

GENERAL CRIME BRIEFING NOTE

Offences and Powers relating to businesses, events, gatherings and movements of people during the Coronavirus public health emergency.

Date: 30 March 2020

Statute: Coronavirus Act 2020, s, 52 and schedule 22, Public Health (Control of Diseases) Act 1984, ss.45C, 45F and 45P, and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Contact at QEB: Philip Stott

On 25 March 2020, the Coronavirus Act 2020 ('the 2020 Act') received Royal Assent and became law. It will remain in force for 2 years from that date, unless extended. This briefing summarises some of the new offences created by the 2020 Act to combat the infectious threat posed by close contact between people.

This note deals with Schedule 22 of the 2020 Act which enacted by section 52. This confers powers to issue directions in relation to events, gatherings and premises.

Additionally, this note will also address the regulations made by the Health Secretary pursuant to his powers under the Public Health (Control of Disease) Act 1984 restricting the activities of individuals and businesses.

A separate note will address Section 51 and Schedule 21 which confer powers and makes offences relating to potentially infectious persons. Both notes only address those powers in so far as they relate to the law of England, although similar provisions have been enacted in respect of all four home nations.

When does Part 2 of Schedule 22 of the Coronavirus Act 2020 apply?

Part 2 of Schedule 22 (paragraphs 3-12) sets out the powers applicable in England.

Under that Part of the Schedule, if at any time a Secretary of State, having consulted the Chief Medical Officer (or a deputy) is of the view that (a) the transmission of coronavirus constitutes a serious and imminent threat to public health in England, and (b) the powers under that Part will be an effective means of preventing or controlling the transmission of the virus, or will facilitate the most appropriate deployment of relevant personnel and resources, then the Secretary of State may make a declaration of a 'public health response period'.

During such a period, the Secretary of State may go on to make directions under Part 2 of Schedule 22.

What are the powers conferred by Part 2 of Schedule 22?

Under paragraph 5, the Secretary of State, for the same purposes as set out above in declaring a public health respond period, may issue a direction prohibiting or imposing requirements or restrictions in relation to the holding of an event or gathering in England.

That may be for a specified event or gathering, or for events or gatherings of a specific description. Such a direction may only have the effect of imposing prohibitions, requirements or restrictions on the owner or occupier of the premises, or the organiser, or any other person involved in holding such an event. Persons whose only involvement is attending the event cannot be made the subject of such a direction.

Under paragraph 6, the Secretary of State may, for the same purposes as above, issue a direction in relation to the entry into, departure from, or location of persons in, premises. That direction may close the premises, restrict entry into the premises, or impose other specifications by reference to the number of persons, the size, opening hours, the purpose for which persons may be in the premises or the facilities available.

That again may be in relation to specified premises or premises of a specified description, but may only have the effect of imposing obligations on the owner or occupier of the premises, or other persons involved in managing the entry, location and departure of persons in or out of the premises.

Before issuing a direction under Part 2 of Schedule 22, the Secretary of State must have regard to any relevant guidance by the Chief Medical Officer (or his deputies).

Where a direction, or variation or revocation of a direction addresses a specific named person, that direction must be given in writing to that person. In any other case, the direction (or revocation or variation) must be published in such a manner as the Secretary of State considers appropriate to bring it to the attention of persons who may be affected by it.

A person, or a class of persons, designated in writing by the Secretary of State, may take 'such action as is necessary to enforce compliance' with a direction issued under Part 2 of Schedule 22. No further limitation or description of such action is given in the Act, making it a potentially extremely wide-ranging power.

No appeal route is created by the Act in respect of this Part of Schedule 22, meaning Judicial Review is likely the only means of challenging unlawful or unreasonable exercise of those powers.

What criminal offences are created in respect of Part 2 of Schedule 22?

Under paragraph 9 a person commits an offence they fail without reasonable excuse to comply with a prohibition, requirement or restriction imposed on the person under Part 2 of Schedule 22.

The offence is punishable by a fine only, up to the maximum permitted on summary conviction, currently £5,000.

If an offence under paragraph 9 is committed by a corporate entity, then an officer of the entity (as well as the entity itself) can be prosecuted, if the offence is proved to have been committed with the consent or connivance of that officer, or is attributable to any neglect on the part of that officer (e.g. a director, manager, company secretary or similar)

Proceedings for an offence under paragraph 9 may be brought by a person or class of persons designated in writing by the Secretary of State.

What are the Health Protection (Coronavirus, Restrictions) (England) Regulations?

Under ss.45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984, the Secretary of State for Health has enacted the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2002/350) [hereafter, 'the Regulations'].

The Regulations designate an 'emergency period' beginning at 1 pm on 26 March 2020 and lasting for 6 months. They must be reviewed by the Secretary of State every 21 days.

The Regulations are unprecedented in their scope and impact on everyday modern life.

What requirements have been imposed on businesses under the Regulations?

Under Regulation 4, a person responsible for carrying on a business listed in Part 1 of Schedule 2 must close any premises in which food or drink are sold for consumption on the premises, and cease selling food or drink for consumption on the premises.

Persons carrying on a business or providing a service listed in Part 2 of Schedule 2, must cease to provide that service during the emergency period.

