



Coronavirus UPDATE

Scotland

With the announcement of a lockdown in Scotland from 05 January the Scottish Government has produced clear guidance on the current lockdown which can be found at

<https://www.gov.scot/publications/coronavirus-covid-19-stay-at-home-guidance/>

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

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

[The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 10\) Regulations 2021](#) as well as [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 11\) Regulations 2021](#).

These both amend that and update [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Regulations 2020](#) by increase police powers, strengthening level 4 controls and further restricting public interaction.

What is the current position in Scotland

Members of the public must stay at home and can only leave their home for an 'essential purpose'

What is an essential purpose (or more correctly a reasonable excuse)?

There are over 26 separate 'reasonable excuses' for a person to leave their home. The most relevant for our purposes are

- To obtain or provide :—
 - food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons,
 - supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person,
- For work or provide voluntary or charitable services, where it is not possible for the person to do so from home,
- To obtain or deposit money, where it is not possible to do so from home.

- For essential services, including services of a charitable or voluntary nature such as food banks, alcohol or drug support services.

Can businesses continue to trade?

In addition to petrol stations, car repairs and MOT services who continue to remain exempt from closure, outdoor markets and outdoor car lots can now remain open and are entitled to continue to trade in a Covid secure fashion.

With general retail, including car sales, all businesses who offer goods for sale or hire in a 'shop' to close.

Whilst auction houses and motor dealers are required to close their 'shops' to members of the public, they are allowed to continue to carry out business at the site where this is necessary for the provision of services or information including the sale, hire or delivery of goods or services:

- i) through a website, or otherwise by on-line communication;
- ii) by telephone, including by Text Message; or
- iii) by post

Whilst there remains some question over whether travel to an auction house or motor dealer to collect a vehicle represents 'essential travel' (see below), with ability of outdoor car lots to remain open click and collect is now easier to arrange.

Essential Shopping

Whilst the controls on the retail sector appear to have minimal changes over tier 4, the Scottish Government guidance regarding travel by members of the public has increased significantly. There now appears to be a concept of '*essential*' shopping and as such it appears that greater restrictions not on businesses but on customers appears to be the main method of control.

There remains a question as to how 'essential' supplies must be for member of the public to leave their homes. If the purchase was deemed a luxury item or an item where time is not of the essence, police and enforcement could quite legitimately decide that it was not reasonably necessary to be outside to make the purchase at that time and prosecute.

Given the increased police powers as well as the increased rhetoric, auction houses and motor dealers should consider whether delivery is a more acceptable business model.

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 and outdoor car lots, they do have significant effect on members of the public's ability to travel as well as car showrooms and auction houses.

The Regulations continue to allow any business to continue 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, including 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.