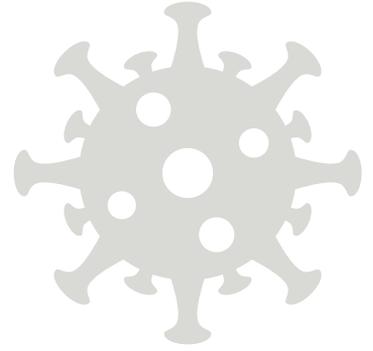


The law & Covid-19



Our 'Legal Doctor' Robert Botkai discusses guidance versus law

Feedback from my debut page has been really positive. Thank you to all who have been in touch.

The law is very fast-moving at the present time and it is likely that at least some of the content of this article will be out of date by the time you read it.

GUIDANCE V LAW

I frequently have to argue on behalf of clients that local authority officers have failed to make a proper distinction between law and guidance. This can and does lead to officers acting outside of their powers and making wrong decisions.

And so I have had more than a passing interest as an entire nation appears to muddle the two concepts aided and abetted by politicians and the media.

Let me give you an example which stems from The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.

RESTRICTIONS ON MOVEMENT AND SLEEP

Readers will be aware of the offence to leave or be outside of one's home. This is no longer an offence as of June 1, 2020 but bear with me.

This was the old Regulation 6 which has received a huge amount of our attention over the last couple of weeks.

■ During the emergency period, no person may leave [or be outside of] the place where they are living without reasonable excuse. The words in square brackets were added without much fanfare on 22 April 2020. A very important change though. The original regulation set out a list of what a reasonable excuse includes such as: to take exercise either alone or with other members of their household. This was amended on May 13,

2020 to include as possible excuses: to take exercise (i) alone, (ii) with one or more members of their household, or (iii) with one member of another household. The crucial word here is "includes". The list set out examples of what could be deemed a reasonable excuse to be outside but it did not exclude others.

The guidance stated:

■ It is still very important that people stay home unless necessary to go out for specific reasons set out in law. These include: to exercise or spend time outdoors for recreation. Even the guidance was wrong as the specific reasons were not "set out in law". The law only set out examples of what could be a reasonable excuse to go out. Regulation 6 has been amended with effect from June 1, 2020 to say as follows:

■ No person may, without reasonable excuse, stay overnight at any place other than the place where they are living.

The circumstances in which a person has a reasonable excuse include, among others, where it's reasonably necessary for work purposes and cases where the person is an elite athlete (I don't think Park Runs count).

The latest guidance states, oh hang on, it actually ignores this regulation now and perhaps wisely so. It is an offence to contravene the regulation. Previously an officer had power to use reasonable force to take us home.

This power has now been removed so we should not fear being dragged from our (or someone else's) bed!

I would be surprised to see any prosecution under Regulation 6. Having seen what was accepted as a reasonable excuse under the restriction of movement



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"I would very much welcome feedback and suggestions on these issues or any areas you would like me to cover in future articles.

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"Meanwhile I wish all my readers and their families well over the coming weeks"

regulation the mind boggles at the reasons that could be given for being in the wrong bed!

A Court would need to decide whether the person had a reasonable excuse to be sleeping away from home and the defence would not be limited to the long list of examples listed in the Regulation.

RESTRICTIONS ON GATHERINGS

I contrast the above with the very next regulation which is the restriction on gatherings. The following is an offence:

■ During the emergency period, no person may participate in a gathering in a public place of more than six [prior to June 1 this was two] except: (a) where all the persons in the gathering are members of the same household; (b) where the gathering is essential for work purposes; (c) where the person concerned is an elite athlete (the list goes on).

So the important distinction here is "except" as opposed to "includes". The list of excuses to gather is absolute and not simply an example of what could be an acceptable reason to gather.

So what about the two metre social distancing? Again this is in the guidance and is not law. The latest version of the guidance states: Public Health England recommends trying to keep two metres away from people as a precaution. However, this is not a rule and the science is complex. The key thing is to not be too close to people for more than a short period of time, as much as you can.

Fortunately we have increasingly heard Ministers and indeed the Prime Minister telling us to use common sense when interpreting the guidance. Most of us already do so.

Please comply with the law and the guidance! ○