

Briefing: CORONAVIRUS AND CIVIL LIBERTIES IN THE UK

- What follows is a **summary** of arguments made in our article of 6th April 2020, which we urge readers to consider in full: [Coronavirus and Civil Liberties in the UK](#). We understand that MPs will be debating the Regulations implementing the ‘lockdown’ in England on Monday 4 May 2020, i.e. Statutory Instrument no. 350 of 2020.
- In addition to the article which we co-authored one of our number, Tom Hickman QC, has also written a blog post setting out [eight improvements that should be made to the Regulations](#).
- It is vital that individuals observe the law and follow the official guidance issued by the UK Government and other authorities across the UK. Nothing in this note is intended to suggest otherwise. Please see www.gov.uk/coronavirus
- In our article, we argued that the English and Welsh ‘lockdown’ Regulations are likely to be *ultra vires* i.e. outside the scope of the Public Health Act 1984 under which they were made. **In summary** this is because:
 - (1) They purport to authorise conduct that is otherwise the torts of false imprisonment and trespass to the person (physical restraint and forcible removal to one’s home).
 - (2) For primary legislation to sanction such tortious conduct, there must be express words or necessary implication to that effect.
 - (3) Section 45G(2)(j) of the 1984 Act does not expressly or by necessary implication authorise physical confinement. There is no explicit authorisation for the most intrusive obligations imposed by the Regulations.
 - (4) These considerations are reinforced by the fact that the 1984 Act expressly prohibits the Secretary of State from imposing certain of the “special restrictions or requirements” listed in section 45G(2). These can only be imposed by a magistrate. This suggests the Secretary of State was not intended to be able to impose restrictions that are otherwise tortious i.e. false imprisonment and physical restraint.
- Given that the Coronavirus Bill was proceeding through Parliament at precisely the same time as the Regulations were being made, it is difficult to understand why the Government did not take the opportunity to establish a more explicit legislative basis for the most intrusive powers constrained in the Regulations. It would be greatly preferable for them to be considered by Parliament and placed on a firmer legislative footing.
- It is also important that such exceptional measures are subject to detailed scrutiny and people seeking to follow or enforce the rules must be clear about what is required of them. While the main restrictions contained in the Regulations are unlikely to be

controversial,¹ and in our view were clearly justified when the lockdown was imposed, there are provisions which are more open to question, including differences between the rules in different part of the UK. For example, in Wales, the ‘reasonable excuse’ of leaving home to take exercise is limited to once per day (contrast Regulation 6(2)(b) of the English Regulations with Regulation 8(2)(b) of the Welsh Regulations).²

- We note that a number of other legal practitioners and academics have also suggested that the ‘lockdown’ Regulations in England and Wales are *ultra vires* the enabling 1984 Act: for example, Lord Anderson KBE QC.³

Tom Hickman QC, Emma Dixon and Rachel Jones

Blackstone Chambers

1 May 2020

¹ We note that as at 24 March 2020, **93%** of the public supported the measures announced by the Prime Minister - <https://yougov.co.uk/topics/health/articles-reports/2020/03/24/public-overwhelmingly-backs-governments-new-measur>

² Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (UK [S.I. 2020/350](#)); Health Protection (Coronavirus, Restrictions) (Scotland) Regulations 2020 ([Scottish S.I. 2020/103](#)); Health Protection (Coronavirus, Restrictions) (Wales) Regulations 2020 ([Wales S.I. 2020/353 \(W. 80\)](#)); Health Protection (Coronavirus, Restrictions) (Northern Ireland) Regulations 2020 ([Statutory Rules of Northern Ireland 2020 No. 55](#)).

³ David Anderson QC, [“Can we be forced to stay at home?”](#) (Personal Blog, 26 March 2020)