

## **Yes, you can protest, but.... – Your rights under the Coronavirus Regulations**

Since the easing of the lockdown on 4 July there have been numerous protests and a variety of responses from the police. For most of that time Forces have simply viewed all protests as unlawful gatherings. Over the last few weeks the police have mostly accepted that protests are exempt from the general ban on large gatherings, but have taken different positions on how to comply with the health and safety requirements of the regulations.

This blog, by [Lochlinn Parker at ITN Solicitors](#) and [Owen Greenhall at Garden Court Chambers](#), aims to help you understand how you can protest, and highlights some of the difficulties you may face. However, while we believe the content is accurate (as of 5pm on 14 September 2020) the law is constantly changing. 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 £10,000 fine. ***If therefore you are organising a protest you are strongly urged to seek independent legal advice.***

The latest [Coronavirus regulations](#) were published just minutes before they came into force on 14 September 2020. Although there have been substantial changes in general to the regulations, the rules on protests have not changed significantly.

The new 'rule of six' means that in general any gathering of over 6 people, in public or private, is against the law. There are a number of 'exceptions' to that rule, and in terms of protests in a public place the exception can be found at paragraph 5(3)(i).

We set out the details of the regulations below, but in summary, you need to answer yes to the following, before you even consider whether your protest is likely to be lawful:

1. Are you organising a protest of over 6 people in an outside public place?
2. Are you a 'political body'?
3. Have you completed a thorough risk assessment focussing on Coronavirus?
4. Have you taken all other necessary precautions to limit the risk of Coronavirus transmission?

As a protester, rather than organiser, you should not fear getting into trouble by attending a protest. However, if the police announce/inform you that the protest is an 'unlawful gathering' then you may risk a fine of £100 (and up to £3,200), if you attend/stay at the scene.

We set out below the details of the regulations and some FAQ, but as said before, 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](#).

[The details of the regulations](#)

The rules on organising a protest are a little difficult to follow and need to be considered carefully, not least because of the prospect of a mandatory £10,000 fine.

The following sets out the regulation that applies to protest.

5 (1) During the emergency period, no person may participate in a gathering which consists of more than six people unless—

- (a) all the people in the gathering are from the same household, or are members of two households which are linked households in relation to each other,
- (b) the gathering is one to which paragraph (2) or (2A) applies and the person concerned participates in the gathering alone or as a member of a qualifying group, or
- (c) paragraph (3) applies.

(2) This paragraph applies to a gathering if it takes place on or at premises, other than a private dwelling, which are—

- (a) operated by a business, a charitable, benevolent or philanthropic institution or a public body, or
- (b) part of premises used for the operation of a business, a charitable, benevolent or philanthropic institution or a public body.

(2A) This paragraph applies to a gathering if it takes place in a public outdoor space which does not fall within paragraph (2)(a) or (b) and—

- (a) the gathering has been organised by a business, a charitable, benevolent or philanthropic institution, a public body, or a political body, and
- (b) the gathering organiser complies with paragraph (5G).

Organising or attending a non protest event that is in outside, in a public place, arranged by a campaign group is covered under paragraph 5(2)(A). Note that (5(2) omits 'political body' and therefore unless your organisation could be classed under a different category you are not able to arrange meetings/events indoors.

Organising or attending a protest fall under the 'other' part of that paragraph 5(1)(c) and therefore must comply with the below:

5 (3) (i) the gathering is for the purposes of protest and—

- (i) it has been organised by a business, a charitable, benevolent or philanthropic institution, a public body, or a political body, and
- (ii) the gathering organiser complies with paragraph (5G).

Paragraph 5G covers the risk assessment that must be completed:

5 (5G) The gathering organiser or manager (as the case may be) complies with this paragraph if, in relation to the relevant gathering, they—

- (a) have carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999 whether or not the gathering organiser or manager is subject to those Regulations, and
- (b) have taken all reasonable measures to limit the risk of transmission of the coronavirus, taking into account—
  - (i) the risk assessment carried out under sub-paragraph (a), and
  - (ii) any guidance issued by the government which is relevant to the gathering.

Paragraph 8 sets out that “the gathering organiser” means the person responsible for organising a gathering.’

The organiser of an unlawful gathering can be issued a fixed penalty notice for £10,000 (paragraph 9(6)(a)), and a person attending or remaining at an unlawful gathering can be given a fixed penalty of £100 (paragraph 9(6)(b)). 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 £3,200. 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.

### 'Political body'

The first issue to overcome is whether or not your group is the type of organisation that falls under the exemption (5(3)(i)(i)). This is slightly convoluted, but for protest groups this will mostly be whether you are a 'political body'.

- 5 (6) (da) "political body" means—
- (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 5G 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, failure to produce 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.

Over the last few weeks some police forces have been asking local council health and safety departments to review risk assessments. If 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.

### 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 hold a public meeting, or even arrange an organising meeting?

You cannot hold a public meeting, or organise a protest in a group of more than 6, people, on a premises (paragraph 5(2)), unless your organisation is 'a business, a charitable, benevolent or philanthropic institution or a public body'. This includes public bodies, charities and institutions "established for charitable, benevolent or philanthropic purposes" (Reg 5(6)(d)). Note that this does not include a 'political body'. You are able to hold non protest events outside, such as information stalls etc. if you otherwise comply with the risk assessment criteria in paragraph 5G.

#### 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.**