugby and similar fields; enclosed pavilions or areas; futsal, basketball, handball, volleyball, roller hockey and similar stadia; covered shooting ranges; indoor tennis, paddle tennis and similar courts; skating and ice-hockey and similar rinks; boxing and martial arts and similar rings; permanent indoor motorbike, car and similar racetracks; indoor velodromes; indoor racetracks and similar stadia; indoor sports centers, gyms and training centers; indoor athletics tracks; and stadia.
- **Activities held in outdoor spaces and in public or equivalent thoroughfares:** bicycle, motorcycle and car racing, and similar closed circuits, except for training activities; nautical events and exhibitions; aeronautical events and displays; popular parades and celebrations and folklore shows or other types of shows.
- **Gaming and gambling spaces:** casinos, gambling and game of chance establishments such as bingo halls, gambling and similar types of machines, games parlors and arcades.
- **Food and drink related businesses:** restaurants, cafes, tea-rooms and similar activities, except when offering home delivery, either directly or through an intermediary, as well as making meals or packaged items available at the door of the establishment or for take-away; bars; and hotel bars and restaurants (except for room service or take-away); and terraces.
- **Springs, spas and related activities.**



The Economy Minister may order the (i) opening of some of the above facilities or establishments that may become essential as the situation evolves; (ii) restriction or suspension of activities if they are shown to be inadvisable; and (iii) opening of certain retail establishments if they become essential to ensure the supply of essential goods to the population.

II. Retail trade activities and services provided at establishments open to the public

All retail trade activities and services provided at establishments open to the public are suspended, except for the following activities (even if they are in shopping malls):

- **Food sales:** grocery stores, minimarkets, supermarkets, hypermarkets, fruit and vegetable stores, butcher shops, fish shops, bakeries; fairs and markets; food producers and distributors; fish markets; restaurant and beverage items for home delivery, either directly or through intermediaries, as well as the preparation of meals or packaged products for take-away; canteens and cafeterias in regular operation; other mass catering units providing meals under contract.
- **Electronic goods:** trade in electronic goods, as well as providing services that can be carried out remotely without contact with the public, or to carry out business on an electronic platform.
- **Health and similar services:** medical services and other health and social support services; pharmacies and stores that sell medicines without prescriptions; medical and orthopedic product establishments; oculists; cosmetic and hygiene product establishments; natural and dietetic product stores; veterinarians; establishments providing medical services or other health and social support services, such as hospitals, consulting rooms and clinics, dental surgeries, and veterinarians providing emergency assistance, as well as the support services integrated within these establishments; and establishments selling veterinary medicine.
- **Supply and repair of essential services:** essential public utilities and their repair and maintenance (water, electricity, natural gas and piped liquefied petroleum gas, electronic communications, postal services, waste water collection and treatment, collection and processing of effluents, solid urban waste management services and urban hygiene, and passenger transport services); approved services for water supply, collection and treatment of sewage and waste generated by the activities or establishments that remain in activity and by authorized activities.
- **Gas stations and others:** gas stations, and charging stations for electric vehicles; establishments selling fuel for domestic use; highway service activities such as service areas and gas stations; filling points not covered by the above and electric vehicle charging stations; providing services to implement or upgrade firebreaks in the fuel management networks.



- **Establishments selling and repairing vehicles and equipment:** establishments selling, maintaining and repairing bicycles, cars and motorcycles, tractors and farm and industrial machinery, ships and vessels, as well parts and accessories and towing services; establishments selling and repairing household appliances and IT and communications equipment; and services for domestic maintenance and repair.
- **Cleaning services:** establishments for laundering and dry-cleaning textiles and leather; cleaning, disinfecting, pest control and similar activities.
- **Education services:** educational institutions, professional learning and training establishments, crèches, occupational therapy centers and social support spaces in full-time schooling that include entertainment and family-related support activities as part of the family support and syllabus enrichment programs.
- **Hotels and lodging:** hotels, tourist establishments and local lodging establishments, as well as student lodging facilities.
- **Other establishments:** stationers and tobacconists (newspapers and tobacco); social gambling; drugstores; hardware and DIY stores; pet and pet food stores; florists selling plants, seeds fertilizers, and chemical and biological plant health products; establishments selling irrigation material and equipment, as well as products for wineries, and fruit and vegetable processing; establishments selling phytopharmaceutical products and biocides; establishments in airports located in mainland Portugal, after passenger security control; vending machines; vehicle technical verification and inspection centers.
- **Other services:** notaries, banking, financial and insurance services, security and household surveillance services, and home delivery services.
- **Other activities:** funeral services and related activities; travelling sales personnel selling necessities and other items considered essential in the current circumstances, in areas where the municipality decides the activity is essential to ensure the population has access to necessities; truck rental companies (*rent-a-cargo*); and car rental companies (*rent-a-car*).

The Minister of Economy may also determine that retail establishments selling more than one type of goods with an activity permitted under the terms of this decree will not be able to sell items usually sold by retail establishments ordered to remain closed, or whose business has been suspended under the terms of this decree. It is expected that supermarkets and hypermarkets will be prevented from selling books, clothing and decorations under the terms of this order.

III. Rules applicable to establishments open to the public

Rules on occupancy, permanence and physical distancing, hygiene regulations and the availability of disinfectant solutions, priority attention, the provision of information to



establishments' customers and services available to the public adopted in the past remain virtually unchanged.

