

It is now clear - there is a right to protest under the Coronavirus Regulations

The latest set of [Coronavirus Regulations](#) have now been published. The Regulations came into force on 2 December. After months of legislative confusion, the right to protest has been clearly set out. As before, there are specific requirements on organisers to plan for and carry out the necessary precautions to prevent the spread of the Covid-19.

The rules in tier 1 are different to those in tiers 2 & 3 (which are broadly the same in terms). This blog will only refer to the rules for tiers 2&3 as they affect the overwhelming majority of people in the UK. While we believe the content of this blog is accurate (as of 12pm on 7 December 2020) the law may well change again. In any event, the question of whether you will comply with the regulations will be highly specific to the facts of each case, and falling foul of the law may result in a fine of up to £10,000. ***In particular if you are organising a protest you are strongly urged to seek independent legal advice.***

Protest is exempt from the ban on gatherings outdoors

In Tier 2 you cannot gather with more than 6 people outdoors (Paragraph 2(1) of Schedule 2), and in Tier 3 it is with more than 2 people (Paragraph 2(1)(b) of Schedule 2). However, you can gather with more people if the activity falls into one of the exemptions listed in paragraphs 4 or 6 of Schedule 1 of the respective tiers. In addition you cannot organise a 'relevant gathering', which is a gathering that would breach the regulations normally, unless you fall in to one of the exemptions (Paragraph 3 Part 1 of the respective schedule).

'Protest' is specifically listed as an exemption. Confusingly it is 'Exemption 14' in Tier 2 (Paragraph 4(20) Part 1 of Schedule 2 for Tier 2), and 'Exemption 13' in Tier 3 (Paragraph 4(18) Part 1 of Schedule 3 for Tier 2),

You are able to **organise a protest** (Regulation 6), as long as you are 'a business, a charitable, benevolent or philanthropic institution, a public body or a political body' (R6(3)(a)) *and* comply with the requirements of Regulation 7 (R6(3)(b)). The definition of a 'gathering organiser' is common sense – 'the person responsible for organising the gathering' (R2). See below for the definition of a 'political body', though it is broad and will fit most campaigning organisations seeking to change the law or government policy.

Regulation 7 is onerous and requires that:

(1) The gathering organiser or (as the case may be) the manager in relation to a gathering takes the required precautions for the purposes of these Regulations by meeting both of the following requirements.

(2) The first requirement is that the gathering organiser or manager has carried out a risk assessment that would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999 (whether or not the organiser or manager is subject to those Regulations).

(3) The second requirement is that the gathering organiser or manager has taken all reasonable measures to limit the risk of transmission of coronavirus, taking into account—

(a) the risk assessment carried out under paragraph (2), and

(b) any guidance issued by the government which is relevant to the gathering.

See below for further thoughts on the implications of the requirement to assess the risks of the protest. The requirement in Regulation 7 is not to be taken lightly as you may be fined £10,000 if you are found to be in contravention of the Regulations.

You are able to **attend a protest** (Paragraph 2(3) Part 1 of the respective tier schedule) as it is an exempt activity (the specific numbered exemption in either Tier 2 or 3 is referred to above). “A person who only participates in a gathering by attending it is not to be taken as being involved in the holding of the gathering.” (Paragraph 2(3) Part 1 of the respective tier schedule)

As a protester, rather than organiser, you should not fear getting into trouble by attending a protest. However, breach of the regulations can lead to arrest or being given a fixed penalty notice. For instance, if the police announce/inform you that the protest is an ‘unlawful gathering’ then they have a power under regulation 9(3) to disperse the gathering, direct you to return home, or remove you from the gathering. You may risk arrest, or a fine of £100 (and escalating up to £6,400 for each additional fine given), if you attend/stay at the scene. (Regulations 10 (arrest), 11 (Fixed Penalty Notice) & 12 (fine amount)). NB the police cannot give a FPN to an under 18 year old (R11(1)(b)).

The police can also give you a ‘prohibition notice’ to if it is ‘necessary’ to prevent you from ‘continuing to contravene the restriction.’ (R 9(2)). An organiser of a protest that does not comply with the regulations can be fined £10,000, or risk a criminal conviction if the FPN is contested at the Magistrate’s Court (R 11(4)).

We set out below further details of the regulations and some FAQ, but as previously said, if you are organising a protest there are a number of hurdles to overcome before you will be able to say that your event is actually exempt from the regulations. You are therefore strongly urged to seek independent legal advice. You can contact the Civil Liberties department on the above number or via the enquiries form, [here](#).

