

GENERAL CRIME BRIEFING NOTE

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

Date: 19 June 2020

Statute: Public Health (Control of Diseases) Act 1984, ss.45C, 45F and 45P, and the Health Protection (Coronavirus, Restrictions) (England) (Amendment), (No. 2), (No. 3) and (No. 4) Regulations 2020

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A initial 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.

Other previous briefing notes have addressed the amendments made by the Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020 (SI 2020/447) [in force from 22 April 2020], the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020 (SI 2020/500), [which came into force on 13 May 2020], and the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020 (SI 2020/558) [which came into force on 1 June 2020].

The Secretary of State has now enacted the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020 (SI 2020/588) which came into force in two tranches on 13 and 15 June 2020.

Hereafter, all amending instruments are referred to as 'the Amendments'.

The previous briefing notes have therefore been updated with the previous significant changes to the law highlighted in italics and in red, and the most recent changes highlighted in green, for the benefit of the reader.

The Regulations and the Amendments only affect the law of England

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 **28** days.

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

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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. *From that initial list, the Amendments now allow garden centres, livestock auctions, outdoor sport courts or amenities (but not playgrounds), outdoor markets and car/boat showrooms, drive-in cinemas, retail art galleries, betting shops, auction houses, and shops and outdoor attractions at aquariums, zoos, botanical gardens etc to open.*

The Amendments further allow persons carrying on a business or providing a service listed in Part 2 of Schedule 2 to carry on a business (i) offering goods for sale or hire in a shop separate from the premises to the closed business or, (ii) by delivering goods or providing services in response to orders received online, by telephone or by post, or (iii) by operating a café or restaurant (separate from the closed premises) solely to sell food or drink off the premises. 'Separate' in this context means in a self-contained unit where it is possible for a member of the public to enter from outside the closed premises.

The Amendments have removed the previous requirement, under Regulation 5, prohibiting a person responsible for carrying on a business (other than one listed in Part 3 of Schedule 2) of from offering goods for sale or hire in a shop. That prohibition under Regulation 5 now only applies to library services providers who may only carry on that service by making deliveries in response to orders online, by telephone or by post. Library service providers may however carry out a business offering goods for sale or hire in a shop, café or restaurant in premises which are separate from the library premises in the same manner as Regulation 4 above.

Persons offering holiday accommodation must also cease carrying on that business save in respect of people who (i) cannot return to their main residence, (ii) use that accommodation as their main residence, (iii) are moving to a new house, (iv) are attending a funeral, (v) are isolating themselves as required by law, (vi) *are elite athletes (or their coaches or (where the athlete is under 18) their parents) engaged in training or competition*, (vii) *are '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 - using that accommodation for the purposes of that work* or, (viii) are homeless. The accommodation may also be used for blood donation sessions or at the request of the Secretary of State or a local authority.

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>

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). *Places of worship may however now be used for private prayer by individuals in a way that does not form part of communal worship. The Amendments now allow burial grounds to be open permanently, not just for funerals. Places of worship may now be used for early years childcare by a person registered under the Childcare Act 2003. They may also carry on a business offering goods for sale or hire in a shop, café or restaurant in premises which are separate from of worship (in the same manner to Regulation 4) and make deliveries.*

Community centres may now be used for essential voluntary or public support services, or for early years childcare by a person registered under the Childcare Act 2003.

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?

The previous version of Regulation 6 - requiring that no-one may leave the place where they are living without a reasonable excuse - has been repealed. Regulation 6 now states that no person (other than a homeless person) may, without reasonable excuse, stay overnight at any place other than where they are living or where their 'linked household' is living (see below).

For the purposes of the new Regulation 6, a 'reasonable excuse' includes:

- (a) attending a funeral of a person's household or family*
- (b) being an elite athlete, or coach of an elite athlete, or parent of an elite athlete under the age of 18, who needs to stay elsewhere for the purposes of training or competition*
- (c) needing to stay elsewhere while moving house*
- (d) being someone who reasonably needs to stay elsewhere*
 - i. for work, voluntary or charity purposes*
 - ii. providing care or assistance to a vulnerable person*
 - iii. to provide emergency assistance*
 - iv. to avoid injury or illness or to escape a risk of harm*
 - v. to obtain medical assistance*
 - vi. to attend a birth or make a visit to a 'linked household' as permitted by Regulation 7*
- (e) needing to stay elsewhere to fulfil a legal obligation or participate in legal proceedings*
- (f) to continue access and contact arrangements between parents and children not in the same household;*
- (g) being unable to return to the place where one lives because that place is not safe, or not available for any reason, or because it is not lawful to stay there.*

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.

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An 'elite athlete' is defined as someone making a living from competing in sport or undertaking officially recognised training/development for the Olympic, Paralympic or Commonwealth Games.

What requirements have been imposed on gatherings under the Regulations?

Under the amended version of Regulation 7, no person may participate in an outdoor gathering of more than six people, or an indoor gathering of more than one person, save where the gathering:

- (a) consists of members of the same household, or members of two households which are 'linked households' in relation to each other*
- (b) is for a funeral of a member of the same household or a close family member*
- (c) is of elite athletes, their coaches and (if the athlete is under 18) their parents, and is necessary for training or competition purposes*
- (ca) is a drive-in cinema where the occupants of any one vehicle are from the same household or 'linked household'*
- (d) is reasonably necessary (i) for work purposes or the provision of voluntary or charitable services, (ii) to facilitate a house move, (iii) to provide care or assistance to a vulnerable person, (iv) to provide emergency assistance, (v) for the purposes of early years childcare by a registered person under the Childcare Act 2003, (vi) to avoid injury or illness or to escape a risk of harm, or (vii) to continue access and contact arrangements between parents and children not in the same household.*
- (e) is to fulfil a legal obligation or participate in legal proceedings*
- (f) takes place at an educational facility and is reasonably necessary for the purposes of education*
- (g) is to attend a birth at the request of the person giving birth*
- (h) is to visit a person reasonably believed to be dying and the visitor is a member of the household, or a close family member or a friend of the dying person, or (where no one matching those descriptions is visiting the dying person) any other person*
- (i) is to visit a member of the same household, close family member or friend who is receiving treatment in a hospice or care home or is accompanying such a person to a medical appointment.*

A gathering is defined as two or more people being present together in the same place to engage in any form of social interaction with each other or to undertake any other activity with each other.

'Indoors' is defined as any place considered to be at least substantially enclosed for the purposes of the Smoke Free (Premises and Enforcement) Regulations 2006.

What are 'linked households'?

The Amendments insert a new Regulation 7A creating the concept of 'linked households'. Where a household consists of just one adult or one adult and any number of people under the age of 18 on 12 June 2020, that household may choose to be 'linked' with a second household (containing any number of adults). The second household may not be linked with any other

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household and all the adults in the second household must agree to be linked with the first household.

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 *staying overnight at a place other than the place in which they are living* contrary to Regulation 6, and that it is necessary and proportionate to do

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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 *a number of* persons are gathered together in contravention of Regulation 7, they may direct the gathering to disperse, or direct people to go to the place where they are living, *or, where the gathering is in a public place, remove people 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.