

Lockdown ban on the sale of hot food faces backlash

During a media briefing on Thursday, Minister of Trade and Industry, Ebrahim Patel responded to questions regarding the sale of cooked foods. He clarified that retailers are not supposed to sell hot prepared foods, and that businesses were told this at the start of the national lockdown.



©reesilpa sornsing via [123RF](#)

“Takeaways and restaurants were closed during the initial announcement of the lockdown and government communicated to retailers that their hot food sections of their retail stores should be closed. We need to ensure the law as it stands is observed. As we get more information, we will review, but as things stand right now it is very clear what the position is,” Patel said.

The clarification from Patel came after several prepared-food services lost their essential services certificates last week.

The BizPortal twitter account, which is run by the Companies and Intellectual Property Commission (CIPC), published a tweet on Thursday calling for consumers to report any supermarkets selling cooked food.

“ Prepared food is not allowed to be sold during the lockdown period. Supermarkets are also not allowed to sell cooked food.

If you know of one, please report them to the [@SAPoliceService](#).

We are revoking fraudulent applications and referring them to [@the_dti](#) for legal action.— BizPortal (@BizPortalGovZa)
[April 16, 2020](#) ”

In a follow-up tweet the CIPC caused confusion online by saying that the ban extends to prepared frozen meals, meaning those which have been cooked and then frozen. The tweet has since been deleted.



BizPortal
@BizPortalGovZa



"Frozen food" in this case refers to prepared meals that have been cooked, then frozen.

You can still buy frozen meats and vegetables.

twitter.com/BizPortalGovZa...

BizPortal @BizPortalGovZa

Please note that the sale and delivery of frozen food is also not allowed.

Only essential products are allowed to be delivered.

twitter.com/BizPortalGovZa...

♥ 13 6:55 PM - Apr 16, 2020



💬 38 people are talking about this



“ You appear to have deleted your earlier tweet about the sale and delivery of frozen food. Please clarify.

Does the DITC regard the sale and delivery of prepared, frozen meals as essential? pic.twitter.com/cEA3GgMD9F— Wendy Knowler (@wendyknowler) [April 18, 2020](https://twitter.com/wendyknowler/status/1251111111) ”

The ban on the sale of hot foods has faced backlash, with a number legal experts pointing out that the restriction is not explicitly stated in any of the current lockdown regulations.

Professor Pierre de Vos, constitutional law scholar at the University of Cape Town, questioned the CIPC in a tweet:

“ Could you assist? Where do you get your information from? Can't find any of this in the regulations which merely say in Annexure B(A)1.(i) that "any food product, including non-alcoholic beverages" are essential goods? <https://t.co/qfkEWetPLJ>— Pierre de Vos (@pierredevos) [April 17, 2020](https://twitter.com/pierredevos/status/1250888888) ”

Legal action threatened

On Friday, lawyers acting on behalf of business group Sakeliga wrote to Patel, giving him until today to reconsider his department's stance on the sale of hot foods, or they were threatening to take him to court. "We have been advised that there is no lawful restriction on the production of 'warm', 'cooked' or 'prepared' food as the minister and his department continues to insist," Sakeliga CEO Piet le Roux said in a statement.

Le Roux said that every food item on a shop shelf was already prepared in some way, and added that it would be impossible to comply, and would decrease food supply and increase prices.

Sakeliga also said attempts to overregulate the food production industry would lead to food shortages. "Many communities are already suffering as a result of shortages in the supply of even basic food," the group's lawyers said. "By continuing to interfere with the production and supply of food, government will, in our client's view, only cause further and possibly even more severe food shortages."

According to a widely-shared tweet by journalist Gus Silber, Woolworths' attorney Webber Wentzel described the DTI announcement as "illegal" due to the fact that there is no provision in the lockdown regulations that prohibits the sale of any category of food.

“ Legal letter in my local Woolies, advising that the enforcement authorities are acting unlawfully in seeking to stop the sale of cooked food from counters, and that they potentially face a "significant civil claim". pic.twitter.com/28nh8bCmml— Gus Silber (@gussilber) [April 18, 2020](#) ”

A Woolworths spokesperson confirmed the legitimacy of the letter Silber encountered in store, explaining that the opinion provided in the guidance letter was solely intended to be used by store management in possible interactions with authorities who enter our stores.

In response to the restriction on hot foods, Woolworths said in a statement, "While this has not yet been formally promulgated in the regulations and we are seeking clarity on the way forward, we have taken a decision to close all hot food counters with immediate effect to adhere to the communication by both the Minister for Economic Affairs and the Minister of Trade, Industry and Competition."

Devastating for essential workers and the elderly

Democratic Alliance representative Dean Macpherson also issued a statement, calling the restriction "illogical" and "ill-considered".

"There is nothing in the lockdown regulations that prohibits the production or sale of cooked food, and thus, we believe the Minister has overstepped his powers by simply pronouncing that retailers may not sell cooked or prepared food. This absurd determination by Minister Patel is illogical and ill-considered," Macpherson said.

He added that it would be devastating for essential service workers who rely on take-away food, and the elderly who are not able to cook their own food anymore. The DA is consulting with its legal team to obtain a legal opinion on the legality of the restriction.

International trade attorney Rian Geldenhuys [told News24](#) that the regulations were not always crystal clear. He said hot food counters could be interpreted as falling under the category of being a restaurant, which are not allowed to operate during the lockdown, "because they could be considered as gathering places".