



BRIEFING PAPER

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Coronavirus: Quarantine and employment rights

By Daniel Ferguson

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Summary

This is a fast-moving area and the paper should be read as correct at the time of publication (20.08.2020).

On 8 June 2020, the UK Government and devolved administrations made legislation requiring anyone arriving in the UK from outside of the Common Travel Area (the UK, Crown Dependencies and Ireland), or anyone who had been outside of the CTA in the past 14 days, to self-isolate upon their arrival at a specified address. The arrangements are commonly called 'quarantine'.

A person subject to quarantine is legally required to self-isolate for 14 days and can only leave their specified address in very limited circumstances. There is no exception allowing a person to leave the house to go to work.

Travel Corridors

On 10 July, the Government introduced 'travel corridors' with several countries, many of them in Europe. These countries were added to an 'exempt countries' list. Anyone arriving in the UK from an exempt country would not be required to self-isolate, provided they had not visited a non-exempt country in the previous 14 days.

Removing countries from the exempt countries list

The Government has removed a number of countries from the 'exempt countries' list. This included Spain on 26 July, Luxembourg on 31 July, Belgium, Andorra and the Bahamas on 7 August and France, the Netherlands and others on 15 August.

The announcements removing these countries from the list were made at short notice, with countries usually being removed from the list within one or two days.

As a result, many people have unexpectedly been required to self-isolate upon arrival in the UK. Unless these people can work from their specified address (usually their home), they will not be able to work, raising questions about their employment rights.

Right to pay

A worker's right to pay is principally governed by the terms of their employment contract. If there is no express term on deducting pay, the general principle is that a worker is entitled to pay if they are 'ready, able and willing' to work, even if they perform no work.

However, it is not clear whether a self-isolating worker is 'able' to work. ACAS guidance suggests that those who cannot work from home are not entitled to pay.

In March, the Government extended the right to statutory sick pay to employees who are self-isolating because they or someone in their household is symptomatic. The right has not been extended to those who are self-isolating after travelling abroad.

Alternatively, a worker could ask to be furloughed, request to take more annual leave or agree with their employer to take a period of unpaid leave.

Protection from dismissal

Employees who have worked for their employers for two or more years are protected from unfair dismissal. Employment lawyers suggest that it would likely be unfair to dismiss an employee who cannot come to work because they unexpectedly had to quarantine. The case may be different if the employee knowingly travelled to a non-exempt country.

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Many casual workers and employees who have not worked for their employer for more than two years are generally not protected against dismissal in this way. They can usually be dismissed by notice provided it is in accordance with the terms of their contract.

Cancelling annual leave

The removal of various countries from the exempt list may leave some worker wanting to cancel periods of pre-booked leave. ACAS guidance suggests that they can only do so with their employer's agreement.

The Government has legislated to allow workers to carry over up to four weeks of annual leave into the next two leave years if it is not 'reasonably practicable' to take it in the current leave year because of coronavirus. This might capture workers who are no longer able to take annual leave because of a requirement to quarantine upon their return.

Employers can require workers not to take annual leave on certain dates by giving them notice. However, employers must ensure that they do not do anything that unreasonably damages the relationship of trust and confidence with the worker. ACAS guidance says it is good practice for employers to discuss the issues with workers and to seek agreement.

1. Self-isolation after travelling abroad (quarantine)

1.1 Requirement to self-isolate

On 8 June 2020, the UK Government and the devolved administrations made legislation imposing self-isolation requirements for those arriving in the UK. In England, the rules are set out in the [Health Protection \(Coronavirus, International Travel\) \(England\) Regulations 2020 \(SI 2020/568\)](#) (henceforth the ‘international travel regulations’). There are equivalent regulations for Scotland, Wales and Northern Ireland.¹ While there are some minor differences between the four regulations, the key provisions relating to self-isolation and exemptions are largely identical.

Under these rules, anyone arriving in the UK from outside the Common Travel Area, or who spent any time outside the CTA in the previous 14 days, has to provide a Passenger Locator Form to the border authorities upon their arrival. In that form they are required to provide a specified address at which they will self-isolate. They must travel directly to that address and self-isolate for 14 days. This arrangement is commonly been referred to as ‘quarantine’.

