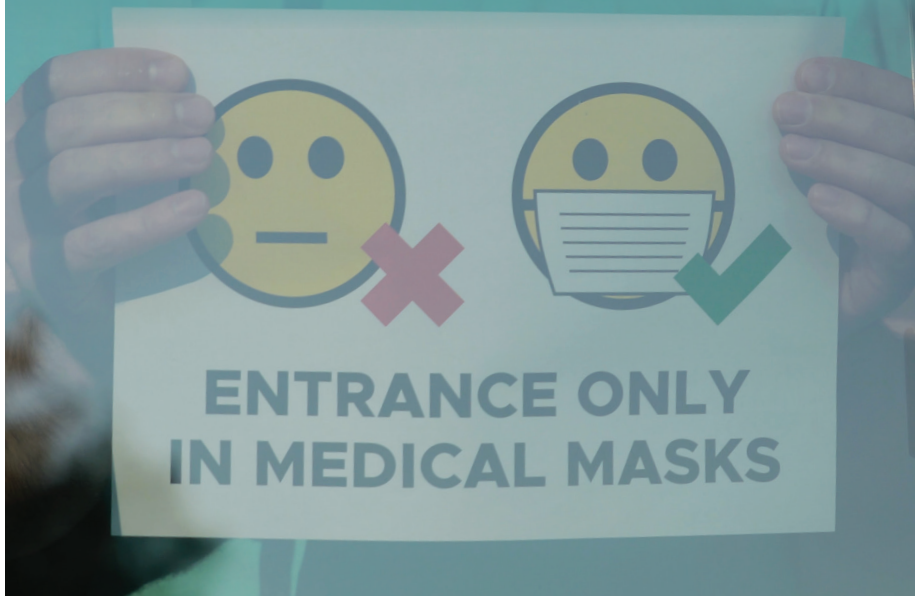


Use a picture—it's worth a thousand words



Coronavirus regulations: out with impenetrable legalese & in with pictures, graphs & diagrams, say [Charles Auld & Kate Harrington](#)

IN BRIEF

► Current coronavirus regulations are to be found in numerous precisely worded but borderline incomprehensible statutory instruments.

► The government could ensure far greater understanding and adherence by presenting the regulations in ways that everyone can understand.

As everybody needs to comply with the COVID-19 restrictions, is it too much to ask that they be drafted in such a way that the general public can understand them? Sadly, however, we have been presented with a plethora of statutory instruments so complex that they are barely understandable by lawyers. If the government had recognised that public accessibility was the primary consideration, it would surely have issued the regulations using diagrams and tables, rather than creating a linguistic behemoth that can only be properly understood by someone who has access to a substantial database of statutes and statutory instruments.

For the man on the Clapham omnibus
It is said that the much-maligned Richard III ensured the publication of statutes in

English so that they could be understood by ordinary people. And there have been other times in our history when the government recognised public understanding was a key feature of legislation. For example, the reason why section 83 of the Fire Prevention (Metropolis) Act 1774 (which remains in force to this day) was enacted is clear:

‘And in order to deter and hinder ill-minded persons from wilfully setting their house or houses or other buildings on fire with a view of gaining to themselves the insurance money, whereby the lives and fortunes of many families may be lost or endangered: Be it further enacted.....that the several insurance offices for insuring houses or other buildings against loss by fire are hereby authorised and required.....to cause the insurance money to be laid out and expended, as far as the same will go, towards rebuilding, reinstating or repairing such house or houses or other buildings so burnt down, demolished or damaged by fire...’

Even quite recently, Parliament has been prepared to sacrifice legislative purity in favour of well-used colloquial

expressions. So the Theft Act 1978 (which criminalises those who dishonestly make off without making payment) requires that the defendant knows that ‘payment on the spot’ is expected. Despite this loose use of language, it does not appear that juries or, indeed, defendants, have had any difficulty in understanding that ‘payment on the spot’ is a figure of speech. And the appellate courts have seldom been troubled with arguments that a conviction is unsafe because the prosecution failed to prove the relevant ‘spot’ upon which payment was required to be made. *R v Aziz* [1993] Lexis Citation 3774 was such an attempt, and it was peremptorily dismissed by Lord Justice Beldam who said: ‘They are all straightforward English words and they mean what they say’.

However, in recent years there has been a growing tendency to create legislation where even the courts have struggled to understand what the words mean. In *AH (Pakistan) v Secretary State for the Home Department* [2013] EWCA Civ 1568, the Court of Appeal was considering some of the immigration regulations and Lord Justice Jackson famously remarked that the provisions ‘have now achieved a degree of complexity which even the Byzantine Emperors would have envied’. If the Byzantine Emperors might have envied the complexity of the immigration provisions, they would surely have held days of national rejoicing at the impenetrable web which our government has weaved with the coronavirus regulations. These have been drafted entirely with a view to legislative accuracy and consistency, completely ignoring that they need to be able to be understood by the ‘man on the Clapham omnibus’.

Impenetrable nonsense

If you suffer from severe insomnia or have had the misfortune to be furloughed, you may wish to entertain yourself by trying to read and understand the current regulations. We do not have sufficient space in this article to do more than mention a few highlights from the main English statutory instrument currently in force which, at the time of writing (it will almost certainly have changed by the time you read this article) is the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, SI 2020/1374, and which we shall call the ‘All Tiers Regulations’.

