



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

Whilst the ongoing coronavirus pandemic is having an unprecedented impact upon human behaviour, businesses should also be aware of the risks to legal persons and officers created by The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the Restriction Regulations").

The Restriction Regulations, which came into force at 13:00 on 26 March 2020 and expire at the end of the period of six months from that date, introduce legal restrictions including the closure of premises (Regs. 4 and 5) and the curtailment of movement (Reg. 6) and of gatherings (Reg. 7). Irrespective of the expiry date, the need for the Restriction Regulations must be reviewed by the Secretary of State every 21 days with the first review being carried out by 16 April 2020.

It appears that in key respects (Reg. 4 in particular), the Restriction Regulations largely re-write and expand upon the emergency provisions set out earlier this week in The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 ("the Business Closure Regulations"), which are revoked by the Reg. 2 of the Restriction Regulations.

The key requirements in relation to business closure in the Restriction Regulations firstly concerns most classes of food business selling food for consumption on the premises, save for a narrow range of essential services set out in paragraph 2 of Part 1 of Schedule 2 (e.g. hospital, care home or school canteens, or food services for the homeless) and an express exemption for hotel room service.

Secondly, all businesses listed in Part 2 of Schedule 2 are required to close (i.e. what are perceived to be non-essential businesses, including the leisure and entertainment industry etc.). All such businesses are required by Reg. 5 to cease to carry on their business, to close their premises and to cease to admit persons to their premises; save that they may continue to carry on these activities if their business can be carried on by way of deliveries via online communication, phone, text or post. There is also a specific exemption from closure in respect of any business providing hot or cold food for consumption off the premises.

It follows from this that any business not expressly covered by the descriptions in Parts 1 and Part 2 in Schedule 2 is not required to close, and this will include the non-

exhaustive list of businesses in Part 3 of Schedule 2. For example, hotels, which are not listed in any of Parts 1, 2 or 3 of Schedule 3 are permitted to continue in business, but not in respect of holiday accommodation. Businesses which comprise a mixture of activities are required to cease to carry on those elements of their business which are subject to restrictions.

The obligations to close business premises and to cease carrying on business apply to the person responsible for carrying on that business, which includes the owner, proprietor and manager of that business.

Regulation 6 imposes extensive restrictions on the movement of individuals from their living place without reasonable excuse; it also sets out a non-exhaustive but extensive list of matters which amount to a reasonable excuse. This includes obtaining basic services (including e.g. food and medicine from the businesses listed in Part 3 of Schedule 2), travel for the purposes of work (if it is not reasonably possible to carry out that work from the place where they are living), attendance at court or the accessing critical public services etc.

A relevant person under the Restriction Regulations may take such action as is necessary to enforce any of the requirements under Regs. 4, 5 or 7 and may direct or remove (if necessary by reasonable force) any person they suspect of being in contravention of Reg. 6 to return to the place they are living.

An offence is committed by any person, whether an individual or a corporate entity, who without reasonable excuse contravenes any requirement in Reg. 4, 5 or 7 or 8, or contravenes a requirement in Reg. 6. An offence is also committed by any person who obstructs, without reasonable excuse, a person carrying out a function under the Regulations. The relevant persons for the purposes of the Restriction Regulations include constables and police community support officers, but also interestingly anyone designated by a local authority or the Secretary of State for the purposes of the Restriction Regulations

Offences committed under the Regulations are summary only and subject to an unlimited fine. Where an offence is proved to have been committed by a corporate body with the consent, connivance or neglect of an officer, that officer is also guilty of the offence and may also be prosecuted. Officer is construed widely by the Regulations to include a director, manager, secretary or other similar officer of the corporate body. Fixed penalty notices may be issued as an alternative to prosecution.

There is obviously no guideline available to assist any court sentencing for offences committed under the Regulations and therefore the Sentencing Council's general guideline will apply, however it is highly likely that any sentencing court would consider the Sentencing Council's Definitive Guideline on Health and Safety Offences as persuasive.

26 March 2020

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