Definition of a 'political body'

A 'political body' is defined (Regulation 2) as

- i) a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000, or
- ii) a political campaigning organisation within the meaning of regulation 2 of the Health and Social Care (Financial Assistance) Regulations 2009.

In turn, as it says the definition of a 'political campaigning organisation' is from regulation 2 of the Health and Social Care (Financial Assistance) Regulations 2009:

“political campaigning organisation” means any person carrying on, or proposing to carry on activities—

(a) to promote, or oppose, changes in any law applicable in the United Kingdom or elsewhere, or any policy of a governmental or public authority (unless such activities are incidental to other activities carried on by that person), or

(b) which could reasonably be regarded as intended to affect public support for a political party, or to influence voters in relation to any election or referendum (unless such activities are incidental to other activities carried on by that person);

In short, if your group has identifiable aims that include trying to change the law or the way the government or a public body acts, either in the UK or abroad, then you likely are a 'political body' and therefore exempt from the regulations. There is no requirement that your group has been established for a long time, or that it has registered, or has articles of association, or the like. In order to protect the right to protest under Articles 10 and 11 ECHR, a Court should adopt a wide definition of 'political body' which is clearly not limited to traditional political parties. However, these regulations (as per their predecessors) have not been tested, and it is not possible to say definitively how wide the definition will be taken to be. In addition, an organisation that campaigns against a private company with no attempt to change the law or government policy is in danger of falling outside the wording of the definition.

Risk assessments

This is the much more problematic part of the regulations. How you comply with the regulations is not clear. Under paragraph 7 of the regulations, there is no set form that needs to be filled out, or even particular body which is charged with deciding what a satisfactory risk assessment is and what is not. While, there is no requirement to submit a risk assessment to anyone, not least the police, many forces are asking to see the assessment, or for you to submit it to the Health and Safety department of the relevant council. Failure to show that you have a satisfactory risk assessment may lead to fines, and/or prosecutions, and so, along with your social responsibilities in the pandemic, it is important to take this task seriously.

If the council or the police subsequently tell you that your risk assessment is not satisfactory then you should ask for full reasons and where applicable seek to resolve the issues.

A lot depends on the specific factual circumstances, but overly onerous requirements placed on those seeking to organise protests may breach Articles 10 and 11 ECHR.

Any request by the police for sight of a risk assessment must be based on genuine health and safety concerns. Public bodies cannot use the Coronavirus Regulations as a tool to quash dissent.

Fines

The fines are set out above. But it is important to note that the £10,000 fixed penalty for organisers is mandatory and there is no room to argue for a reduction. If you are fined for attending then if you pay the fine within 14 days then it is reduced to £50 (paragraph 9(7)). If you have already received a fixed penalty notice, then the fines double each time up to a maximum of £6,400. A refusal to pay a fixed penalty notice may lead to criminal proceedings being brought for breaching the regulations without reasonable excuse. Those convicted may be punished with an unlimited fine (no minimum applies though courts are likely to have regard to comparable amounts for fixed penalty notices).

The police and CPS always retain a discretion as to whether to enforce an alleged breach of regulations through arrest and prosecution. Regard must be had by the police and CPS to published policies on the prosecution of alleged offences committed in protests (see <https://www.cps.gov.uk/legal-guidance/public-protests>). Relevant factors include whether an individual's role was minor and whether they have a history of offending at protests.

Do I need to notify the authorities that I am organising a protest or provide them with my risk assessment?

There is no requirement to notify anyone of a forthcoming protest (other than a public procession to which Section 11 of the Public Order Act 1986 applies). You do not need permission to protest. You also do not have to prove that you are exempt from the regulations. In addition, you do not have to submit your risk assessment to anybody.

However, if the police cannot determine that you have satisfied the regulations they may be able to say that they have a reasonable suspicion that you have broken the law and you may end up being given a fine, which you can only contest in a Magistrate's court and therefore risk a criminal conviction.

You should at least be prepared to show your risk assessment if and when you are asked or to publish it online.

Do I need to identify myself as the organiser of the protest?

There is no obligation to do so, however, the same logic applies as in the previous paragraph, that if the police cannot determine that you have complied with the regulations then you may end up with a fine. It may be more difficult for the police to assess whether you have complied if they cannot liaise with the organiser.

Can I get legal advice on my rights to protest?

While the short answer is yes, the difficulty is how you go about funding that legal advice. Legal Aid is not available for advice on how to comply with the regulations, unless you are seeking to challenge the decision of the police or a public body to declare your protest an unlawful gathering. If you are seeking to challenge a decision in relation to your protest then you are strongly urged to seek out independent legal advice at the earliest opportunity.

This blog is intended to be no more than guidance on the current state of law. If you want to plan a protest then you should seek independent legal advice.