



Criminal Offences & Police Powers during the Coronavirus Crisis

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Emergency Regulations under Public Health (Control of Disease) Act 1984

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Introduction

- Made in exercise of the powers conferred by ss.45C(1), (3)(c), (4)(d), 45F(2) and 45P of the [Public Health \(Control of Disease\) Act 1984\(1\)](#).
- [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#).
- In force 13.00 on 26 March 2020; must be reviewed at least once every 21 days; first review was on 16 April.

Introduction

- Purpose of the parent statute:

S45 (1): *The appropriate Minister may by regulations make provision for the purpose of **preventing, protecting against, controlling or providing a public health** response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere).*

- The purpose of the Regulations is explained - see SI Introduction.

Introduction to Regulations

- These Regulations are made in response to the **serious and imminent threat to public health** which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus (SARS CoV-2) in England.
- The Secretary of State considers that the restrictions and requirements imposed by these Regulations are **proportionate to what they seek to achieve, which is a public health response to that threat.**

Guide to Interpretation

- These are public health provisions not (for e.g.) public order provisions.
- It is not law enacted to (for e.g.) prevent public order or to criminalise such conduct. It is to protect public health.
- That should inform the approach of police and court when interpreting these (in part) vague provisions.
- Also, since they create criminal offences, the Regulations should be interpreted strictly and any ambiguity resolved in favour of the subject.



Summary

- They impose the following requirements and restrictions:
 - **Regulations 4 & 5** - requirement to close premises and businesses and also to cease trading during the emergency period
 - **Regulation 6** – restrictions on movement
 - **Regulation 7** – restrictions on gatherings

Regulation 4- closure of specified business

Regulation 4(1) imposes:

- The Regulation provides a requirement for the closure of specified businesses in which food and drinks are sold for consumption on its premises (though allowing for selling of the same to be consumed off premises).
- The relevant businesses are listed in [Part 1, Schedule 2](#) and include restaurants, cafes, bars and public houses.

Regulation 5 – requirements on certain businesses

- Regulation 5(1) requires :
 - a person responsible for carrying on a business or service not listed in Part 3, Sch. 2 which offer goods for sale or hire in a shop, or library services, to cease providing that service except where making deliveries of orders and to close such premises which are not required to carry out such deliveries.
 - Not apply to business supplying food for off premises consumption (Reg.5(2)).

Regulation 5

- **Part 3, Sch. 2, includes the following:**
 - Food retailers, including food markets, supermarkets corner shops.
 - Off licenses and licensed shops selling alcohol (including breweries).
 - Pharmacies (including non-dispensing pharmacies) and chemists.
 - Newsagents.
 - Homeware, building supplies and hardware stores.
 - Petrol stations.
 - Car repair and MOT services.
 - Bicycle shops.
 - Taxi or vehicle hire businesses.
 - Banks, building societies, credit unions, short term loan providers and cash points.
 - Post offices.
 - Funeral directors.

Regulation 5

- [Reg. 5\(3\)](#) - cessation of businesses providing holiday accommodation. Exceptions apply including provision of accommodation for e.g. as main residence ([Reg. 5\(4\)](#))
- Closure of
 - places of worship ([Reg. 5\(5\)](#)), exceptions are made for funerals and broadcasting an act of worship and to provide essential voluntary services or urgent public services([Reg. 5\(6\)](#)).
 - community centres, save where they are providing essential voluntary activities or urgent public services ([Reg. 5\(7\)](#)).
- Those responsible for a crematorium or burial ground must ensure it is closed to members of the public, except for funerals or burials ([Reg. 5\(8\)](#)).

