



## **THE RESTART OF OUTDOOR EVENTS THE POWERS OF LOCAL AUTHORITIES – A BARRISTERS OPINION**

### **Background**

Following the last minute cancellation of the Southampton Boat Show in September – a smaller version of the normal event – by Southampton City Council, the Forum sought advice from a leading barrister who specialises in licence issues, Phillip Kolvin QC.

The following is a brief outline of his advice in relation to the use of Regulation 5(1) of The Health Protection (Coronavirus, Regulations) England (No. 3) Regulations 2020 (No. 2020/750) by local authorities to prevent outdoor events from taking place.

Under this Regulation, before an authority can issue a direction, it must satisfy three key conditions that:

1. The direction responds to a serious and imminent threat to public health;
2. The direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the Authority's area; and
3. The prohibitions, requirements and/or restrictions imposed by this direction are a proportionate means of achieving that purpose.

Decisions must be based on satisfying all three of these conditions – not just one of them.

The key points of the Advice are:

- Directors of Public Health have general duties in relation to public health but do not have any specific duties in relation to the Public Health (Control of Disease) Act 1984 or have the power to serve a statutory notice.
- The key term in the Regulation is 'proportionate' which means that local authorities need to take into account the measures that organisers put in place to prevent the risk of infection.
- The proportionality test involves asking whether a less intrusive means may be found of achieving the purpose, in this case the prevention of transmission of the disease, and to comply with this a local authority should be able to justify this via its own risk assessment.

- At the same time, local authorities should work closely with event organisers once concerns are raised in order to explore how the concerns might be alleviated. Organisers should be given the opportunity to strengthen measures if possible.
- Councils should be able to justify their decisions against similar local settings, such as gatherings in shopping centres, public houses or outdoor markets.

Furthermore, Philip Kolvin QC wrote: “it is quite rare that the medical remedy for an issue is euthanasia and, in my view, a more careful, analytical approach should be taken” by local authorities.

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The Events Industry Forum