



## The Self-Isolation Regulations: Implications for Employers

The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020, SI 2020/1045 (“the Self-Isolation Regulations”) are the latest in a series of statutory instruments which have, since March 2020, been introduced by UK Government Ministers under the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) in response to the Covid-19 pandemic. This Alerter highlights the implications for employers.

*Originally published by LexisNexis®*

1. Part 1 of the Self-Isolation Regulations (i.e. reg.2 to reg.5) imposes obligations on individuals to “self-isolate” (within the meaning of reg.2(3) and (4)) upon receipt of a notification from the Department of Health and Social Care, the NHS (“*other than by means of the NHS Covid 19 smartphone app*”) or a Local Authority. Part 2 of the Self-Isolation Regulations (i.e. reg.6 to reg.9) imposes related obligations on those individuals and their employers in the employment context. Part 3 of the Self-Isolation Regulations (i.e. reg.10 to reg.17) deals with enforcement and, significantly, imposes criminal liability on several parties (including employers) for breaches of the obligations in Parts 1 and 2.
2. The Self-Isolation Regulations only apply in England. They are limited in scope in that sense. Otherwise, their scope is sweeping; they have the potential to criminalise an act as ordinary as an employer allowing their employee to enter their place of work. Therefore, it is crucial that employers are aware of them.
3. Many employers will not be. The key provisions of the Self-Isolation Regulations were first made public when their text was published at 5pm on 27 September 2020. Those provisions came into force several hours later, at 12pm on 28 September 2020. No draft of the Self-Isolation Regulations was laid before Parliament before they came into force. They were not approved by resolution of either of House of Parliament before they came into force. They were, like others

in their series, introduced under section 45R of the 1984 Act which allows UK Government Ministers to dispense with those basic requirements if the Minister is willing to declare that, by reason of “urgency”, they consider it necessary to do so.

4. This article aims to highlight the key provisions of the Self-Isolation Regulations from the perspective of employers. It does so by providing answers to the following questions:
  - a. What are the Self-Isolation Regulations designed to achieve?
  - b. How can employers fall foul of the Self-Isolation Regulations?
  - c. What are the likely consequences for employers who fall foul of the Self-Isolation Regulations?
  - d. What practical steps should employers be taking in response to the coming into force of the Self-Isolation Regulations?

**A: What are the Self-Isolation Regulations designed to achieve?**

5. Broadly, the Self-Isolation Regulations aim to prevent individuals who have tested positive for severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (“**Coronavirus**”) and individuals who have had “close contact” (as defined by reg.5) with someone who has tested positive for Coronavirus from leaving their home or “other suitable place” for a period of up to 14 days (see reg.2 and 3).
6. The Regulations achieve this through deterrents in the form of criminal penalties for:
  - a. Adult individuals who breach the requirement under reg.2 of the Self-Isolation Regulations or reg.4 of the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (“**the International Travel Regulations**”) to self-isolate (or secure that a child for whom they are responsible self-isolates);
  - b. Employers who knowingly procure such a breach by an employee, worker or agency worker; and
  - c. All parties to an employment or agency relationship who, once aware of the requirement for the employee, worker or agency worker to self-isolate, fail to give notice of that requirement to the other parties to the employment or agency relationship.

---

## **B: How can employers fall foul of the Self-Isolation Regulations?**

7. Before considering the ways in which employers can fall foul of the Self-Isolation Regulations, it is important to note that throughout the Self-Isolation Regulations the term “worker” is used and it is defined by reference to section 230(3) of the Employment Rights Act 1996 (see reg.6). Under section 230(3) of the Employment Rights Act 1996, the term “worker” embraces both employees and workers. Therefore, references in the Self-Isolation Regulations to a worker or workers should be read as references to an employee or employees as well.
8. First, employers can fall foul of the Self-Isolation Regulations by procuring a breach of reg.2 of the Self-Isolation Regulations or reg.4 of the International Travel Regulations. Under reg.7(1) of the Self-Isolation Regulations, an employer must not knowingly allow any employee, worker or agency worker to attend any place other than the place where the employee, worker or agency worker is self-isolating during the period for which the employee, worker or agency worker is required to self-isolate in accordance with reg.2 of the Self-Isolation Regulation or reg.4 of the International Travel Regulations. Regulation 7(1) only applies in circumstances where the employer is aware of the requirement for the employee, worker or agency worker to self-isolate and where the employee, worker or agency worker is attending the other place for “*any purpose related to [their] employment*”. Under reg.7(2), the employer will not be in breach of reg.7(1) if the employee, worker or agency worker attends the other place for one of the permitted reasons specified under reg.2(3) of the Self-Isolation Regulations or reg.4(9) of the International Travel Regulations. Those reasons include the need to seek urgent medical or veterinary assistance or to fulfil a legal obligation (including attending a court hearing).
9. Second, employers can fall foul of the Self-Isolation Regulations through a breach of the notice requirements under reg.9(4) or 9(6). Regulation 8(1) of the Self-Isolation Regulations applies to employees and workers who are: i) aware of the requirement for them to self-isolate, and ii) are due to undertake activities in the course of their employment at a place other than the place at which they are self-isolating during the period for which they are required to self-isolate in accordance with reg.2 of the Self-Isolation Regulation or reg.4 of the International Travel Regulations. Under reg.8(1) of the Self-Isolation Regulations, employees and workers are required to notify their employer of the requirement for them to self-isolate and of the period during which they are so required. This must be done “*as soon as reasonably practicable*” and in any event before they are “*next due to start work within the isolation period*” (see reg.8(2)). A similar requirement is imposed on agency workers to notify one or other of their agency, end-user or employer (if their employer is not their agency or end-user) (see reg.9(2) and