Regulation 6 – restriction of movement

The Regulation mandates:

- *During the emergency period, no person may **leave** the place where they are living **without reasonable excuse** (Reg. 6(1)).*
- Not apply to the homeless (Reg 6(4)).
- Interpretation by reference to the purpose – protect public health

Regulation 6(2) – reasonable excuse

*(2) For the purposes of paragraph (1), a **reasonable excuse** includes the **need-***

- “**Reasonable**” - objective
- “**Includes**” - does not purport to be exhaustive
- **Reg. 6(2)** lists 13 examples
- Reasonable to suppose that any other reason (i.e. not one of the 13) will be interpreted by reference to those examples

The example exceptions

- The 13 example exceptions include:
 - Obtain basic necessities (Reg. 6(2)(a))
 - Exercise (Reg. 6(2)(b))
 - Donate blood (reg. 6(2)(e))
 - Work, where not reasonably possible to work at place were living (Reg. 6(2)(f))
 - To access critical public services (Reg. 6(2)(i))
 - Avoid injury or illness of escape risk of harm (Reg. 6(2)(m))

Regulation 6 – police guidance

- National Police Chiefs' Council/College of Policing Guidance to Officers, 31/3/20
- National Police Chiefs' Council – *What constitutes a reasonable excuse to leave the place where you live*
 - This is not the law
 - It includes examples (to officers) of what is
 - likely to be
 - not likely to be reasonable
 - Useful commentary
 - Copies of the Guidance for you in the delegate packs

Regulation 7 – restrictions on gathering

The **Regulation** prohibits:

- the gathering in a public place of more than two (2) people, unless
 - they are members of the same household,
 - where the gathering is for essential work purposes or
 - to attend a funeral.
- It also allows for such gatherings, where reasonably necessary, in order to
 - move house,
 - provide care or assistance to a vulnerable person,
 - to provide emergency assistance or
 - to participate in legal proceedings.

Enforcement – Regulation 8

- **Reg. 8(1)** enables a “relevant person” (police officer, a PCSO, someone designated by Local Authority) to take “*such action as is necessary to enforce any requirement*”.
- Enforcement of the closures or restrictions requirement ([Reg. 4 & 5](#)) will be through service of a prohibition notice to the relevant person who, it is reasonably believed, is contravening the restriction and where it is necessary and proportionate to prevent the continued contravention ([Reg. 8\(2\)](#)).



Enforcement – Regulation 8

- Enforcement of the restriction on movement ([Reg.6](#)); where a relevant person considers that a person is **outside the place where they live**, **without a reasonable excuse**, they may:
 - Direct that person to return to the place where they live - this may include providing reasonable instruction of the route by which the person is required to return ([Reg. 8\(3\)](#)), and
 - Remove that person to the place where they live - using reasonable force where it is a **necessary and proportionate** means of ensuring compliance ([Reg. 8\(4\)](#)).

Enforcement – Regulation 8

- These directions include the ability to direct a person who is accompanying a child, to take that child to the place where they live and for that person to ensure the child complies with the direction ([Reg. 8\(5\)](#)), and
- In addition, where there are reasonable grounds to believe that a child is repeatedly failing to comply with the restriction on leaving their home, they may direct the person with responsibility for the child to secure the child's compliance ([Reg 8.\(6\)](#)).

Enforcement – Regulation 8

- NB – All such directions (Reg.8(3), (5) or (6)) can only be given where it is a **necessary and proportionate** means of ensuring compliance with the requirement.

Enforcement – Regulation 8

- Enforcement of restrictions on gatherings (Reg.7).
- In respect of gatherings of three (3) or more people, the relevant person can direct:
 - The gathering to disperse (Reg. 8(9)(a)).
 - The any person in the gathering to return to the place where they live (Reg. 8(9)(b)).
 - To remove any person in the gathering to the place where they are living (Reg. 8(9)(c)).
- May use **reasonable force** and must be **necessary and proportionate** means of ensuring compliance with the requirement (Reg. 8(10))

Regulation 9 – criminal offences

The regulations create summary criminal offences punishable with fine in three situations:

- Contravention of a requirement without a reasonable excuse – [Reg. 9\(1\)](#).
- Obstruction, without reasonable excuse, of a person carrying out a function under the regulations – [Reg. 9\(2\)](#).
- Contravention of a prohibition notice or direction or reasonable instruction given to a person under regulation 8 without reasonable excuse – [Reg. 9\(3\)](#).