A person subject to self-isolation must not leave their specified address except in limited circumstances. The circumstances in which a person can leave their home include:

- to seek urgent medical assistance;
- to escape a risk of harm;
- to fulfil a legal obligation such as attending court; and
- in exceptional circumstances, to obtain basic necessities like food.²

There is no general exception allowing a person to leave their specified address to go to work. However, some workers, such as those who travel to the UK to undertake emergency work in certain sectors, are not required to self-isolate.³

Breaking the quarantine rules is a criminal offence. A person found breaking the rules can be issued a fixed penalty notice of £1,000.

The UK Government has published [detailed guidance for those who are required to self-isolate after travelling abroad](#). The [Scottish](#), [Welsh](#) and [Northern Irish](#) governments have produced their own guidance.

1.2 Exempt countries

On 6 July 2020, the UK Government [announced its intention to establish ‘travel corridors’](#) with various countries. Travellers arriving in the UK from exempt countries would not be required to quarantine,

The Common Travel Area includes the UK, the three Crown Dependencies and Ireland.

See GOV.UK: [Common Travel Area](#)

¹ See [SSI 2020/169](#) (Scotland); [WSI 2020/574](#) (Wales); and [NISR 2020/ 90](#) (NI)

² Reg. 4, [SI 2020/568](#)

³ Department for Transport, [Coronavirus \(COVID-19\): travellers exempt from border rules in the UK](#), 31 July 2020 (accessed 20 August 2020)

provided they had not visited a non-exempt country in the past 14 days. At the same time, the Foreign and Commonwealth Office [exempted these countries from its general advice against all but essential travel](#).

The announcement followed criticisms of the Government's blanket ban on foreign air travel, particularly from the travel and aviation industries.⁴

Legislation that came into effect on 10 July added an 'exempt countries' list to the international travel regulations and identical lists were added to the relevant devolved legislation.⁵

The countries that were initially exempted included many European countries, a number of Caribbean countries and a handful of other countries, including Japan, Australia, South Korea and the Hong Kong Special Administrative Region (SAR).

In a [Written Statement](#) on 6 July the Transport Secretary, Grant Shapps, said that this would allow those living in the UK to take holidays abroad:

I hope this announcement provides good news to the many of us who want to enjoy a holiday abroad this year, visit family and friends overseas or travel to do business and will help protect jobs in the international transport and tourism sectors. The government continues to work closely with international partners around the world to discuss arrangements for travellers arriving from the UK and will continue this engagement ahead of the changes coming into force.

He also said that the Government would to consult with the Joint Biosecurity Centre and keep the exemptions under review.⁶

1.3 Adding and removing countries from the exempt list

The Government and devolved administrations are regularly adding to and removing countries from their exempt lists as the advice changes.

While each of the four nations does have its own legislation and list of exempt countries, the UK Government and devolved administrations have so far added and removed countries at the same time.

Adding countries to the list has been relatively uncontroversial. For example, on 24 July the Government announced that it was [adding Estonia, Latvia, Slovakia, Slovenia and St Vincent and the Grenadines to the list from 28 July](#), meaning people travelling to the UK from these countries would not be required to quarantine. Brunei and Malaysia were [added to the list from 11 August](#).

Removing countries from the list has been far more controversial.

The UK Government has an [up-to-date list of exempt countries](#).

The [Scottish, Welsh and Northern Irish](#) governments have similar lists.

⁴ In its June 2020 report on aviation and Coronavirus the Transport Select Committee called on the Government to adopt a more flexible, 'risk-based' approach, see: Transport Committee, [The impact of the coronavirus pandemic on the aviation sector](#), 13 June 2020, HC 268, paras 27-29

⁵ Schedule A1, [SI 2020/568](#) (England); Schedule A1, [SSI 2020/169](#) (Scotland); Schedule 3, [WSI 2020/574](#) (Wales); Schedule 3, [NISR 2020/90](#) (Northern Ireland)

⁶ The Joint Biosecurity Centre is a new body set up by the Government to undertake biosecurity monitoring. See Alex Thomas, [Joint Biosecurity Centre](#), Institute for Government, 12 May 2020 (accessed 20 August 2020)

On 25 July 2020, the UK Government [announced that it would remove Spain from list of exempt countries](#). The legislation removing Spain from the list came into force the next day.

In the press release accompanying the announcement a Government spokesperson explained that Spain had been removed from the list following an updated coronavirus assessment by the Joint Biosecurity Centre. It noted:

We've always been clear that we would act immediately to remove a country where necessary. Both our list of quarantine exemptions and the FCO travel advice are being updated to reflect these latest risk assessments.

