
NOTE

1. The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations, at regulation 2(1), suggest that where an adult is notified that they have tested positive for COVID-19, they must self-isolate for the applicable period. However, this duty is subject to two important qualifications:
 - 1.1 First, at regulation 2(3)(b), a person who is required to self-isolate may leave the place at which they are living where it is necessary for one of the reasons set out in that regulation (which include to seek medical assistance: regulation 2(3)(b)(i)). The phrase “*medical assistance*” is not limited to medical assistance for that person. Regulation 2(3)(b)(i) therefore permits a person to leave their home for the purpose of seeking medical assistance for a newly born child.
 - 1.2 Second, regulation 11 makes it clear that it is not a criminal offence under the regulations for a person to leave their home when they have a “*reasonable excuse*”.
2. The phrase, “*reasonable excuse*”, is not defined in the regulations or in the associated governmental guidance. It must mean something different to the list of exceptions set out in regulation 2(3)(b), as a person leaving their home for one of those reasons would not be contravening a requirement of regulation 2, and would not therefore be committing an offence. The following principles are relevant to construing the phrase:
 - 2.1 The phrase, “*reasonable excuse*,” in the public health context, is “*largely, if not entirely, a question of fact*”.¹

¹ *Morris v Beardmore* [1981] AC 446 at 461.
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- 2.2 The phrase can include the exercise of rights under the European Convention on Human Rights. This is “*inherently a fact-specific inquiry*.”²
- 2.3 The separation of either parent from their newly born child constitutes an interference with their (and their child’s) rights under article 8 of the European Convention on Human Rights.³ The circumstances of giving birth also engage the rights of the parents and the child under article 8.⁴
3. It is therefore wrong in law to suggest that “*legislation*” requires all parents who test positive for COVID-19 to self-isolate at all times. Being present during childbirth and at the neonatal stage may be necessary for the purposes of “*medical assistance*” or it may be necessary, depending on the facts of an individual case, to facilitate the exercise of article 8 rights.

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² *R (Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605, §104.

³ See, for example, *Hanzelkovi v Czech Republic* (App. no. 43643/10), §§67 and 78.

⁴ See, for example, *Odievre v France* (2004) 38 EHRR 43, §29; *Ternovszky v Hungary* (2015) 61 EHRR 35, §22; *Dubská v Czech Republic* (2017) 65 EHRR 5, §163.