Fixed Penalty Notice – Reg.10

- Where an authorised person reasonably believes that an offence has been committed by an offender over the age of 18 they may issue a fixed penalty notice (FPN).
- FPN - opportunity to discharge any liability for the offence by paying a fine
 - £60 if paid with 28 day
 - Reduced to £30 if paid within 14 days
 - Double for subsequent offences to maximum of £960.

FPN

- FPNs are not automatic.
- The police also have discretion not to offer a FPN where the offence is so serious that it merits a prosecution or where there has been repeated offending.
- Not have to accept FPN; and if do not, the police can issue criminal proceedings for the offence instead.
- If accept FPN and not comply with terms, after 28 days police can prosecute.

CPS Guidance

- <https://www.cps.gov.uk/coronavirus-related-updates>
- Charging decision. Note PI test:

“Given that the offences in the Regulations are related to measures imposed to prevent the spread of infection throughout the UK, and potentially high incidences of serious illness and death, they should be considered serious. A prosecution will therefore likely be required in the public interest in the majority of cases.”

Conclusion

- Questions?
- Delegates pack & handout
- Follow the Govt. guidance
 - Stay (at) home
 - For the NHS, your family, your neighbours, your nation, the world and life itself
 - Keep well

CORONAVIRUS ACT 2020

Schedule 21, Part 2

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Schedule 21, Part 2

Came into force on 26 March 2020 and will expire after two years (subject to 'alteration' provisions).

Part 2 applies to England

Revokes the **Health Protection (Coronavirus) Regulations 2020** (in force from 10 February 2020) (any offences committed between 10 February 2020 and 26 March 2020 will be dealt with under those Regulations).

POWERS (paras 4 to 24):

Vested in public health officers, police officers (and immigration officers) ...

- 1) the power to **direct** or **remove** potentially infectious persons to a suitable place for screening and assessment (paras 6 and 7);
- 2) powers exercisable once a potentially infectious persons is at a suitable place for screening and assessment (paras 8 to 13);
- 3) powers exercisable after screening and assessment (paras 14 to 17).

Powers apply during the “transmission control period” which can be activated and deactivated by declaration/revocation by the Secretary of State for Health

TCP commenced on 26 March 2020 for present purposes.

“Potentially infectious person” (para 2)

A person who is, or may be, infected or contaminated with coronavirus, and there is a risk that the person might infect or contaminate others with coronavirus (OR a person who has been in an “infected area” (outside the UK) within the 14 days preceding that time (ie the rest of the world)).

“Public health officer” (para 3)

Police Guidance (3/4/20) advises officers to contact their local health protection team (on call 24 hours) to find out who the local public health officer is. www.gov.uk/health-protection-team

THE POWER TO DIRECT OR REMOVE POTENTIALLY INFECTIOUS PERSONS TO A SUITABLE PLACE FOR SCREENING AND ASSESSMENT ([paras 6 and 7](#)):

A public health officer, police constable (or immigration officer) who has reasonable grounds to suspect (equivalent to [section 24, PACE](#)) that a person is potentially infectious may:

direct that person to go immediately to a place specified in the direction which is suitable for screening and assessment; OR,

remove the person to a place suitable for screening and assessment.

A public health officer exercising this power may request a police constable to **remove** a person to a place suitable for screening and assessment, and the police constable may then do so ([para 6\(2\)\(c\)](#))

Conditions applicable to police officers (and immigration officers) in the exercise of this power:

They **MUST** - before exercising the power to **direct** or **remove** a potentially infectious person –

1) consult a public health officer unless it is impractical to do so (**para 7(5)**); and,

2) They must consider it necessary and proportionate to exercise the power (**para 7(3)**):

- in the interests of the potentially infected person; or,
- for the protection of other people; or,
- for the maintenance of public health; **AND**,

3) They must inform the person of the reason for **directing** or **removing** them and that it is an offence to fail, without reasonable excuse, to comply with the direction **OR**, where the person is removed, to abscond.

POWERS EXERCISABLE ONCE A POTENTIALLY INFECTIOUS PERSONS IS AT A SUITABLE PLACE FOR SCREENING AND ASSESSMENT ([paras 8 to 13](#))

Can only be exercised if a public health officer:

1) has reasonable grounds to suspect that a person is potentially infectious; AND

2) considers that it is necessary and proportionate to exercise the powers:

- in the interests of the potentially infectious person;
- for the protection of other people; or,
- for the maintenance of public health.

