

## **Coronavirus: Some Lockdown Restrictions are Unlawful (Summary)**

### **Summary**

1. This paper explains that some restrictions imposed during the Coronavirus Pandemic (Covid-19)<sup>1</sup> lockdowns are unlawful. The unlawful restrictions include a) people only being allowed to leave their houses to exercise and to shop for food; and b) the exclusion of the press and public from the courts.
2. These restrictions infringe the fundamental principles of human rights. People have the right to a) leave their home for any purpose; and b) have a trial or hearing held in public.
3. It is long established that the UK Parliament can legislate to restrict human rights. The caveat to this is that the legislation must confront any restriction head on. The legislation cannot use general or ambiguous words, it must make it very clear what right it is denying.
4. The Coronavirus Act 2020 (CA 2020) is the legislation emanating from the UK Parliament that gives the UK Executive<sup>2</sup>, and the devolved Parliaments and Executives, the power to act during Covid-19. The CA 2020 does not give authority to a) restrict people's ability to leave their home; or b) exclude the press and public from the courts.
5. Without authority from the UK Parliament via the CA 2020, neither the UK Executive nor the devolved Parliaments and Executives have the authority to restrict people's fundamental human rights. Therefore, these restrictions and enforcement by the police are unlawful.
6. Please note that this paper makes no comment on whether these restrictions are a necessary response to Covid-19. It only asks whether they are lawful?

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<sup>1</sup> The World Health Organisation confirmed Coronavirus as a pandemic on the 11<sup>th</sup> of March 2020 (<https://www.bbc.com/news/world-51839944>). The coronavirus SARS-CoV-2 causes the disease Covid-19. This paper uses Covid-19 for the virus and the disease. The WHO explains the naming of the virus and disease here: [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it)

<sup>2</sup> The UK and Devolved Parliaments legislate and the UK and Devolved Executives run the country controlled by the legislation emanating from the UK and Devolved Parliaments. Executive and Government are sometimes used interchangeably. See: <https://www.gov.uk/government/how-government-works> for more information on this area.

## **Introduction**

7. This paper will concentrate on the response to Covid-19 in Scotland and ask: Is the Scottish Parliament and Executive's response to Covid-19 lawful? It will first set out the facts and issues (the actions taken to combat Covid-19), followed by the legislation. Next, it will explain the principle of legality that states that fundamental human rights can only be overridden by legislation from the UK Parliament that uses clear and specific words. It will conclude by contending that some of the actions taken to combat Covid-19 are unlawful.

## **The facts and issues**

8. During Covid-19, the Scottish Parliament legislated to allow the Scottish Executive to impose restrictions on people's lives. These restrictions included a) people only being allowed to leave their houses to exercise and to shop for food; and b) the exclusion of the press and public from the courts. Both of these restrict people's human rights.
9. Restrictions on leaving home violate people's right to free movement and their right of assembly and association. Banning the press and public from the courts violate people's right to fair trial. See the Open Justice Campaign for more detail on this issue.
10. The next section will explain the legislative background to these restrictions.

## **The law: The Coronavirus Legislation**

### ***UK Legislation, Scottish Legislation and Executive Actions***

11. The UK Parliament passed the Coronavirus Act 2020 (CA 2020) and it came into force on the 25<sup>th</sup> of March 2020. This Act gave authority for the UK Executive, and the Devolved Parliaments and Executives, to legislate and take action to combat Coronavirus.
- 12., The Scottish Parliament passed the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) Act 2020 No 2. These Acts gave the Scottish Executive the power to make regulations and take action to combat Coronavirus.

13. On the 27<sup>th</sup> of March the Scottish Executive used “powers from the UK Coronavirus Bill to make it a criminal offence to flout the strict public health guidance that is helping save lives.”<sup>3</sup> The guidance to the public was to “only go outside if they have a ‘reasonable excuse’. These include shopping for necessary food, household and medical supplies, travelling to and from work where working from home is not an option, and daily exercise that adheres to social distancing guidance.”<sup>4</sup> In late March, the Scottish Courts and Tribunals Service banned the press and public from court buildings.
14. The Scottish Parliament Information Centre (SPICe) says that these measures are necessary “to reflect the restrictions in both guidance and legislation, on the way people live and work” (SPICe gives a timeline<sup>5</sup> of Covid-19 in Scotland and the UK. They report the first day of Lockdown as being the 24<sup>th</sup> of March 2020).

### **The law: The Principle of Legality and Parliamentary Sovereignty**

15. The doctrine of Parliamentary Sovereignty states that the British Parliament can make or unmake any law. The principle of legality enhances Parliamentary Sovereignty by stating that if legislation is meant to override fundamental human rights, then this can only be done by using clear and specific words. Fundamental human rights cannot be overridden by general or ambiguous words.<sup>6</sup>
16. The devolved Parliament's ability to legislate is limited in that, amongst other things, they cannot legislate to restrict human rights. Therefore, if the Coronavirus Act 2020 does not give the Scottish Parliament and Executive the authority to restrict people's human rights, then they cannot do so. The Coronavirus Act 2020 does not give authority to the Scottish Parliament and Executive to restrict people's fundamental human rights.

### **Application of the law to the facts and issues**

17. It is contended (applying the principle of legality) that limiting people's right to leave their home is unlawful as the Coronavirus Act 2020 does not grant this authority

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<sup>3</sup> See: <https://www.gov.scot/news/social-distancing-enforcement-measures-in-place/>

<sup>4</sup> See: <https://www.gov.scot/news/social-distancing-enforcement-measures-in-place/>

<sup>5</sup> See <https://spice-spotlight.scot/2020/07/09/timeline-of-coronavirus-covid-19-in-scotland/>

<sup>6</sup> For an explanation of Parliamentary Sovereignty and the principle of legality see Lord Steyn and Lord Hoffman *in R v Secretary of State for the Home Department Ex parte Simms* [1999] UKHL 33

18. It is contended (applying the principle of legality) that excluding the press and public from the courts is unlawful, as the Coronavirus Act 2020 does not grant this authority

### ***Leaving your home and travelling outside your local area***

19. In relation to restricting people from leaving their home or travelling outside their local area - It is contended that these restrictions do nothing to combat the spread of the Sars-Cov-2 (the virus that causes the disease Covid-19).

20. For example, if I leave my home (Glasgow city centre) and travel outside my local area to Loch Lomond and go for an open water swim there and travel back. There is zero chance of getting Covid-19 or transmitting Sars-Cov-2 on this journey.

21. There are no confirmed cases of Covid-19 being caught outside when social distancing was being observed. So, any power given to the Scottish Parliament or Scottish Executive to control Sars-Cov-2 and Covid-19 does not touch restricting people from leaving their homes or travelling outside their local area and the corresponding penal sanctions.

### **Conclusion and consequences**

22. The Scottish Parliament and Executive have no authority to restrict people's movement or control people's ability to meet up with other people. Therefore, these parts of the lockdown restriction and their enforcement are unlawful.

23. The Scottish Parliament and Executive have no authority to exclude the press and public from Scotland's courts. This action is unlawful. Please see the Open Justice Campaign for more information on this subject.

24. Other measures, such as the rule of six, are also unlawful as there is no authority to implement and enforce this rule.

### **What can I do about this? Further information.**

25. If this affects you, then please contact the Fair Trial Project via the contact page on the web-site. Please sign up for the Fair Trial Project's free newsletter. The newsletter will keep you up to date with the various campaigns we are running.
  
26. Please note that a fully referenced paper on this topic will appear in the library later in 2021.