



COVID-19 Legislation: The uncertainty is infectious.

Thomas Sherrington

Barrister

St John's Buildings

A few short weeks ago, coronavirus was someone else's problem. A "flu-like" illness that was affecting a distant city in a far-off country. Nothing to do with us, not a big deal and a load of hype over nothing.

Fast forward to today and society is experiencing the biggest Government led restriction of movement since the Second World War, instigated by [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) which came into force at 1pm on 26th March 2020.

But in the haste to close businesses and restrict society's movement, the limit and scope of those restrictions has raised disturbing levels of uncertainty, which appears to be spreading like the virus they are designed to combat.

The 2020 Regulations: Law or Myth?

The uncertainty I refer to comes from apparent misinterpretation of the 2020 Regulations, mainly [Regulation 6](#) which relates to restrictions on movement of people.

The Regulation bans any person from leaving the place where they are living "without reasonable excuse". The problem arises in that the Regulations do not strictly define what a reasonable excuse is and is therefore open to interpretation.

The Regulations do provide a non-exhaustive list of excuses that are reasonable (shopping for necessities, to exercise, to donate blood or to provide care and assistance are some examples) but even those specific examples are creating difficulties.

Breaches of this regulation is an offence under Regulation 9 and can result in fines or prosecution (Regulations 10 and 11)

Shopping

Regulation 6(2)(a) allows you to leave the house "to obtain basic necessities including food or medical supplies" for yourself, a vulnerable person and even your pet. However, in recent days, this has been interpreted by some police forces as only food that they deem as "necessary".

The Chief Constable of Northamptonshire police recently suggested that they were "days away" from "marshalling supermarkets and checking the items in baskets and trolleys to see whether it's a legitimate, necessary item". This was soon [renounced](#) after it was pointed out that the Regulations provide no such power to the Police.

Cambridgeshire Police tweeted, and subsequently deleted, their commendation for the public keeping the "non-essential item isles" free in one of their local supermarkets.

The Regulations do not impose restrictions on what you can and can't buy from the supermarket. However, certain police forces are misinterpreting this regulation which will arguably cause confusion amongst an already worried public.

Exercise

Regulation 6 (2)(b) allows for you to exercise either alone or with the household outside of your home. What the regulation does **not** do is restrict where or how often that exercise can take place.

The Government, on numerous occasions and through numerous ministers, has instructed us that we should only exercise once a day, which suggests that any more than that will land you in hot water.

My own neighbour was stopped by the police driving to the local water park to walk with her daughter and her dog. She was told to turn around and go home as she was not allowed to “travel somewhere to exercise”.

There is nothing in the Regulations that specifies the location or number of times one can exercise. No matter what Government spokespeople may be saying, there is not any law to back it up. In fact the recent guidance from the [College of Policing and the National Police Chiefs Council](#) informed the 44 police forces across England and Wales not to punish those travelling to exercise and that there was no legal limit on how often one could leave the house.

Work

Regulation 6(2)(f) provides for travel for the “purposes of work” where one cannot work from home.

Despite seeming relatively straightforward, it appears there is still confusion spreading in relation to this regulation. A tweet recently went viral depicting [a note left for someone travelling every day without a uniform](#) who had been “reported” for “non-essential travel”. Many responses were from nurses and other workers who either didn’t have or were not allowed to wear their uniforms when travelling.

“Essential travel” is an expression that has been used time and time again throughout this crisis. However, it is important to note that the expression does not appear **at all** within the 2020 Regulations, nor does it appear in the original Coronavirus Act 2020 and therefore has no legal meaning. It seems quite obvious that the use of such expressions and instructions that are not contained within legislation is causing confusion and additional restrictions unnecessarily.

General Police Powers

It is notable that the Regulations do **not** provide any additional police powers to stop vehicles, create roadblocks or even require members of the public to inform them why they are out of their properties.

Despite this, police have been doing just that in order to ascertain whether someone has a reasonable excuse for being outside.

The most obvious, and perhaps embarrassing, example of this was the recent conviction of Marie Dinou, who was wrongfully charged and convicted of offences under the Coronavirus Act 2020 for failing to inform the police of her reasonable excuse for being at a train station. That Act allows the

police new powers when dealing with “potentially infectious” individuals. There was no evidence suggesting Ms Dinou was infected with coronavirus. The Act and the new police powers had been misunderstood and the conviction was set aside.

Perhaps most worrying about that case was not simply the police misunderstanding, but also the conviction, in absence, at the Magistrate’s Court. This amplifies that it is not simply the police who are getting confused by the legislation but also those in the Court system, who are supposed to know what the law is and how to interpret it.

Uncertainty in a time of crisis

The lack of certainty in this area is stark and has been openly criticised but is still apparently commonplace throughout the country.

Obviously, drastic measures were required when the threat of this virus became apparent. However, it would appear the lack of clarity that has been created by the haste of the enactment of the legislation has manifested a catalogue of issues. Confusion, misinterpretation and a wrongful conviction are an unwanted addition to an already precarious atmosphere. I have provided just a few examples. There are and will be many more.

At a time when social liberties have been, quite rightly restricted, public trust in the establishment and understanding as to the extent of the restrictions is paramount. Uncertainty and confusion are infectious and create symptoms of contempt and anger, right at a time when we must remain calm and vigilant to overcome a very dangerous threat.

Thomas Sherrington

Barrister St John’s Buildings

Email – clerk@stjohnsbldings.co.uk

Tel – 0161 214 1500