

STATEMENT BY MINISTER

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Minister of Legal and Constitutional Affairs
To the House of Representatives
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(Always check against delivery and response to questions/comments)

The purpose of this statement is to correct a misstatement of the law, which has misled members of the public, on when Emergency Regulations take effect.

A question arose in the public sphere, based on statements attributed to two senior members of the legal profession- one of whom is Jamaica's celebrated constitutional law expert and the other, a former Solicitor-General, whether the ***Emergency Powers (Parishes of St James, Westmoreland and Hanover) (No2) Regulations, 2022, and similar Emergency Powers (Parishes of St Ann, Clarendon and St Catherine and Specified Areas in the Parishes of Kingston and St Andrew) Regulations, 2022***, were valid as at December 6, 2022 when states of public emergency were declared by the Governor-General.

The validity of the Regulations was brought into question because it was reportedly said that until and unless they were tabled in the Parliament they were of no effect. The States of Public Emergency were consequently described as 'toothless'.

I should like to advise that the Regulations in question were promulgated by the Governor-General pursuant to power to do so granted by the Parliament under ***section 3 of the Emergency Powers Act***.

The relevant portion of the law provides:

"-(1) During a period of public emergency, it shall be lawful for the Governor-General, by order, to make regulations for securing the essentials of life to the community and those

Regulations may confer or impose on any Government Department or any person...such powers and duties as the Governor-General may deem necessary or expedient for the preservation of the peace, ... and for any other purposes essential to the public safety and the life of the community, and may make such provisions incidental to the powers aforesaid as may appear to the Governor-General to be required for making the exercise of those powers effective."

...

"-(4) Any Regulation so made shall be laid before the Senate and the House of Representatives as soon as may be after they are made and shall not continue in force after the expiration of seven days from the time when they are so laid before the Senate or House of Representative, whichever shall be the later unless a resolution is passed by the Senate or the House of Representative providing for the continuance thereof."

These Regulations do not require any affirmative or negative resolution to commence, as some other laws require. The ***Emergency Powers Act*** provides for the making of these types of Regulations by the Executive (Governor-General), not the Legislature (Parliament), because the Legislature has delegated that subsidiary lawmaking power to the Executive. This a permissible delegation, for the stated purposes, in circumstances where a state of public emergency or public disaster exist.

Section 3 of the Emergency Powers Act (and any other Act which confers a power to make Regulations) must be read conjunction with ***section 31 of the Interpretation Act***, which provides:

"-(1) All regulations made under any Act or other lawful authority and having legislative effect shall be published in the Gazette and unless it be otherwise provided shall take effect and come into operation as law on the date of such publication."

“(2) The production of a copy of the Gazette containing any regulations shall be prima facie evidence in all courts and for all purposes of the due making and tenor of such regulations.”

The requirement to table the Regulations speaks to their duration - how long they last. The requirement does not deal with when they commence. The regulations were duly gazetted and published on December 6, 2022. They were subsequently laid in the Senate (Dec 9, 2022) and then the House (Dec 13, 2022).

It is most unfortunate that the people of Jamaica have been misled on this very important matter.