IV. Special rules applicable to restaurants and wholesalers

Restaurants and similar establishments

- All restaurants and similar establishments are to remain closed to the public, operating exclusively to prepare food for consumption off the premises either through home delivery directly or through intermediaries, or on a take-away basis. It is not necessary for these purposes to obtain a permit to prepare food for consumption outside the establishment.
- Bars and other establishments serving drinks with no entertainment, as well as drinks establishments with dance floors, are to remain closed.
- Caps have been placed on the fees and commissions that can be charged by intermediary platforms in the restaurant and similar establishments sector.

Wholesale establishments

- Licensed wholesale food distribution traders are allowed to sell their products directly to the public, complying with the regulations applicable to businesses open to the public (on access, occupancy, security, hygiene and priority service).
- It is expected that measures will be introduced to ensure that amounts supplied to consumers are appropriate, to discourage hoarding.

V. Restrictions on consuming and selling alcoholic beverages

The following restrictions on consuming and selling alcoholic beverages have been kept in place:

- Sale of alcoholic beverages is prohibited in fuel service areas and gas stations, and, from 8.00 p.m., in retail establishments, including supermarkets and hypermarkets.
- Supply of alcoholic beverages is prohibited in the case of home deliveries and take-aways from 8:00 p.m.
- Consumption of alcoholic beverages is prohibited in open air areas with public access and on public streets.



VI. Other measures: electronic communications and bottled gas

- Electronic communications services: companies offering public communications services or electronic communications services accessible by the general public must assign priority to the continuity of critical services, particularly (i) the short voice and message service (SMS) on fixed and mobile networks; (ii) uninterrupted access to emergency services, including information on the location of the person making the call and the uninterrupted transmission of warnings to the population; (iii) data services supported on fixed and mobile networks in conditions that ensure access to a group of services to be defined in an order from the government official responsible for the communications area; and linear and digital and terrestrial television.
- Sale and distribution of bottled liquefied petroleum gas (LPG): maximum prices have been set for LPG, with a formula for the monthly fixing of LPG's price.

MEASURES APPLICABLE TO PUBLIC SERVICES

Public services must provide face-to-face service by appointment, while reinforcing online service systems and provision of services through contact centers for use by individual customers and companies.

These services are required to comply with the same rules on hygiene, opening times and priority attention applicable to premises dealing with the public, with the necessary adaptations.

MEASURES APPLICABLE TO EXERCISE AND SPORTS ACTIVITIES

Individual exercise and sports training are only permitted outdoors, as are all professional training and competitive and similar activities, with no public presence, and complying with DGS guidelines.

Open sports facilities must comply with the hygiene rules applicable to all premises open to the public.

MEASURES APPLICABLE TO AIR TRAFFIC AND AIRPORTS

Passengers on flights originating in countries to be determined on a list in a government order will have to present a certificate showing that they have been tested for COVID-19 with a negative result, carried out within 72 hours of departure; otherwise, they will not be allowed to board the aircraft and will be refused entry to Portugal.



Portuguese citizens and foreigners with legal residence in mainland Portugal, as well as diplomatic personnel posted to Portugal, who do not have a certificate showing that they have been tested for COVID-19 with a negative result, will immediately on arrival be taken by the security authorities for a test, before entering mainland Portugal.

At the international airports it manages, the ANA – Aeroportos de Portugal, S. A. must use infrared thermometers to measure the body temperature of all passengers arriving in mainland Portugal. If passengers are detected to have a temperature over 38.°C, the security authorities must take them immediately to a suitable area for a repeat body temperature measurement, and, if the situation justifies it, passengers will be required to take a COVID-19 test.

All passengers awaiting the result of their COVID-19 test will be able to leave the airport as long as they provide contact details and remain in mandatory confinement in isolation until the test result is received.

MEASURES TO CONTROL THE HEALTH OF INDIVIDUALS

Control body temperature

Authorization has been given to take non-invasive body temperature measurements at access control points for workplaces, public utility services and institutions, educational establishments and commercial, cultural and sports premises, means of transport, healthcare facilities, prisons and education centers, as well as residential buildings.

People who may be subjected to tests for the diagnosis of COVID-19 as indicated below may also be required to have their body temperature measured.

Taking body temperature measurements does not infringe individual data protection rights, as it is expressly forbidden to link body temperature records to the person's identity, unless that person gives express consent. Measurements may be taken by an employee of the entity responsible for the premises or establishment using equipment containing no memory or record of the measurements performed. It is also established that the employee performing the measurement must be made subject to professional secrecy rules, according to recent guidelines issued by the Portuguese National Data Protection Authority. We published these guidelines in our *COVID-19 Newsletter: New CNPD guidelines on processing personal data in the context of measures to fight the pandemic*, which can be consulted [here](#).

If a person refuses to have their temperature taken or if the reading is 38°C or higher, they may be prevented from entering the premises indicated above. If the reading is 38°C or higher, leading to a worker being prevented from accessing the workplace, this will be considered a justified work absence.



Administering tests to diagnose SARS-CoV-2

Authorization has also been granted for tests for the diagnosis of SARS-CoV-2 to be administered to workers, users and visitors to healthcare establishments, educational establishments and residential facilities, as well as those detained in prison institutions, and young people resident in educational centers and their workers. Those wishing to enter or leave mainland Portugal or the autonomous regions by air or sea may also be required to take a test, as well as those seeking access to specific premises to be determined in an order issued by the DGS. If the result of such a test prevents workers from accessing their workplace, this will be considered a justified work absence.



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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our Task Force by email TFcoronavirusPT@cuatrecasas.com or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our [website](#).

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