



Coronavirus UPDATE **English Lockdown**

With the announcement of a lockdown in England from 06 January the English Government has produced clear guidance on the current lockdown which can be found at :

<https://www.gov.uk/guidance/national-lockdown-stay-at-home>

English Government guidance clearly states that all areas in England have been moved into level 4 and put in a temporary lockdown (with the exception of some islands).

The English Government has produced only one piece of legislation regarding 'coronavirus';

[The Health Protection \(Coronavirus, Restrictions\) \(No. 3\) and \(All Tiers\) \(England\) \(Amendment\) Regulations 2021](#)

This amends that and updates [The Health Protection \(Coronavirus, Restrictions\) \(All Tiers\) \(England\) Regulations 2020](#) and [The Health Protection \(Coronavirus, Restrictions\) \(England\) \(No. 3\) Regulations 2020](#) by increasing police powers, strengthening level 4 controls and further restricting public interaction.

The information in this note is based on updated information released by the Government as of 07 January 2021.

What is the current position in England?

You must not leave, or be outside of your home except where necessary.

What is reasonably necessary?

There are over 24 separate 'reasonable excuses' for a person to leave their home. The most relevant for our purposes are :

- to buy goods or obtain services from any business or service allowed to remain open;
- to collect food, drink or other goods which have been ordered from a business, or to access goods or services which are provided in any way permitted;
- for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible to work, or to provide those services, from home.

What businesses are entitled to remain open?

As with tier 1, 2 and 3, a number of businesses are entitled to remain open, these include

- food retailers, including food markets, supermarkets, convenience stores and corner shops,
- petrol stations,
- vehicle repair and MOT services,
- bicycle shops,
- taxi or vehicle hire businesses,
- car parks,
- automatic car washes,
- mobility and disability support shops.

Customers can continue to travel to obtain goods and services from these businesses.

In addition to the above, all businesses offering goods and services can continue only where it is necessary to make deliveries or otherwise providing services in response to orders received :—

- i) through a website, or otherwise by on-line communication,
- ii) by telephone, including orders by text message, or
- iii) by post;

Can customers travel to collect vehicles ordered online or over the phone?

Unlike other parts of the United Kingdom, in England goods do not have to be 'essential' for customers to leave their homes. Where businesses are entitled to remain open customers can travel to them.

This same reasonable excuse *is not* extended to those businesses in the second category that are only able to offer goods and services through a website, or otherwise by on-line communication, by telephone, including orders by text message, or by post. These businesses are entitled to deliver these goods or to allow them to be collected, provided they have been pre-ordered and the purchaser does not enter "inside the premises" to do so.

Whilst it is a little unclear, it is and remains our opinion that customers in England can travel to collect cars under Click and Collect. Whilst customers cannot expressly travel to collect goods as a reasonable excuse, they can collect goods provided they do not enter inside the

premises to do so and as such it would be very difficult for enforcement to prevent customers from utilising Click and Collect.

What counts as entering 'inside premises'?

This is not clear, and members will have to decide what risk to take. If you wish to minimise the risk completely then vehicles should be delivered or collected away from business premises, including any outdoor areas.

The concept of 'premises' is not defined within the Regulations. Given that the risk of infection increases in enclosed spaces the requirement not to enter *inside* the premises is highly suggestive of an enclosed space with walls and a ceiling. It is unlikely that an open space or a roofed but open area (i.e. no walls) will be deemed as 'inside'.

It is our opinion that the risk of collection is minimal provided all customers have committed to purchasing the vehicles through a website, or otherwise by on-line communication, by telephone, including orders by text message, or by post prior to attending and the only action being undertaken is the handover of the same.

This risk can be reduced further if other Covid secure measures are taken and a clear and detailed risk assessment is followed and maintained.

Are there any businesses that *must* close?

Yes.

- showrooms and other premises, including outdoor areas, used for the sale or hire of caravans, boats or any vehicle which can be propelled by mechanical means;
- car washes (except for automatic car washes);
- auction houses (except for auctions of livestock or agricultural equipment);

Conclusion

It is important to note that the legal situation is still in flux. Members need to consider what risks they wish to take. Whilst these Regulations have minimal effect on petrol stations, car repairs and MOT services, they do have significant effect on customers' ability to travel and restrict car showrooms, forecourts and auction houses.

The Regulations continue to allow any business to provide goods and services at a distance. However, where businesses wish to offer vehicles at a distance, it is vital that they fully understand the implications of distance sales and fully comply with their legal requirements, including clearly written terms and conditions regarding any cooling off periods as appropriate.

Should you have any questions, please do not hesitate to call the Member Helpline on 0845 305 42 30.

Motor Industry Legal Services

Motor Industry Legal Services (MILS Legal Ltd) provides fully comprehensive legal advice and representation to UK motor retailers for one annual fee. It is the only law firm in the UK which specialises in motor law and motor trade law. MILS currently advises over 1,000 individual businesses within the sector as well as the Retail Motor Industry Federation (RMI) and its members.