

THE NEW SELF-ISOLATION REGULATIONS: WHAT ARE THE NEW REQUIREMENTS IMPOSED ON WORKERS, AGENCY WORKERS AND EMPLOYERS, AGENTS AND PRINCIPALS?

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The Health Protection (Coronavirus, Restrictions) (Self-isolation) (England) Regulations 2020 (the “**Self-Isolation Regulations**”), made at 5.00pm on 27th September 2020, came into force at 12.00am on 28th September 2020.

Part 1 of the Self-Isolation Regulations imposes self-isolation requirements in relation to persons who have tested positive for coronavirus and their close contacts, in England only.

Part 2 imposes:

- a prohibition on employers from allowing a worker to attend any place except the place where they are required to self-isolate for any purpose connected to the worker's employment;
- a prohibition on a self-isolating worker or agency worker to be present for work purposes anywhere other than the place where they are self-isolating;
- a requirement on a self-isolating worker to inform their employer that they are self-isolating;
- a requirement on a self-isolating agency worker to inform either their employer, the agency or the principal that they are self-isolating. The person in receipt of this information is required to pass it on to the two other parties.

Part 3 provides for enforcement, disclosure of information, and for the review and expiry of the Self-Isolation Regulations.

What is the definition of “employer”?

“Employer” has the meaning given by s.230 of the Employment Rights Act 1996: “*in relation to an employee or a worker, [it] means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.*”

What is the definition of a “worker”?

“Worker” has the meaning given by s.230 of the Employment Rights Act 1996: “an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual”.

What is the definition of an “agency worker”, “agent” and “principal”?

An agency worker is an individual who is (or is to be) supplied by a person (an “agent”) to do work for another (a “principal”) under a contract or other arrangements made between the agent and the principal, but who is not a worker (because of the absence of a worker’s contract between the individual and the agent or principal) and who is not a party to a contact under which the individual undertakes to do the work for another party to the contract whose is a client or customer of any profession or business undertaking carried on by the individual.

When must the worker/agency worker self-isolate?

An adult must self-isolate when notified that they have tested positive for coronavirus pursuant to a test after 28 September 2020 or that they had come into close contact with someone who tested positive for coronavirus (reg.2(1), Self-Isolation Regulations).

Who will notify the worker/agency worker?

The Secretary of State, a person employed or engaged for the purposes of the health service or a person employed or engaged by a local authority will notify the

worker/agency worker that they must self-isolate. A notification cannot be received by means of the NHS Covid 19 smartphone app.

For how long must the individual self-isolate?

An adult who has tested positive for coronavirus after reporting symptoms, must self-isolate for a period of 10 days beginning with the date 5 days before the test or the date on which they reported such symptoms (whichever is later).

An adult who did not report any symptoms but who tested positive for coronavirus must self-isolate for a period of 10 days beginning with the date of the test.

An adult who is living with a person (including a child) who tested positive with coronavirus must self-isolate for a period of 14 days beginning with the date 5 days before that person's test or the date on which that person reported such symptoms (whichever is later). If that person did not report any symptoms, then the adult must self-isolate for 14 days from the date of the test.

An adult who came into close contact with a person who has tested positive for coronavirus must self-isolate for 14 days beginning with the date on which they last came into contact with the affected person.

“Close contact” means having face-to-face contact with someone at a distance of less than 1 metre, spending more than 15 minutes within 2 metres of an individual, travelling in a car or other small vehicle with an individual or in close proximity to an individual on an aeroplane. (reg 5, Self-Isolation Regulations).

Where must the adult self-isolate?

In their home, the home of a friend or family member or a bed and breakfast accommodation, accommodation provided under ss.4, 95 or 98 of the Immigration and Asylum Act 1999(a) or other suitable place.

Exceptions to the self-isolation requirement are provided in reg.2(3)(b), Self-Isolation Regulations.

Must a worker notify their employer that they are self-isolating?

Yes, where the worker is aware of the requirement to self-isolate and due to work or undertake any other activities related to their employment during the isolation period other than at the designated place where they are self-isolating.

What information must the worker provide to their employer?

The worker must notify their employer that they are under a requirement to self-isolate, and of the start and end dates of the isolation period.

When must the worker notify their employer that they are self-isolating?

As soon as reasonably practicable and in any event before they are next due to start work within the isolation period.

What requirements are imposed on employers of workers required to self-isolate?

An employer who is aware of its worker's requirement to self-isolate, must not knowingly allow the worker to attend any place during the isolation period for any purpose related to the self-isolating person's employment, other than the place where they are self-isolating.

An employer will not be in breach of the regulations where the worker attends any place in accordance with the isolation requirements (see reg.2(3)(b), Self-Isolation Regulations).

What are the notification requirements for a self-isolating agency worker?

Where the agency worker is aware of the requirement to self-isolate and is due to work during the isolation period other than at the place where they are self-isolating,

they must notify their agent, principal, or employer of the requirement to self-isolate and of the start and end dates of the isolation period.

The agency worker must do so as soon as reasonably practicable and in any event before they are next due to work during the isolation period.

If an agency-worker's agent is in receipt of the information, what must they do?

It must supply the information to the agency worker's employer and to any principals to whom the self-isolating agency worker is to be supplied during the isolation period.

If an agency-worker's principal is in receipt of the information, what must they do?

It must supply the information to the agency worker's employer and to the agent.

If an agency-worker's employer is in receipt of the information, what must they do?

It must supply the information to the agency worker's agent and to any principals to whom the self-isolating agency worker is to be supplied during the isolation period. Further, it must not knowingly allow the self-isolating agency worker to attend any place other than the place where they are self-isolating during the isolation period for any purpose related to the person's employment.

An employer will not be in breach of the Self-Isolation Regulations where the worker attends any place in accordance with the isolation requirements (see reg.2(3)(b), Self-Isolation Regulations).

What are the consequences of breach of the Self-Isolating Regulations?

Contravention of the requirements in regs.2, 7, 8 or 9 without reasonable excuse is an offence, and may attract a fixed penalty notice of £1,000 on first contravention, up to £10,000 for the fourth and any subsequent contraventions. Further, the offence may be prosecuted by a local authority or the CPS.



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