

**B/15**

***The Honourable Second Member for Port Louis North and Montagne Longue (Mrs Luchmun Roy)***

***To ask the Honourable the Attorney-General, Minister of Agro-Industry and Food Security –***

***Whether, in regard to offences committed for breach of the Curfew Order, he will state if same will appear on the certificate of character of the offenders and, if so, indicate if same will be reviewed?***

1. Mr. Speaker, Sir, under the the Certificate of Character Act as it presently stands, offences amounting to crimes or misdemeanours should, in principle, appear in a person's certificate of character.

Mr Speaker Sir,

The Curfew Orders which have been published during the COVID-19 pandemic indeed contain a provision which reads as follows –

*“Any person who fails to comply with this notice shall commit an offence and shall, on conviction be, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 6 months”*

Mr Speaker, Sir, the offence therefore is classified as a misdemeanour. In the present state of the law, where offences amount to a misdemeanour, and less than 5 years have lapsed since the conviction and where no probation order was made in favour of the person convicted, the said offences would appear in the certificate.

In so far as LENIENCY is concerned Mr Speaker, Sir, this will be a matter for the Court to determine at the time of sentencing depending on all the circumstances on a case to case basis.

### **OTHER MATERIALS**

Let me state at the outset that this fine will be reviewed very soon as the sentence set out in the Curfew Order is limited by section 79(1)(b) of the Public Health Act which provides as follows (the policy of Government in imposing a Curfew Order is clear: as a responsible Government, we want to protect our population and we want to save the lives of our citizens):

***“79. Regulations to combat epidemic***

***(1) (a) After the issue of a notice under section 78, and while it continues in force, the Minister may make such regulations as he thinks fit, for the prevention or mitigation of any epidemic, endemic, infectious or communicable disease.***

***(b) Any regulations made under paragraph (a) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 6 months.”***

3. Mr. Speaker, it is important to recall that the first Curfew Order, inter-alia, provided that no person shall remain outdoors as from 23 March 2020, with the exception of the following classes of persons, for the purpose of leaving their place of residence to their place of work and back:

- (a) such judicial officers in respect of such minimum judicial services as the Chief Justice deems essential, and such employees of the public sector, including Ministries and Government departments, public enterprises and statutory bodies, providing essential services to the public as may be designated by the Head of the public bodies concerned; and
- (b) employees of the private sector providing strictly essential minimum services.

The first curfew order, which lapsed on 2 April 2020 at 2000 was extended for the first time till 15 April 2020 at 2000 (General Notice 548 of 2020 dated 31 March 2020) and for the second time till 4 May 2020 at 2000 (General Notice 561 of 2020 dated 12 April 2020).

5. On the other hand, Mr. Speaker, a crime or misdemeanour will not appear on the certificate where the person has in Mauritius -

- (a) never been convicted of any crime or misdemeanour;
- (b) following a conviction for a crime or misdemeanour, other than an offence specified in the Second Schedule, been given only –
  - (i) an absolute discharge; or

- (ii) a conditional discharge, and has complied with the terms and conditions of the discharge; or
- (c) more than 5 years before making the application, been convicted of a crime or misdemeanour, other than an offence specified in the Second Schedule, and been –
  - (i) given only a fine of up to 5,000 rupees; or
  - (ii) made the subject of a probation order only, and has complied with the terms and conditions of the order; or
- (d) been granted a free pardon in respect of a crime or misdemeanour pursuant to section 75 of the Constitution.

6. It is to be noted that under the Criminal Code, misdemeanours are offences punishable by -

- (a) imprisonment for a term exceeding 10 days;
- (b) a fine exceeding 5,000 rupees.

And crimes are offences punishable by—

- (a) penal servitude;
- (b) a fine exceeding 5,000 rupees.

7. Mr. Speaker, examples of other minor offences which are included in the certificate of character are – smoking in a public place, throwing cigarette, consuming alcoholic drinks in a public place, illegal littering, insult, being found in a place of amusement outside prohibited hours.

8. Mr Speaker, Government amended the Equal Opportunities Act in 2017 to deal with the issues of offences which appear in the Certificate of Character as well in order to avoid issues of bias and stigma and discrimination in the labour market. After the amendments to the Equal Opportunities Act, sections 10 and 11 of the Equal Opportunities Act now provide as follows:

***“10. Employment of persons***

***(1) No employer or prospective employer shall discriminate against another person—***

***[Amended 15/17 (cio 23/11/17)]***

***(a) in the advertisement of a job;***

***(b) in the arrangements he makes for the purpose of determining who should be offered employment;***

***(c) in determining who should be offered employment;***

***(d) in the terms or conditions on which employment is offered;***

***[Amended 15/17 (cio 23/11/17)]***

***(e) by refusing or deliberately omitting to offer employment to that person; or***

***(f) where, subject to subsection (2), that person has a criminal record which is irrelevant to the nature of the employment for which that person is being considered.***

***[Added 15/17 (cio 23/11/17)]***

***(2) The burden of establishing the relevance of the criminal record to the nature of employment shall rest with the employer or prospective employer.***

**[S. 10 amended by s. 3 of Act 15 of 2017 w.e.f. 23 November 2017]**

**11. Persons in employment**

**(1) No employer shall discriminate against an employee—**

- (a) in the terms or conditions of employment that the employer affords that employee;**
- (b) in conditions of work or occupational safety and health measures;**
- (c) in the provision of facilities related to or connected with employment;**
- (d) by denying the employee access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefit, facility or service associated with employment;**
- (e) by terminating the employment of the employee;**

**[Amended 15/17 (cio 23/11/17)]**

**(ea) where, subject to subsection (2), the employee has a criminal record which is irrelevant to the nature of the promotional post for which the employee is being considered; or**

**[Added 15/17 (cio 23/11/17)]**

**(f) by placing the employee at a disadvantage in any other manner.**

**(2) The burden of establishing the relevance of the criminal record to the promotional post shall rest with the employer.**

**[Added 15/17 (cio 23/11/17).]**

**[S. 11 amended by s.4 of Act 15 of 2017 w.e.f. 23 November 2017.]”**

9. Mr. Speaker, Sir, in some jurisdictions like the UK, for instance, even some minor offences involving an element of dishonesty, though spent, would still appear on the certificate of character with a caveat, which could lead to the employer discriminating against that person who would normally have already repented and served whatever he had to do to the

society.

10. Moreover, Mr. Speaker, it also has to be ensured that the certificate of character is admissible internationally for the simple reason that many of our citizens seek employment abroad or to work on “bateaux de croisiere” for instance.

11. Consequently, Mr. Speaker, in view of all the above matters and bearing in mind that a breach of the curfew order may have serious considerations for public health, it is not proposed to review the matter the moreso that no discrimination may be made against a person, in employment, if he is found guilty of breach of curfew order as long as such breach is not relevant to the nature of his employment.