

GENERAL CRIME BRIEFING NOTE

OFFENCES AND POWERS RELATING TO BUSINESSES, EVENTS, GATHERINGS AND MOVEMENTS OF PEOPLE DURING THE CORONAVIRUS PUBLIC HEALTH EMERGENCY.

Date: 14 May 2020

Statute: Public Health (Control of Diseases) Act 1984, ss.45C, 45F and 45P, and the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 1) and (No. 2) Regulations 2020

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A previous briefing note dated 30 March 2020 addressed the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2002/350) [hereafter, 'the Regulations'] made by the Health Secretary pursuant to his powers under ss.45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984.

A first set of minor amendments (the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020 (SI 2020/447) came into force on 22 April 2020.

Following the televised address by the Prime Minister on Sunday 10 May 2020, some relaxation of the restrictions has been enacted by the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020 (SI 2020/500), which came into force on 13 May 2020. [Hereafter both amending instruments are referred to as 'the Amendments'.] The Regulations and the Amendments only affect the law of England.

The previous briefing note has therefore been updated with the more significant changes to the law highlighted in red and in italics for the benefit of the reader.

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

The Regulations designate an 'emergency period' beginning at 1pm 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?

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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. *The Amendments now allow garden centres, livestock auctions and outdoor sport courts (but not playgrounds) to open.*

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.

By virtue of the Amendments, 'key workers' – namely persons who work in one of the critical sectors listed in the document 'Guidance for critical workers who can access schools or educational settings' published by the Cabinet Office and the DfE as updated on 5 May 2020¹ - are now also able to use that accommodation for the purposes of that work.

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). *The Amendments now allow burial grounds to be open permanently, not just for funerals.*

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

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close>

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;

¹ The document containing the full list of 'key workers' is available online at

<https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>

- (b) to exercise² alone, or with other members of the same household, *or (under the Amendments) with one member of another 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 work or provide 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 aged over 70; has an underlying health condition (including but not limited to conditions listed in Schedule 1); or is pregnant.

The Amendments also now allow persons to leave their homes in order to:

- (i) to obtain or deposit money with banks, cashpoints, post offices etc;*
- (ii) to visit burial grounds to pay respects to a family member, household member or friend;*
- (iii) to collect goods ordered online, by telephone or post;*
- (iv) to visit estate agents, view residential properties for sale or rent, or move home etc;*
- (v) to use a waste or recycling centre and;*
- (vi) to visit a 'public open space' (defined as a public garden, 'open country' or 'access land' under relevant countryside legislation) either alone, or with members of their household, or one member of another household, for the purposes of open air recreation in order to promote physical or mental health or emotional wellbeing.*

What requirements have been imposed on gatherings under the Regulations?

Under Regulation 7, no person may participate in a gathering of more than two people³ save:

- (a) where 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, or

² There was no formal restriction on the number of times exercise could be taken per day in the original Regulations, and this position remains unchanged.

³ This regulation has not been changed by the Amendments, despite the other changes allowing persons to take exercise or visit public open spaces with one member of another household, underlining that such gatherings should involve only one person from each household at a time.

- (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 (e.g. a director, manager, company secretary or similar), 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.

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 *aged 18 or over (previously over 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 Amendments have increased the amount to be paid under an FPN to £100 (previously £60), or £50 (previously £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 due is increased to £200. For the third FPN, it is now £400. For the fourth FPN, it is now £800. For the fifth FPN, it is now £1,600. Finally, under the Amendments, for the sixth and any subsequent FPN, the amount due is £3,200 (compared with a previous maximum of £960).

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 www.qebholliswhiteman.co.uk.