



24 September 2020

### **FACE COVERING. Questions and Answers**

Following Government policy, from 24 September 2020 it became a legal requirement in England for staff as well as members of the public to wear face coverings in shops.

The information in this note is based on information released by the Government as at 24 September 2020.

### **England**

What is the requirement at law?

*“No person may, without reasonable excuse, enter or remain within a relevant place without wearing a face covering”* (s3(1) The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England)

Regulations 2020)

What is a reasonable excuse?

A person has a reasonable excuse if

- they cannot put on, wear or remove a face covering—
  - because of any physical or mental illness or impairment, or disability (within the meaning of section 6 of the Equality Act 2010(6)), or
- without severe distress;
- they are accompanying, or providing assistance to, another person who relies on lip reading to communicate;
- they remove their face covering to avoid harm or injury, or the risk of harm or injury, to themselves or others;
- they are entering or within a relevant place to avoid injury, or to escape a risk of harm, and do not have a face covering with them;
- it is reasonably necessary for them to eat or drink, and they remove their face covering to eat or drink;
- they have to remove their face covering to take medication;
- they are required by a person responsible for a relevant place or their employee acting in the course of their employment, to remove their face covering in order to verify their identity;
- they are asked within a pharmacy to remove their face covering in order to assist in the provision of healthcare or healthcare advice;
- they are asked by a relevant person to remove their face covering.

Is a garage a ‘retail’ business/do my staff need to wear a face covering?

Whilst government guidance makes reference to 'retail' businesses, the legislation refers to a 'relevant place'. Whilst there are a few specific places (i.e. post offices, theatres, etc, etc...) the legislation includes 'a shop'. Whilst this is not a very precise definition, if your premises are open to the public for the sale of goods or provision of services, then our advice is that you are a shop for the purposes of the legislation and your staff are required to wear a face covering.

Do my staff have to wear face coverings if they work behind a screen?

The Regulations state that;

*"No person may, without reasonable excuse, enter or remain within a relevant place without wearing a face covering."*

Whilst there is the argument that a screen would create a separate 'relevant place' and therefore if not open to the public the Regulations would not apply, it will depend on how substantial any screen is. If it is truly floor to ceiling and fully enclosed, this is possible. However, it is our opinion that this argument is unlikely to be successful at this time and we would continue to advise the use of face coverings.

Do my staff have to wear face coverings if there are no customers?

The Regulations make reference to '*enter(ing) or remain(ing) within a relevant place*'. There is no reference to the number of people within a relevant place. As such, where staff remain within a shop whether there are other people present or not, face coverings are required.

What is a face covering?

The Regulation define a face covering as, '*any type which covers a person's nose and mouth*'. .

Any face covering MUST cover a persons mouth and nose. If a face covering is worn incorrectly over the mouth only (of on the chin as has been seen) then this will not comply with the regulations and the wearer may be subject to a fixed penalty notice.

It should also be noted that anything that covers the nose and mouth would suffice. Whilst a mask is strongly advised, where staff have difficulty with wearing masks then a face shield *may* suffice if worn correctly.

What if my staff refuse?

Whether staff are legally required to wear face coverings or not, provided there are no medical reasons against wearing a face covering, or reasonable excuses as per the legislation, it is likely that requiring staff to wear a face covering will be a reasonable request and in line with health and safety legislation. As such, any refusal to wear a face covering will be a disciplinary matter.

We would advise that Members first deal with any incidents on an informal basis. It will first be necessary to ascertain the reasons why a face covering is not being worn. If there are no medical reasons against wearing a face covering, or reasonable excuses as per the legislation, then verbal warnings should be considered. These can then be escalated as appropriate through the usual disciplinary process.

## Scotland

### What is the requirement at law?

*“(1) Except to the extent that a defence would be available under regulation 8(4), no person may enter or remain within a place mentioned in paragraph (2) without a face covering.”* (s6B (1) The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020)

### What is a Defence under regulation 8(4) ?

It is a defence to show that the person, in the circumstances, had a reasonable excuse.

A reasonable excuse includes:

- to seek medical assistance;
- to provide care or assistance to a vulnerable person, including to provide emergency assistance;
- to avoid injury, illness or to escape a risk of harm;
- where the person cannot put on, wear or remove a face covering—
  - because of any physical or mental illness or impairment or disability (within the meaning of section 6 of the Equality Act 2010);
- without severe distress;
- to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise);
- to eat or drink;
- to exercise;
- to take medication;
- to remove a face covering temporarily to comply with a request by a relevant person or another person acting in the course of their duties;
- where the person is undertaking food handling tasks, to avoid risk to the hygiene or safety of food.

### Is a garage a 'retail' business/do my staff need to wear a face covering?

The Scottish Regulations require face coverings to be worn in *'any building, room or other premises used for the retail sale or hire of goods or services'*. This definition is much more specific than that in either England or Wales and is self-explanatory.