The Transport Secretary told ITV News that the Government could not rule out removing more countries from the list.⁷

A number of other countries have since been removed at short notice, including [Luxembourg \(31 July\)](#), [Andorra, Belgium and the Bahamas \(7 August\)](#) and [France, the Netherlands and others \(15 August\)](#).

The removal of countries from the exempt list has led to many people unexpectedly having to quarantine upon their arrival in the UK, including the Transport Secretary himself.⁸

⁷ [“'Can't rule out more quarantines': Grant Shapps warns of further disruption as Covid concerns raised across Europe”](#), *ITV*, 29 July 2020 (accessed 20 August 2020).

⁸ [“Coronavirus: Transport Secretary Grant Shapps caught up in Spain rule change”](#), *BBC*, 26 July 2020 (accessed 20 August 2020)

2. Quarantine and pay

A person who is required to self-isolate after travelling abroad cannot leave their specified address to go to work. This has recently caused difficulties for holiday-makers who have unexpectedly had to self-isolate after countries like Spain and France were removed from the list of exempt countries.

One key issue is what pay, if any, a self-isolating worker is entitled to.

During a debate in the House of Lords, Baroness Vere, the Parliamentary Under-Secretary for the Department for Transport, said the Government expected employers to be flexible and to support workers:

My Lords, we encourage employers to show flexibility by allowing employees who return from Spain to work from home where possible while self-isolating or offering paid leave. We expect that many employers will have their own policies for self-isolation. Some may continue to offer full pay for all or some of the isolation period. Those who need urgent support may be entitled to new-style employment and support allowance or universal credit.⁹

However, the question is what employers are **legally required** to do.

2.1 Wages

The starting point for determining whether a worker is entitled to be paid wages is the terms of the employment contract.

Under various types of contract, it is an express term that a worker will only be paid for the work that they do. Examples might include piece work (paid by output) or zero-hours contracts (paid by hours worked).

The situation is more complicated if the contract does not contain any relevant clause on deducting wages.

The traditional approach is that a worker is not entitled to pay if they do not perform any work.¹⁰ However, a worker will be entitled to be paid if they can show that they are 'ready, able and willing' to work.¹¹

The relevant principles were summarised by the Court of Appeal in [North West Anglia NHS Foundation Trust v Gregg \[2019\] IRLR 570](#). The court cited the general principle that a worker is not entitled to pay if they are not ready, able and willing to work. However, it added a potentially important qualification:

(b) If he or she [the worker] was ready and willing to work, and the inability to work was the result of a third-party decision or external constraint, any deduction of pay may be unlawful. It will depend on the circumstances.¹²

The court held that workers may have a right to be paid if they are unable to work because of an involuntary or unavoidable impediment.

⁹ [HL Deb 28 July 2020 vol. 805 c112](#)

¹⁰ [Miles v Wakefield Metropolitan District Council \[1987\] IRLR 193](#)

¹¹ [Beveridge v KLM UK Ltd \[2000\] IRLR 765](#)

¹² [North West Anglia NHS Foundation Trust v Gregg \[2019\] IRLR 570](#), at [52]

It is unclear how far this principle extends as there is relatively little case law. In the context of quarantine, a key question would likely be whether the impediment (the requirement to self-isolate) was avoidable.

Workers who can work from home

If a worker is able to work from the place where they are self-isolating, they can work and be paid in the usual way.

Unless set out in their employment contract, workers do not necessarily have a right to work from home. Any home working arrangements will need to be agreed with their employer. UK Government says workers should [discuss such matters with their employer before they travel](#).

Workers who cannot work from home

As noted above, if a worker cannot work from home the question will be whether they can be considered 'ready, able and willing' to work.

In this context, it could be argued that the impediment to work was 'unavoidable' but this might be difficult to establish as the worker would have contributed to the outcome by travelling abroad. The UK Government did note that the list of exemptions was subject to ongoing risk assessments. The First Minister of Scotland, Nicola Sturgeon, gave a firmer warning about the potential consequences of travelling:

So if necessary, the Scottish Government will re-impose quarantine restrictions on travel from certain countries – as we did at the weekend for Spain – if those countries see a sharp increase in cases.

People planning overseas holidays need to be aware of that. You cannot assume, and you heard me say that last week, you cannot assume that the rules and regulations applying to or in your destination when you book a holiday will stay the same while you are there or be the same when you come to travel home.¹³

The Arbitration, Conciliation and Advisory Service (ACAS) has produced [guidance on quarantine](#). It notes that if a worker is unable to work from home they would need to take additional annual leave or ask to be furloughed, suggesting that they would not have a right to pay.