reg.9(3)). Employers can fall foul of these notification requirements because, under reg.9(4) and (6), employers, agencies and end-users who receive notice from an agency worker under reg.9(2) of the Self-Isolation Regulations must then “*as soon as reasonably practicable*” supply the information contained in the notification to the other parties in the agency chain e.g. the agency must supply it to the end user and (if different) the agency worker’s employer.

10. Under reg.11(1) of the Self-Isolation Regulations, any breach by the employer, agency or end-user of reg.7(1) or reg.9(4) or 9(6) “*without reasonable excuse*” is a criminal offence and directors, managers, secretaries and other officers of a corporate employer, agency or end-user may be personally liable for such offending under reg.11(8) and (9) if it is proven to have been committed with that individual’s consent, “*connivance*” or to have been attributable to that individual’s neglect.

### ***C: What are the likely consequences for employers who are suspected of breaching the Self-Isolation Regulations?***

11. Under reg.12(1) of the Self-Isolation Regulations, any corporation or individual who is “*reasonably believed*” to have committed an offence under the Self-Isolation Regulations may be issued with a Fixed Penalty Notice (“**FPN**”). If the FPN is paid within 28 days, no prosecution will be brought against that corporation or individual in respect of that offending (see reg.12(2)).
12. However, FPNs under reg.12 can be for substantial sums. They start at £1,000 for breaches of reg.7 and reg.9(4) or 9(6) and climb to £10,000 for repeated breaches of reg.7. Therefore, it is not inconceivable that corporations or individuals will be unable to pay these FPNs, or will refuse to do so if they believe that it has been wrongly issued. In those circumstances, the corporation or individual might find themselves facing prosecution in the Magistrates’ Court.
13. Under reg.11(5) of the Self-Isolation Regulations, the offence under reg.11(1) is punishable in the Magistrates’ Court only by a fine; it is not an imprisonable offence. If convicted in the Magistrates’ Court, the fine will be (at least theoretically) unlimited. However, it must reflect the seriousness of the offending (see section 164(2) of the Criminal Justice Act 2003) and take into account the financial circumstances of the offender (see section 164(3) and 164(4) of the Criminal Justice Act 2003). These factors could justify either an increase or a decrease in the fine. However, in practice, any fine in the Magistrates’ Court is likely to be in line with the amounts of the FPNs under reg.12 of the Self-Isolation Regulations. It is also worth noting that a fine in the Magistrates’ Court would usually be accompanied by an order requiring the corporation or individual to pay something

---

towards the costs of bringing the prosecution under section 18 of the Prosecution of Offences Act 1985. Therefore, while it is possible that a fine in the Magistrates' Court could be lower than the amounts of the FPNs under reg.12 of the Self-Isolation Regulations, it is also possible (and perhaps more likely) that it could be higher (taking into account the possibility of an order under section 18 of the Prosecution of Offences Act 1985).

***D: What practical steps should employers be taking in response to the coming into force of the Self-Isolation Regulations?***

14. The trigger for criminal liability for a breach of reg.7(1) and/or reg.9(4) or 9(6) of the Self-Isolation Regulations is knowledge on the part of the employer (or agency/end-user in the case of the latter). There can be no liability for procuring a breach of reg.2 of the Self-Isolation Regulations or reg.4 of the International Travel Regulations if the employer is unaware that the employee, worker or agency worker is required to self-isolate. Similarly, there can be no liability for breach of the notice requirements if the agency worker does not give notice to the employer, agency or end-user under reg.9(2).
15. Given that it is a criminal offence for employees, workers and agency workers not to give notice to their employers, agencies or end-users (and for employers, agencies and end-users not to pass such information down the agency chain) a lack of knowledge should not be a feature of many cases.
16. Therefore, employers should put procedures in place to ensure that, as soon as they have knowledge of a requirement for one of their employees, workers or agency workers to self-isolate under reg.2 of the Self-Isolation Regulations or reg.4 of the International Travel Regulations, the requirements of reg.7 and reg.9(4) and 9(6) are followed promptly and accurately.

**Lia Moses**

9 October 2020