► The All Tiers Regulations start by defining over fifty different expressions, and while some are clear to a non-lawyer (such as ‘child’ means a person under the age of 18) most are defined by reference to other statutory provisions so that ‘parental responsibility’ has

the meaning given in section 3 of the Children Act 1989 and ‘public outdoor space’ includes land which is ‘access land’ for the purposes of Part 1 of the Countryside and Rights of Way Act 2000. This may make perfect sense to the draftsman who has immediate access to all primary and secondary legislation. However, it seems to have eluded the government that most of the populace do not have such access; it cannot be right that citizens have to consult lawyers in order to know if Granny can come and see them that evening, or if they can stop and talk with a friend they unexpectedly encounter while out on their daily walk.

- ▶ While the press and our politicians have often referred to different groups coming together in ‘bubbles’, such a non-legislative word is not to be found in the All Tiers Regulations. These refer, instead, to ‘linked households’ which therefore means that a ‘First Household’ has to be defined and this requires no less than five sub-paragraphs. Even those five sub-paragraphs are not entirely definitive since they only apply if ‘all persons who would be members of the linked households in accordance with this regulation agree (subject to paragraph (7))’ and paragraph 7 explains that such agreement, in the case of a child, will be given by the person with parental responsibility for that child.
- ▶ Part 1 of Schedule 3A starts by stating that no person ‘may leave or be outside of the place where they are living without reasonable excuse’. It is therefore essential that ordinary people know what might be considered such an excuse, but the Schedule goes on to define ‘reasonable excuse’ in a way which non-lawyers will not find easy to follow. ‘The circumstances in which a person has a reasonable excuse include where one of the exceptions set out in paragraph 2 applies’. Paragraph 2 then sets out a large number of exceptions some of which are straightforward: ‘to take exercise outside alone’ and others rather less so: ‘to collect food, drink or other goods which have been ordered from a business or to access goods or services which are provided in any way permitted by paragraph 12 or 13’.

As the impact of the virus has varied markedly over the months and, indeed, as the virus itself has mutated, frequent changes to the regulations have been required and this has overlaid numerous amendments on to an already incredibly complex set of statutory provisions.

Although the All Tiers Regulations only came into force on 2 December 2020, by 29 January 2021 there had already been eight further statutory instruments amending the original statutory instrument. Thus the Health Protection (Coronavirus, Restrictions) (All Tiers) (Amendment) (No.3) Regulations 2020, SI 2020/1646, make over 50 changes to the All Tiers Regulations including: ‘in paragraph 2(2)(d)(ii)(bb) for ‘exercise’ substitute ‘open air recreation’ and ‘in paragraph 2(13), omit paragraph (h)’. Understanding the impact of amendments made in this form may be straightforward for the draftsman who can access his original work, but even for those of us who have computers with multiple screens, trying to decipher the construction of each amendment is extremely challenging. For those who are locked down and having to rely on a smartphone or tablet, the regulations become impenetrable nonsense.

The emojis have it

Despite a few well-publicised incidents of large-scale disobedience (and a certain amount of bending the rules, particularly over Christmas), it would appear that the overwhelming majority of the population sees the sense in following the regulations. However, it would equally appear that few actually read the regulations themselves; rather they rely upon summaries provided by the media. But, in stark contrast to the government, the media are in the business of communication, and so they understand that most of the population are not wordsmiths and that diagrams and tables are a more efficient way of conveying the information.

So why does the government not recognise that with short-lived and frequently changing regulations, the most efficient way to impart their meaning is to create them pictorially in the first place? The use of images is not a new concept. In the Middle Ages, pictures encapsulating legal concepts and helping to explain the law appeared in volumes of Roman and canon law as well as English statutes. While these illustrations declined with the advent of printing, today the reproduction of diagrams and pictures is relatively straightforward; charts, pictures and emojis form a significant part of the traffic we see every day on our smartphones.

Furthermore, there are already some regulations which include diagrams and pictures. For example, Schedule 2 to the Traffic Signs Regulations and General Directions 2016, SI 2016/362, provides:

‘A warning of a description in column 2..... must be conveyed by a triangular

sign which is of— (a) the colour and type provided for in the diagram in column 3; and (b) the size shown for a sign in the diagram above the table.’

The regulations then include a table and column 3 of that table sets out pictures of the required signs which we are all used to seeing on our roads.

So why not create the coronavirus regulations in a similar way, with a short explanatory description followed by relevant diagrams? For example, ‘an appropriate social distance’ might be depicted by reproducing the image of footprints which are currently to be found on pavements and in food shops. A ‘First Household’ could be defined as comprising any of the arrangements depicted by a series of diagrams in the Schedule. Concepts such as what constitutes a reasonable excuse for being outside can equally be shown diagrammatically. It needs to be recognised that such diagrams may not be able to convey meanings with quite the precision of the written word. So the government might consider a hybrid approach, publishing two versions of the regulations; one written and one pictorial, with an express provision in the written version that compliance with the pictorial regulations is a reasonable excuse for a technical breach of the written version.

To be effective, regulations, such as the coronavirus regulations, require substantial compliance by the majority of the population who, in turn, need to be able to understand what they have to do. It is all very well creating precisely worded regulations utilising expressions and definitions borrowed from other statutory provisions; but if the result is regulations that few can understand, they have failed in their primary purpose of conveying their meaning to the public. Since diagrams and tables are much more readily accessible to the populace at large (who can also remind themselves of the provisions—as pictorial representations can be stored far more easily on smartphones), they are a much more efficient way of getting information across. If Richard III was prepared to take the step of publishing statutes in a form the people could understand, is it now time for our government to take a similarly innovative step—recognise that the modern generation increasingly communicates by pictures and emojis and, where appropriate, enact regulations in a pictorial form? **NLJ**

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