### Do my staff have to wear face coverings if they work behind a screen?

Again, Scottish businesses benefit from a more specific definition. Unless the screen is sufficient to be deemed another room entirely, then your staff will have to wear face coverings.

### Do my staff have to wear face coverings if there are no customers?

The Regulations make reference to *'enter(ing) or remain(ing) within a place mentioned in paragraph (2)'*. There is no reference to the number of people within a relevant place. As such, where staff remain within a shop whether there are other people present or not, face coverings are required.

### What is a face covering?

The Regulations in Scotland define a face covering as, '*a covering of any type (other than a face shield) which covers a person's nose and mouth*'

Any face covering MUST cover a person's mouth and nose. If a face covering is worn incorrectly over the mouth only (or on the chin as has been seen) then this will not comply with the regulations and the wearer may be subject to a fixed penalty notice.

A face shield will not be sufficient in Scotland.

#### What if my staff refuse?

Whether staff are legally required to wear face coverings or not, provided there are no medical reasons against wearing a face covering or reasonable excuses as per the legislation, it is likely that requiring staff to wear a face covering will be a reasonable request and in line with health and safety legislation. As such, any refusal to wear a face covering will be a disciplinary matter.

We would advise that Members first deal with any incidents on an informal basis. It will first be necessary to ascertain the reasons why a face covering is not being worn. If there are no medical reasons against wearing a face covering, or reasonable excuses as per the legislation, then verbal warnings should be considered. These can then be escalated as appropriate through the usual disciplinary process.

#### Wales

What is the requirement at law?

***“A person (“P”) must wear a face covering in relevant indoor premises.”***

(s12B (1)The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020)

What is a reasonable excuse?

A person has a reasonable excuse if:

- they are unable to put on, wear or remove a face covering because of a physical or mental illness or impairment, or a disability (within the meaning of section 6 of the Equality Act 2010);
- they are undertaking an activity and wearing a face covering during that activity may reasonably be considered to be a risk to their health;
- they have to remove the face covering to communicate with another person who has difficulty communicating (in relation to speech, language or otherwise);
- they have to remove the face covering in order to avoid harm or injury, or the risk of harm or injury, to themselves or others;
- they are at the premises to avoid injury, or to escape a risk of harm, and do not have a face covering;
- they have to remove the face covering to—

- take medication;
- eat or drink, where reasonably necessary;
- they are asked to remove the face covering by an enforcement officer.

#### Is a garage a 'retail' business/do my staff need to wear a face covering?

The Welsh Regulations make reference to '*relevant indoor premises*'. There are a few steps you have to go through within the Welsh Regulations these are defined as '*Any business selling goods or services for sale or hire in a shop.*' As such, the position in Wales is the same as in England above: If your premises are open to the public for the sale of goods or provision of services, then our advice is that you are a shop for the purposes of the legislation and your staff are required to wear a face covering.

#### Do my staff have to wear face coverings if they work behind a screen?

As with England and Scotland, the requirement is to wear a face covering whilst '*in relevant indoor premises*'. Whilst there is the argument that a screen would create a separate indoor premises, the Welsh regulations refer to 'a business' and so this argument is less likely to succeed. We would continue to advise the use of face coverings.

#### Do my staff have to wear face coverings if there are no customers?

The Regulations make reference to being '*in*' relevant indoor premises. Again, and like both England and Scotland, there is no reference to the number of people within a relevant place. As such, where staff remain within a shop whether there are other people present or not, face coverings are required.

#### What is a face covering?

The Regulation define a face covering as, '*any type which covers a person's nose and mouth*'.

Any face covering MUST cover a persons mouth and nose. If a face covering is worn incorrectly over the mouth only (of on the chin as has been seen) then this will not comply with the regulations and the wearer may be subject to a fixed penalty notice.

It should also be noted that anything that covers the nose and mouth would suffice. Whilst a mask is strongly advised, where staff have difficulty with wearing masks then a face shield *may* suffice if worn correctly.

#### What if my staff refuse?

Whether staff are legally required to wear face coverings or not, provided there are no medical reasons against wearing a face covering or reasonable excuses as per the legislation, it is likely that requiring staff to wear a face covering will be a reasonable request and in line with health and safety legislation. As such, any refusal to wear a face covering will be a disciplinary matter.

We would advise that Members first deal with any incidents on an informal basis. It will first be necessary to ascertain the reasons why a face covering is not being worn. If there are no medical reasons against wearing a face covering, or reasonable excuses as per the legislation, then verbal warnings should be considered. These can then be escalated as appropriate through the usual disciplinary process.

## **In Conclusion**

This advice has tried to compare and contrast the differing approaches in England, Scotland and Wales. It is general in nature and it will need to be tailored to any one particular situation. Furthermore, it is important to note that the situation is very fluid and Government guidance is changing daily. We are keeping our ears close to the ground for RMI members who are all, understandably, desperate for more certainty. Should you find yourself in the situation above, contact us at any stage for advice and assistance as appropriate.

Motor Industry Legal Services

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