Law firm Lewis Silkin LLP also say that workers who are self-isolating will have no right to pay if they are unable to work from home. However, they note that if the travel was work-related, it would be "reasonable" for the employer to pay wages during the period of self-isolation.¹⁴

2.2 Sick pay

Employers must pay statutory sick pay (SSP) to eligible employees who are incapable for work because of illness for four consecutive days.¹⁵

In certain circumstances, an employee will be 'deemed' to be incapable for work.¹⁶ In the context of coronavirus, the Government has extended

¹³ Scottish Government, Coronavirus (COVID -19) update: First Minister's speech 28 July 2020, 28 July 2020 (accessed 20 August 2020)

¹⁴ James Davies and Helen Coombes, [Travelling from Spain – new self-isolation rules and employment](#), Lewis Silkin LLP, 27 July 2020 (accessed 20 August 2020)

¹⁵ Part XI, [Social Security Contributions and Benefits Act 1992](#)

¹⁶ Reg. 2, [Statutory Sick Pay \(General\) Regulations 1982](#)

SSP to various groups of people by 'deeming' them to be incapable. This includes those who are self-isolating because they or someone in their household is symptomatic, those who are self-isolating following a notification from NHS Test and Trace and those who are shielding.¹⁷

The Government has so far not extended the right to SSP to those who are self-isolating after travelling abroad. When asked if the Government would extend SSP, Baroness Vere said that emergency support was already available in the form of new-style employment allowance and universal credit.¹⁸

SSP is the minimum payment that must be made under statute. Employees may have a right to occupational sick pay under their employment contract. Whether they are entitled to this pay during a period of self-isolation would depend on the terms of the contract.

2.3 Furlough

The Coronavirus Job Retention Scheme (CJRS) remains in place until 31 October 2020, although [employers now have to make contributions towards the costs of furloughed employees](#).

Since 1 July 2020, there has been no minimum furlough period and eligible employees can be 'flexibly furloughed'. So, for example, an employee returning from abroad could be furloughed while they are self-isolating. The [ACAS guidance on quarantine](#) notes that using the furlough scheme is one option available to employers.

However, the decision to furlough is one for the employer. If the employer is not required to pay the employee wages there may be no incentive for them to agree to a furlough, especially as furloughing now incurs a financial cost. Further, employees can now [only be furloughed if they were furloughed at least once before 1 July 2020](#).

Further information on the CJRS can be found in the Library Briefing, [FAQs: Coronavirus Job Retention Scheme \(CBP-8880\)](#).

2.4 Asking to take additional annual leave

If a worker is not entitled to be paid during a period of self-isolation and is not being furloughed, another option might be to ask to take further annual leave to cover this period. All workers are entitled to at least 5.6 weeks of annual leave, and some will be entitled to more under their contract. A worker will only be able to take leave during self-isolation if they have enough annual leave remaining.

Under the [Working Time Regulations 1998 \(SI 1998/1833\)](#) a worker seeking to take annual leave must normally give their employer twice as many days' notice as the number of days of leave they are asking to take. Employers can refuse a request but must give as many days' notice as the number of days of leave requested.¹⁹

For example, a worker who is seeking to take five days of leave must give their employer at least 10 days' notice. The employer can refuse the request by giving the worker at least five days' notice.

¹⁷ Schedules 1 and 2, *Statutory Sick Pay (General) Regulations 1982*

¹⁸ [HL Deb 28 July 2020 vol. 805 c113](#)

¹⁹ Reg. 15, *Working Time Regulations 1998*.

These notice requirements can be varied by a 'relevant agreement' and a worker may have different requirements set out in their contract.

It is also open to employers to accept a request for leave that is made without the required notice but they do not have to do so.

Lewis Silkin LLP suggest that allowing workers to take remaining leave would be a "practical solution" to the problems posed by quarantine.²⁰

Employees can take annual leave while on furlough. However, the [Government guidance](#) says that they should not be put on furlough just for a period of annual leave.

If a furloughed employee takes annual leave their employer can claim 80% of their reference salary from the CJRS but must top this up to the rate of their 'normal remuneration'.²¹

2.5 Unpaid leave

If a worker is unable to work from home and cannot be furloughed or take annual leave, the remaining option would be to arrange with their employer to take a period of unpaid leave.