POWERS EXERCISABLE ONCE A POTENTIALLY INFECTIOUS PERSONS IS AT A SUITABLE PLACE FOR SCREENING AND ASSESSMENT (**paras 8 to 13**) continued ...

If conditions 1) and 2) are met, a public health officer may:

a) **require** the potentially infectious person to remain at the place for a period not exceeding 24 hours (**para 9**) – AND the person must be informed of the reason for imposing the requirement, the maximum period of time that the person may be required to stay there and that it is an offence to fail to comply with the requirement;

b) **require** the potentially infectious person to be screened and assessed (includes taking a biological sample/providing information) and impose **other requirements** (eg production of documents/provision of contact details (**para 10**));

c) if it's considered appropriate for the purposes of screening and assessment ... **direct** the person to go immediately to another suitable place, **remove** the person to another suitable place or, request a police constable to remove the person to another suitable place (**para 11**)

POWERS EXERCISABLE ONCE A POTENTIALLY INFECTIOUS PERSONS IS AT A SUITABLE PLACE FOR SCREENING AND ASSESSMENT (paras 8 to 13) continued ...

EXCEPTIONALLY (see Police Guidance) - where a person is at a place for screening and assessment and a police constable (or an immigration officer) has reasonable grounds to suspect that the person is potentially infectious they may keep that person at that place until a public health officer can exercise the functions under (para 9 to 11) for a period not exceeding 24 hours (in the case of a police constable).

If EVEN MORE EXCEPTIONALLY it has not been reasonably practicable for a public health officer to exercise their powers under (para 9 to 11) a Superintendent (or above) can consent to (authorise) detention for (up to) another 24 hours.

(in the case of immigration officers – it's 3 hours extendable [by a chief immigration officer] to a further 9 hours).

POWERS EXERCISABLE AFTER SCREENING AND ASSESSMENT (paras 14 to 17)

A public health officer may impose **requirements** and **restrictions** in circumstances where:

- 1) a person has been assessed and screened by a public health officer and EITHER the screening confirmed that the person is infected/contaminated by CV OR the screening was inconclusive; or,
- 2) a person has been assessed by a public health officer and the officer has reasonable grounds to suspect that the person is potentially infectious.
- 3) If this applies a public health officer may impose such **requirements** and **restrictions** on the person as they consider necessary and proportionate:
 - in the interests of the potentially infectious person;
 - for the protection of other people; or,
 - for the maintenance of public health.

POWERS EXERCISABLE AFTER SCREENING AND ASSESSMENT (paras 14 to 17) continued ...

Potential **requirements** include (non-exhaustive) (para 14(3))

- to provide information to the PHO or any specified person;
- to provide details by which the person may be contacted during a specified period;
- to go for the purposes of further assessment or screening to a specified place suitable for those purposes and do anything that may be required under **paragraph 10(1)**;
- **to remain** at a specified place (which may be a place suitable for screening and assessment) for a specified period;
- **to remain** at a specified place in isolation from others for a specified period.

When deciding whether to impose **requirement(s) to remain** (last two bullets) - the PHO must have regard to the person's wellbeing and personal circumstances (**para 14(6)**)

POWERS EXERCISABLE AFTER SCREENING AND ASSESSMENT (paras 14 to 17) continued ...

Potential **restrictions** include (non-exhaustive) (para 14(4))

- a **restriction** on the person's movements or travel (within or outside the UK);
- a **restriction** on the person's activities (including work/business);
- a **restriction** on the person's contact with other persons or with other specified persons.

Where a PHO imposes a **requirement** or **restriction** they must inform the person of the reason for so doing and that it is an offence not to comply.

Requirements to remain and **restrictions** must not exceed 14 days. In any event the PHO must assess the person within 48 hours and reconsider whether it is necessary and proportionate to continue to impose the **requirement** or **restriction**.

Following reconsideration a PHO may revoke a **requirement to remain** or substitute a different specified period (which, again, must not exceed 14 days).

