

The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020: An Easing of Restrictions in the Residential Property Market

On 13 May 2020, the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020 came into force, signaling a start to the tentative easing of the “lockdown” promised by the Prime Minister in his speech on 10 May 2020.

In particular from the point of view of the property industry, measures were introduced to try to kick-start the housing market, so often a barometer of economic health.

When the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 came into force at 1pm on 26 March 2020, they introduced a blanket ban on persons leaving the place where they are living without reasonable excuse: Paragraph 6(1). That restriction was subject to the now well-known exceptions including shopping for essentials, working where it was not possible to work from home and exercise. Paragraph 6(2)(1) included, as an exception, “to move house where reasonably necessary” though no clues were given as to when it might be thought reasonably necessary to move house. As a result, it is reported in the press that some 450,000 residential property sales representing £82bn of property were put “on hold”.

From 13 May 2020, the uncertainty created by the exception has been removed, replaced by a new Paragraph 6(2)(1) inserted by Paragraph 2(3)(v) of the (Amendment) (No.2) Regulations. It is now a lawful excuse to leave the place where you are living to undertake any of the following activities in connection with the purchase, sale, letting or rental of a residential property

- Visiting estate or letting agents, developer sales offices or show homes
- Viewing residential properties to look for a property to buy or rent
- Preparing a residential property to move in
- Moving home
- Visiting a residential property to undertake any activities required for the rental or sale of that property

The rules apply only to residential property and have not been extended to commercial or agricultural property.

Estate agents have been advised that they can re-open though, notwithstanding the relaxation of the rules, buyers are still being encouraged to view properties online where possible.

The final exception, drafted relatively widely, would seem to be aimed at permitting property surveys to take place as well as visits by architects, engineers, contractors and others necessary to advise potential purchasers in relation to their potential purchase. Estate agents and letting agents will also be entitled to visit properties to prepare sales or letting particulars, measure properties and record footage for virtual viewings. In the enfranchisement and compulsory purchase worlds, expert valuers should be able to resume visiting properties for the purposes of compiling valuations.

Government advice has been issued to accompany the amendments: <https://www.gov.uk/guidance/government-advice-on-home-moving-during-the-coronavirus-covid-19-outbreak>. It provides advice to both the public and industry on how to undertake the activities mentioned above as safely as possible. The advice is all subject to the latest social distancing guidance: <https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing> (published 11 May 2020).

Advice to the public includes the following:

- the vulnerable or those shielding should balance any pressing need to move against increased risks. Their condition should be made known to all professionals involved, who in turn should seek to implement additional precautionary measures;
- those self-isolating should continue to do so and not move home, undertake or admit property viewings;
- the adoption of practices and procedures to minimise the risk of transmission such as online viewings, and limited physical viewings. Measures during visits include refraining from touching surfaces, opening windows, regular hand washing, and arranging for the occupiers' absence.

Advice to the industry (covering estate and lettings agents, developers, tradespeople, conveyancers, New Build Inspectors, surveyors, EPC assessors, removals firms, private and social landlords) includes:

- the need to observe extant advice regarding safe working environments: <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19> and <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19> (updated 11 May 2020);
- estate agents should enquire whether a party is showing symptoms or self-isolating, should not carry out any open house viewings, wear face masks in accordance with guidance if they undertake an accompanied visit and should facilitate re-negotiated move dates if necessary;
- developers should promote virtual viewings, be flexible and ensure contracts accommodate risks associated with delay caused by Covid-19;
- conveyancers should conduct as much of their business remotely as possible. They should endeavour to promote flexibility and make provision for the risks presented by Covid-19, e.g. when advising their clients who are ready to move not to exchange contracts on an occupied property unless they have made explicit provision for the risks presented by the virus;
- surveyors and EPC assessors are free to visit properties to carry out surveys, so long as guidance on social distancing and working in others' homes is observed: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/homes> (updated 11 May 2020 - this is obviously applicable to other affected industries);
- removal firms must check no members of households are self-isolating or showing symptoms, encourage the cleaning of all surfaces, and avoid contact with homeowners. As

with tradespeople, removers should bring their own refreshments and operate a ‘buddy system’;

- private landlords should follow the current advice on renting (<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/homes>) and social distancing, with repairs and checks being undertaken between tenancies¹. Similar considerations apply to social landlords – who must also avoid moving tenants who are showing symptoms or self-isolating.

It is hoped that the relaxation of these restrictions, together with the encouragement to allow construction workers to resume work on sites, will boost the housing market and at least enable those stuck “in limbo” to complete their purchases and move house. It remains to be seen whether others will be tempted to use the time they would otherwise be commuting to look for a new home or whether caution will prevail until an end to the crisis is more clearly in sight.

As the Guidance emphatically states, however, these changes do not ‘represent a return to normality’. It warns that there may yet be a need to freeze all home moves at short notice – for which contractual provision should of course be made. The Guidance acknowledges that many affected will already be contractually bound to move and that the parties should negotiate, and prepare to be flexible. This exhortation accords with previous Government guidance on responsible contractual behavior, published on 7 May 2020: <https://www.gov.uk/government/publications/guidance-on-responsible-contractual-behaviour-in-the-performance-and-enforcement-of-contracts-impacted-by-the-covid-19-emergency>.

¹ Notably the guidance states that private ‘[l]andlords should make every effort to abide by gas electrical safety requirements, which continue to be of great importance for tenants’ and safety. This may be more difficult due to restrictions associated with the coronavirus outbreak, for example where a tenant has coronavirus symptoms, is self-isolating or shielding. Under such circumstances, provided the landlord can demonstrate they have taken reasonable steps to comply, they would not be in breach.’