**Coronavirus and Criminal Offences**

**The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020**

On 26 March 2020, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the “**Regulations**”) came into effect in England. The Regulations restrict our movement and close some business premises during the emergency period.

**What restrictions are there on movement?**

Regulation 6 makes it an offence for any person to leave the place where they are living without reasonable excuse during the emergency period.

Regulation 6(2) gives some examples of what a reasonable excuse includes:

* To obtain basic necessities (including food and medical supplies).
* To take exercise (either alone or with other members of your household).
* To travel for the purposes of work where it is not reasonably possible to work from home.
* To attend court or satisfy bail conditions.
* To avoid injury or illness or escape a risk of harm.

Regulation 6(2) lists more examples. It is important to note that this is not an exhaustive list.

**What restrictions are there on gatherings?**

Regulation 7 prevents people participating in a gathering in a public place of more than two people during the emergency period except –

* Where all persons in the gathering are members of the same household; or
* Where the gathering is essential for work purposes; or
* To attend a funeral; or
* Where reasonably necessary –
  + To facilitate a house move; or
  + To provide care or assistance to a vulnerable person; or
  + To provide emergency assistance; or
  + To participate in legal proceedings or fulfil a legal obligation.

A relevant/authorised person (which includes a constable or police community support officer) may direct the gathering to disperse and direct or remove any person in the gathering to return to the place where they are living (Regulation 8(9)).

Anybody who contravenes this requirement without a reasonable excuse commits an offence.

**What restrictions are there on business premises?**

Regulation 4 requires restaurants, cafes, bars, pubs, and other businesses listed in Part 1 of Schedule 2 to close any premises in which food or drink are sold for consumption on the premises and cease selling food or drink for consumption on its premises during the emergency period. Cinemas, theatres, gyms, swimming pools and other businesses listed in Part 2 of Schedule 2 are required to stop carrying on the business and service during the emergency period. Regulation 5 provides for further restrictions on some businesses.

A relevant person may give a prohibition notice to a person if they reasonably believe they are contravening a requirement in Regulation 4 or 5 and it is necessary and proportionate to do so (Regulation 8(2)).

A person who contravenes this requirement without reasonable excuse commits an offence.

**What punishments are available?**

An authorised person may issue a fixed penalty notice to anyone over 18 that they reasonably believe has committed an offence under the Regulations mentioned above.

Anybody who receives a fixed penalty notice has the opportunity of discharging any liability to conviction for the offence by paying the fixed penalty within 28 days following the date of the notice. The first fixed penalty notice will be £60, but if it is paid within 14 days it is £30. If somebody receives a fixed penalty notice for another breach of the Regulations, the second fixed penalty notice will be £120. Each time afterwards, the amount can be doubled to a maximum of £960. An offence under the Regulations is punishable on summary conviction by a fine (Regulation 9(4)).

**How long will the Regulations be in force for?**

The emergency period will end when the Secretary of State terminates the restriction or requirement (Regulation 3(b)).

**What powers are there in relation to potentially infectious people?**

The Coronavirus Act 2020 (the “**2020 Act**”) has given the Secretary of State powers to make a declaration for a transmission control period under paragraph 4, Schedule 21 of the 2020 Act.

Schedule 21 of the 2020 Act confers powers on public health officers, constables and immigration officers in relation to potentially infectious people.

Paragraph 2(1) of Schedule 21 states that a person is “potentially infectious” at any time if –

* The person is, or may be, infected or contaminated with coronavirus, and there is a risk that the person might infect or contaminate others with coronavirus; or
* The person has been in an infected area within the 14 days preceding that time.

Paragraph 2(2) of Schedule 21 states that an “infected area” means any country, territory or other area outside the United Kingdom which the Secretary of State has declared as a country, territory or area—

* Where there is known or thought to be sustained human-to-human transmission of coronavirus; or
* From which there is a high risk that coronavirus will be transmitted to the United Kingdom.

During a transmission control period, a public health officer (an officer designated by the Secretary of State or a designated, registered health consultant) is given powers under Schedule 21, paragraph 6. If they have reasonable grounds to suspect that a person in England is potentially infectious, they may:

* Direct the person to go immediately to a place specified in the direction which is suitable for screening and assessment,
* Remove the person to a place suitable for screening and assessment, or
* Request the constable to remove a person to a place suitable for screening and assessment (and the constable may then do so).

These powers must only be exercised if it is necessary and proportionate to do so in the interests of the person, for the protection of others, or for the maintenance of public health (paragraph 6(3)).