POWERS EXERCISABLE AFTER SCREENING AND ASSESSMENT (paras 14 to 17) continued ...

A **requirement to remain** may be enforced:

- by a police constable or PHO removing the person to the place;
- by a police constable or PHO keeping the person at the place; or,
- if the person absconds, by a police constable taking the person into custody and returning them to that place or another place specified by a PHO

CHILDREN (under 18) (para 18)

An individual who has responsibility for a child (an individual with custody or charge of the child for the time being or parental responsibility for the child) must:

- 1) so far as reasonably practicable, secure that the child complies with any **direction**, **instruction**, **requirement** or **restriction** given to or imposed on the child;
- 2) provide to the person exercising a power under **Schedule 21** such information and assistance in relation to the child as is reasonably necessary and practicable in the circumstances.

A power to **direct** or **require** a child to go to a place may instead be exercised by **directing** or **requiring** an individual who has responsibility for a child to take the child to that place.

The powers under **para 10** (screening and assessment) or **para 14** (**requirements** and **restrictions**) can only be exercised in the presence of the individual who has responsibility for a child or, in the absence of such a person, an adult that is considered to be appropriate (having regard to the views of the child).

CHILDREN (under 18) ([para 18](#)) continued ...

Where a power is exercisable in relation to a child but the child is not accompanied by an adult with responsibility for the child, the person by whom the power is exercisable must:

- **If practicable contact an individual who has responsibility for the child before the power is exercised; or,**
- **If that is not practicable, take reasonable steps after the power has been exercised to contact such an individual and inform them of any exercise of the power in relation to the child.**

Ancillary Powers (para 20):

- a) A PHO, police constable (or immigration officer) may give reasonable instructions to a person in connection with:
- a direction given under [Part 2 of Schedule 21](#) OR removing a person or keeping a person at a place under a power conferred under [Part 2 of Schedule 21](#)

In giving reasonable instructions – must inform the person of the reason for the instruction and that it is a criminal offence not to comply with it;

b) A power to remove a person to a place includes a power to keep the person for a reasonable period pending their removal;

c) A police constable or immigration officer may use reasonable force, if necessary, in the exercise of a power conferred by [Part 2 of Schedule 21](#);

d) A police constable may enter any place for the purpose of exercising a power conferred by [Part 2 of Schedule 21](#).

OFFENCES (para 23):

(1) A person commits an offence if the person –

*(a) fails without reasonable excuse to comply with any **direction**, reasonable instruction, **requirement** or **restriction** given to or imposed on the person under this Part of this Schedule,*

(b) fails without reasonable excuse to comply with a duty under paragraph 18(1) or (2) (duties of individuals who have responsibility for a child),

(c) absconds or attempts to abscond while being removed to or kept at a place under this Part of this Schedule,

(d) knowingly provides false or misleading information in response to a requirement to provide information under this Part of this Schedule or otherwise in connection with the exercise of any power under this Part of this Schedule, or

(e) obstructs a person who is exercising or attempting to exercise a power conferred by this Part of this Schedule.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

APPEALS:

Para 17(1) – a person made subject to a **requirement** or **restriction** (para 14) may appeal against it (or any variation of it or any extension of the period) to a Magistrate’s Court.

As of 30 March 2020, Magistrates’ Courts are only hearing a limited category of cases (including “civil applications relating to public health legislation”) – assumed to relate to appeals

POLICE GUIDANCE (NPCC & College of Policing 3/4/20) [Extracts]

... exceptional powers for exceptional circumstances only

If a constable has reasonable grounds to suspect a person is potentially infectious they may direct or remove that person to a place suitable for screening and assessment or keep the person at that place until a public health officer can undertake the screening and assessment. This should be the absolute exception.

Remember: Engage, Explain, Encourage, Enforce. Enforcement is your last option.

CV symptoms can be vague and it is important we do not turn to these powers in haste if we see someone with a cough or temperature.

All this activity should be pre-planned with medical practitioners

Our advice is to never act without the prior advice of Public Health, but the Act does make provision for you to do so of your own accord, therefore it is ultimately the decision of your chief constable how these provisions are to operate for you locally.