There is no general right to take unpaid leave and failing to attend work would be a breach of contract. As such, workers would need to agree a period of unpaid leave with their employer. If they fail to do so their absence would be unauthorised and they could face disciplinary action.

Further information can be found in the [ACAS guidance on absence](#).

²⁰ James Davies and Helen Coombes, [Travelling from Spain – new self-isolation rules and employment](#), Lewis Silkin LLP, 27 July 2020 (accessed 20 August 2020)

²¹ See [FAQs: Coronavirus Job Retention Scheme](#), Commons Library Briefing Paper CBP-8880, 16 June 2020, Q40.

3. Quarantine and dismissal

There is also the question of whether a worker could be disciplined or even dismissed because they are unable to work while they are required to self-isolate after arriving in the UK from abroad.

Following the removal of Spain from the list of exempt countries on 26 July 2020, the Foreign Secretary, Dominic Raab, said during an [interview on Sophy Ridge on Sunday](#) that workers cannot be penalised for following the law. However, fact-checking organisation Full Fact concluded that this statement was incorrect, noting that the legal position is more complex.²²

3.1 Protection from unfair dismissal

The main protection from dismissal is the rules on unfair dismissal in the [Employment Rights Act 1996](#). Under these rules, a dismissal will only be 'fair' if it is for a 'potentially fair' reason listed in the legislation and if dismissal was reasonable in the circumstances (discussed below).²³

Scope of the protection

The protection from unfair dismissal is normally only available to employees who have worked for their employer for two or more years.²⁴ This excludes those who are '[limb \(b\) workers](#)', including many casual workers such as gig workers or those on zero-hours contracts.

If an employee is not covered by the rules on unfair dismissal then they can normally be dismissed by notice, provided any procedures in their employment contract are complied with. The TUC has said that in the context of quarantine this leaves some employees vulnerable to dismissal. It has reiterated long-standing calls to make protection from dismissal a 'day-one' right.²⁵

Automatically unfair dismissal

In some cases, a dismissal can be considered 'automatically unfair'. For most automatic unfair dismissal claims there is no requirement for a person to have worked for their employer for two years, although the protection is still limited to '[employees](#)'.

One of the categories of automatically unfair dismissal is health and safety cases. An employee will have been unfairly dismissed if the reason for their dismissal was that they took steps to protect others from what they reasonably believed was serious and imminent danger.²⁶

Thompsons Solicitors have suggested that this might apply to employees who self-isolate after travelling abroad.²⁷ If this argument is correct, it

²² Full Fact, [It's not true that employees who have to quarantine cannot be 'penalised'](#), 29 July 2020

²³ Section 98, *Employment Rights Act 1996*

²⁴ Section 108, *Employment Rights Act 1996*

²⁵ Tim Sharp, [From deckchair to desperation: the government must help holidaymakers facing quarantine](#), TUC, 28 July 2020 (accessed 20 August 2020)

²⁶ Section 100(1)(e), *Employment Rights Act 1996*

²⁷ Thompsons Solicitors, [Travel to the UK: Requirement to self-isolate for 14 days](#), 5 August 2020 (accessed 20 August 2020)

may offer protection to employees who have not worked for their employer for two years and who are not covered by the general protection from unfair dismissal.

However, this argument is untested. An employee who is self-isolating only because they travelled abroad, rather than because they are symptomatic, may struggle to show that they have a reasonable belief that their attending the workplace poses a serious and imminent danger to others. In such cases, self-isolation would largely be precautionary.²⁸

3.2 Quarantine and unfair dismissal

For employees who are covered by the protection from unfair dismissal, the question will be whether a dismissal for having to quarantine is fair.

As noted above, in order to be fair a dismissal must be for a potentially fair reason and dismissal must be reasonable in the circumstances.

The 1996 Act lists potentially fair reasons for dismissal. In this context, an employer would likely seek to rely on either 'conduct' or 'some other substantial reason' (SOSR).

There is a vast body of case law setting out the principles that the court will consider when determining whether dismissal was reasonable in the circumstances. These will include whether a fair investigation was carried out and whether the decision to dismiss fell within the 'range of reasonable responses'.

In [Graham v Secretary of State for Work and Pensions \(Jobcentre Plus\) \[2012\] EWCA Civ. 903](#), the Court of Appeal summarised the key tests to be applied in misconduct cases:

35. [...] I said that once it is established that employer's reason for dismissing the employee was a "valid" reason within the statute, the ET has to consider three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case; secondly, did the employer believe that the employee was guilty of the misconduct complained of and, thirdly, did the employer have reasonable grounds for that belief.