A constable or immigration officer can also exercise these powers but before doing so must consult a public health officer to the extent that it is practicable to do so (paragraphs 7(1) and 7(5) of Schedule 21).

Paragraphs 8(1) and 9(1) of Schedule 21 can require persons to remain at the screening and assessment place. A public health officer may keep a person for a period not exceeding 48 hours (Schedule 21, paragraph 9(1)). Paragraph 13 details when an immigration officer or a constable can keep a person at a screening or assessment place.

The powers continue beyond assessment too. If the screening confirms that the person is infected, or the screening was inconclusive, or a public health officer who has assessed the person has reasonable grounds to suspect that the person is potentially infectious they may have their movement restricted as well as having to provide details to public health officers. Paragraphs 14(3)-(4) of Schedule 21 give a more complete list of the restrictions and requirements.

Paragraph 18 of Schedule 21 ensures that any individual responsible for a child (a person under the age of 18) must make sure, as far as reasonably practicable, that the child also complies with any direction, instruction, requirement or restriction given to or imposed on the child under Part 2 of Schedule 21.

**What punishments are available?**

Paragraph 23 of Schedule 21 makes it a criminal offence if a person fails to comply with any direction, reasonable instruction, requirement or restriction under Part 2 of the Schedule, including their duty regarding their children. It is also an offence under this paragraph to abscond, or attempt to abscond from screening, knowingly provide false information, or obstruct a person attempting to exercise their powers conferred by this Schedule.

If a person is guilty of an offence under paragraph 23, they are liable on summary conviction to a fine not exceeding level 3 (paragraph 23(2) of Schedule 21).

**How long will the transmission control period be in force for?**

The transmission control period would end with a declaration from the Secretary of State revoking it (paragraph 5(b)).

**How have allegations of assault been affected by coronavirus?**

Alongside the new offences and restrictions recently introduced by the government, claims of having coronavirus have been used as a threat when allegedly committing common assault or assaulting an emergency worker. A series of incidents, particularly involving emergency workers, have involved coughs or spits, or threats to cough or spit, by people claiming to have coronavirus.

Case law has already made clear that spitting may be a common assault, whether it makes contact with the victim, or causes them to fear immediate unlawful physical contact (*Misalati* [2017] EWCA 2226). The Crown Prosecution Service has confirmed that coughs directed as a coronavirus threat towards members of the public could also be charged as common assault (see the CPS Guidance: [‘*Coronavirus coughs’ at key workers will be charged as assault, CPS warns*](https://www.cps.gov.uk/cps/news/coronavirus-coughs-key-workers-will-be-charged-assault-cps-warns)). Common assault carries a maximum sentence of 6 months’ imprisonment, an unlimited fine, or both.

In November 2018, the Assaults on Emergency Workers (Offences) Act 2018 (the “**2018** **Act**”) made it a separate offence to assault an emergency worker.

Section 1 of the 2018 Act makes common assault or battery against an emergency worker acting as such a worker an offence. Section 3 of the 2018 Act covers who is an emergency worker, the list includes a person providing NHS health services, a constable, a prison officer and a person providing fire and rescue services. It covers paid and unpaid workers.

As a result, anyone coughing or spitting at an emergency worker whilst claiming to have coronavirus could face up to 12 months’ imprisonment, an unlimited fine, or both.

**What incidents have arisen?**

Recent convictions for assaulting an emergency worker include a man who coughed at police officers directly after claiming to have coronavirus and another who threatened to spit at police officers following the Prime Minister’s announcement of stricter social distancing measures.

A man from Londonderry has been charged after allegedly telling two police officers that he had coronavirus and then coughing at them.

**How have the police and the Crown Prosecution Service responded?**

Max Hill QC, Director of Public Prosecutions, has been quick to respond, stating “*let me be very clear: this is a crime and needs to stop. The Crown Prosecution Service stands behind emergency and essential workers and will not hesitate to prosecute anybody who threatens them as they go about their vital duties.*”

The police and Crown Prosecution Service have acted accordingly. Assaults on emergency workers are being treated as high priority and custodial sentences have been imposed. A conviction for coughing at police officers after claiming to have coronavirus resulted in a sentence of 6 months’ imprisonment. Another offence involving spitting at two officers, threatening to infect them, and damaging their vehicle, resulted in 12 months’ imprisonment.

In Northern Ireland, the man from Londonderry mentioned above has been arrested and charged with attempted grievous bodily harm with intent. With the increasing number of these types of offences, it may be that England and Wales follow Northern Ireland in heavier charges for offenders in an attempt to protect emergency workers and the general public.

**Conclusion**

We recommend keeping up to date on Government advice as information is being updated regularly.

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