Under Regulation 5, a person responsible for carrying on a business (other than one listed in Part 3 of Schedule 2) of offering goods (other than hot or cold food for consumption off the premises) for sale or for hire in a shop, or library services, must cease to carry on that business except for making deliveries or providing services by orders made online, by post or by telephone.

Persons offering holiday accommodation must also cease carrying on that business save in respect of people who cannot return to their main residence, use that accommodation as their main residence, are moving to a new house, are attending a funeral, or are homeless. Places of worship must cease to be open to members of the public save for funerals, broadcasting acts of worship, or essential voluntary services (e.g. food banks, blood donation sessions etc).

A list, in non-legal language, of the relevant closures and requirements regarding business can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876279/Full_guidance_on_staying_at_home_and_away_from_others_1_.pdf

What requirements have been imposed on movement under the Regulations?

Under Regulation 6, no person may leave the place where they are living without a reasonable excuse. For the purposes of Regulation 6, a reasonable excuse includes (a) to obtain basic necessities and supplies (including food and medical supplies) for persons in the same household or for a vulnerable person (b) to exercise alone or with other members of the household (c) to seek medical assistance (d) to provide care or assistance to a vulnerable person, or provide emergency assistance (e) to donate blood (f) to travel for work or charitable services where it is not possible to carry out that activity from home (g) to attend a funeral of a person's household or family (h) to fulfil a legal obligation or participate in legal proceedings (i) to access critical public services (including childcare or education activities) (j) to continue access and contact arrangements between parents and children not in the same household (k) to visit a place of worship if you are the relevant minister or worship leader (l) to move house where reasonably necessary or (m) to avoid injury or illness or to escape a risk of harm.

A 'vulnerable person' is defined as any person who is (a) aged over 70, (b) an underlying health condition (including but not limited to conditions listed in Schedule 1), or (c) pregnant.

What requirements have been imposed on gatherings under the Regulations?

Under Regulation 7, no person may participate in a gathering of more than two people save where (a) all the persons in the gathering are members of the same household (b) where the gathering is essential for work purposes (c) to attend a funeral (d) where reasonably necessary to facilitate a house move, to provide care or assistance to a vulnerable person, to provide emergency assistance or to participate in legal proceedings or fulfil a legal obligation.

What offence is created by the Regulations?

Under Regulation 9, a person commits an offence if they, without reasonable excuse, contravene a requirement or restriction in the Regulations or obstruct a person carrying out a function under the Regulations. That offence is punishable by a fine only, up to the maximum permitted on summary conviction, currently £5,000.

If an offence under Regulation 9 is committed by a corporate entity, then an officer of the entity (as well as the entity itself) can be prosecuted, if the offence is proved to have been committed with the consent or connivance of that officer, or is attributable to any neglect on the part of that officer (e.g. a director, manager, company secretary or similar).

Regulation 10 enacts a fixed penalty notice ('FPN') scheme, payable to the local authority specified in the FPN, in relation to offences under Regulation 9 committed by persons over the age of 18. Where an FPN is issued, no proceedings may be taken for the offence within 28 days of the date of the FPN, and the person may not be convicted of the offence if the FPN is paid. There are requirements as to the relevant detail to be included on the FPN. The amount to be paid under an FPN is £60, or £30 if paid within 14 days of the date of the FPN.

If the person has already received one FPN, then for the second FPN, the amount to be paid is £120. For the third FPN, it is £240. For the fourth FPN, it is £480. For the fifth FPN, it is £960, which is the maximum amount chargeable under an FPN.

FPNs may be issued in respect of any of the Regulations by a constable, PCSO, or a person designated by the Secretary of State. They may be issued by a person designated by a local authority only in respect of Regulations 4 or 5 (regarding businesses).

Proceedings for an offence under the Regulations may be brought by the CPS or by a person designated by the Secretary of State.

How are the Regulations otherwise enforced aside from criminal offences?

A constable, PCSO, or a person designated by the Secretary of State may, under Regulation 8, take "such action as is necessary to enforce any requirement" under Regulations 4 and 5 (regarding businesses) or Regulation 7 (regarding gatherings). That is again an extremely wide-ranging power.

Where such a person considers that a person is outside the place in which they are living contrary to Regulation 6, and that it is necessary and proportionate to do so, they may also direct them to return to the place where they are living or remove them to that place. They may use reasonable force, if necessary, to do so.

Where such a person considers that three or more persons are gathered together in contravention of Regulation 7, they may direct the gathering to disperse, or direct or remove any person in the gathering back to the place where they are living.

Where such a person considers that a child is repeatedly failing to comply with Regulation 6 or 7, and that it is necessary and proportionate to do so, they may direct any person who has responsibility for that child to secure compliance of that child with the Regulations or any instructions given under the Regulations, so far as is reasonably practicable.

A person may be similarly designated by a local authority under Regulation 8, but only in relation to requirements under Regulations 4 and 5.

Failure to comply with any reasonable instructions, directions or removal given under Regulation 8 is also punishable as an offence under Regulation 9.

This briefing note was produced by Philip Stott. This note should not be taken as constituting formal legal advice. To obtain expert legal advice on any particular situation arising from the issues discussed in this note, please contact our clerking team at barristers@qebhw.co.uk. For more information on the expertise of our specialist barristers in criminal and regulatory law please see our website at <https://www.qebholliswhiteman.co.uk/>.