36. If the answer to each of those questions is "yes", the ET must then decide on the reasonableness of the response by the employer. In performing the latter exercise, the ET must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to the ET's own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If the employer has so acted, then the employer's decision to dismiss will be reasonable.²⁹

An Employment Tribunal will have regard to the [ACAS Code of Practice on disciplinary and grievance procedures](#).

Whether a dismissal is fair must always be assessed on the facts.

²⁸ For further information on health and safety dismissals see [Coronavirus: Returning to work](#), Commons Library Briefing Paper CBP-8916, 5 August 2020

²⁹ [Graham v Secretary of State for Work and Pensions \(Jobcentre Plus\) \[2012\] EWCA Civ. 903](#), per Aikens LJ at [35] to [36]

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If an employee went abroad on an authorised holiday and had to self-isolate unexpectedly upon their return, it would be difficult for an employer to argue that dismissal is reasonable. Thompsons Solicitors suggest that an Employment Tribunal would “very likely” find dismissal unfair in such circumstances.³⁰

By contrast, an employer might be able to argue that dismissal is fair in circumstances where they had a clear rule against travelling to countries not exempt from quarantine and an employee became unable to work after knowingly travelling to such a place.

³⁰ Thompsons Solicitors, [Travel to the UK: Requirement to self-isolate for 14 days](#), 5 August 2020 (accessed 20 August 2020)

4. Cancelling annual leave

In light of the removal of many European countries from the list of countries exempt from quarantine, workers who have booked holidays to these destinations may wish to cancel the leave they have booked. Employers may also wish to ensure that workers do not travel to a place where they will be required to quarantine upon their return, especially if that worker is unable to work from home.

4.1 Can workers cancel pre-booked leave?

As noted above, under the *Working Time Regulations 1998* (WTR), workers can elect to take leave on particular days by giving their employer at least twice as many days' notice as the number of days of leave they intend to take. However, the WTR does not make any provision about workers withdrawing their notice.

[ACAS guidance on annual leave and Covid-19](#) says that employer can insist that workers take pre-booked annual leave, although it notes that it would be good practice to agree this with the employee:

Previously booked holidays

An employee may no longer want to take time off they'd previously booked, for example because their hotel cancelled the booking. Their employer can insist they still take the time off, but it's good practice to get agreement from the employee.

If the employee wants to change when they take this time off, they'll need to get agreement from their employer.

In this context, it should be noted that the Government has legislated to allow workers to carry over up to 4 weeks of annual leave into the next two leave years if it is not 'reasonably practicable' for them to take that leave in the current leave year because of coronavirus.³¹

The legislation does not define what 'reasonably practicable' means. The Government has published [guidance listing a number of examples](#). The examples include an employer not being able to arrange workforce cover for a worker taking annual leave or where a worker taking leave would impact on society's response to the coronavirus saturation. This could arguably cover a situation where a worker is no longer able to take leave because of a requirement to quarantine upon their return.

4.2 Can employers cancel a worker's leave?

As noted above, under the WTR employers have a right to require a worker not to take leave on particular days. They can do so by giving the worker at least as many days' notice as the number of days the worker is proposing to take.³²

This would give employers a right to cancel the leave of a worker who is intending to travel to a non-exempt country.

³¹ [Working Time \(Coronavirus\) \(Amendment\) Regulations 2020](#)

³² Reg. 15(2)(b), *Working Time Regulations 1998*

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However, if the leave that the employer is seeking to cancel is leave that has been carried over from a previous leave year under the new rules (mentioned above), employers can only cancel the leave if they have a “good reason” for doing so.³³

Lewis Silkin LLP say that employers should exercise caution when cancelling leave. They note that all employment contracts contain an [implied term](#) of mutual trust and confidence. This requires the parties not to do anything that unreasonably damages the relationship of trust and confidence between the employer and employee. In particular, they highlight that workers may be seeking to travel abroad for reasons other than a holiday, such as caring for relatives or attending funerals.³⁴

The [ACAS guidance](#) notes that the use of annual leave in the current climate is a complicated matter and that employers should listen to and be mindful of the concerns of staff and seek to act by agreement.

³³ Reg. 13(12), *Working Time Regulations 1998*.

³⁴ James Davies and Helen Coombes, [Travelling from Spain – new self-isolation rules and employment](#), Lewis Silkin LLP, 27 July 2020 (accessed 20 August 2020)

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