

What are the new Enforcement and Prosecution Powers of Local Authorities and their effect on Business under the Health Protection (Coronavirus, Restrictions (England) Regulations 2020?

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1. On 25 March 2020, the [Coronavirus Act 2020 \(CA 2020\)](#) received Royal Assent. At 1pm On 26 March 2020, the Health Protection (Coronavirus, Restrictions (England) Regulations 2020, [SI 2020/350](#) (the ‘Regulations’) came into force. Similar Regulations apply to Wales. Together, these provisions contain wide-ranging powers designed to restrict the movement of people with the aim of limiting the spread of COVID-19 in the UK.
2. The powers pertaining to the restriction of individual liberty and their use by the Police in various parts of the country are well publicised. However, the current Regulations replace earlier iterations designed to limit the use of, and then close businesses. Individuals suggesting that sunbathing is an “essential” activity or that finding their cannabis dealer is a legitimate reason to be on the streets are not the only ones who may find themselves in hot water.
3. Local Authority enforcement departments whether they be environmental protection, premises licencing, trading standards or any other department with a vested interest are capable of investigating and enforcing new offences under the Regulations.

A. Time period for Regulations and Prosecution

4. As per Regulation 3:

3 The emergency period and review of need for restrictions

- (1) *For the purposes of these Regulations, the “emergency period”—*
 - (a) *starts when these Regulations come into force, and*

(b) ends in relation to a restriction or requirement imposed by these Regulations on the day and at the time specified in a direction published by the Secretary of State terminating the requirement or restriction.

5. The applicability is on a rolling basis. There is an obligation to review the need for and use of the Health Protection Regulations every 21 days¹ with the first review being 16th April 2020.

B. Local Authority Enforcement Teams as “relevant persons”

6. Enforcement powers are granted to “relevant” persons. The police (and PCSOs) obviously fall into this category, however it also includes a “person designated by a local authority for the purposes of [the] regulations². This power is however, limited to enforcement of two specified regulations as set out below.³

C. Regulations Capable of Local Authority Enforcement

7. Local Authorities can designate staff as “relevant persons” in relation to two areas of responsibility:

4 Requirement to close premises and businesses during the emergency

(1) A person responsible for carrying on a business which is listed in Part 1 of Schedule 2 must—

(a) during the emergency period—

(i) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises, and

(ii) cease selling food or drink for consumption on its premises; or

(b) if the business sells food or drink for consumption off the premises, cease selling food or drink for consumption on its premises during the emergency period.

¹ Reg 3(2)

² Reg 8(12)(iii)

³ Reg 8(13)

(2) For the purposes of paragraph (1)(a), food or drink sold by a hotel or other accommodation as part of room service is not to be treated as being sold for consumption on its premises.

(3) For the purposes of paragraph (1)(a)(ii) and (b), an area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

(4) A person responsible for carrying on a business or providing a service which is listed in Part 2 of Schedule 2 must cease to carry on that business or to provide that service during the emergency period.

(5) Paragraph (4) does not prevent the use of—

(a) premises used for the businesses or services listed in paragraphs 5, 6, 8, 9 or 10 of that Part to broadcast a performance to people outside the premises, whether over the internet or as part of a radio or television broadcast;

(b) any suitable premises used for the businesses or services listed in that Schedule to host blood donation sessions.

(6) If a business listed in Part 1 or 2 of Schedule 2 (“business A”) forms part of a larger business (“business B”), the person responsible for carrying on business B complies with the requirement in paragraph (1) if it closes down business A.

8. The Regulation requires the closure of businesses selling food or drink for consumption on the premises, namely those businesses listed in Part 1 of Schedule 2:

C.1 Part 1 Schedule 2:

- Restaurants (including restaurants and dining rooms in hotels or members' clubs).
- Cafes, including workplace canteens (subject to sub-paragraph (2)), but not including—
- cafes or canteens at a hospital, care home or school;
- canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence; services providing food or drink to the homeless.

- Workplace canteens may remain open where there is no practical alternative for staff at that workplace to obtain food.
- Bars, including bars in hotels or members' clubs
- Public Houses

9. Businesses listed in Part 2 of Schedule 2 must cease to trade over the emergency period, to protect against the risks to public health arising from coronavirus, except for limited permitted uses. For ease of reference the businesses are listed as follows:

C.2 Part 2, Schedule 2:

- Cinemas
- Theatres.
- Nightclubs.
- Bingo halls.
- Concert halls.
- Museums and galleries.
- Casinos
- Betting shops.
- Spas.
- Nail, beauty, hair salons and barbers.
- Massage parlours.
- Tattoo and piercing parlours.
- Skating rinks.
- Indoor fitness studios, gyms, swimming pools, bowling alleys, amusement arcades or soft play areas or other indoor leisure centres or facilities.
- Funfairs (whether outdoors or indoors).
- Playgrounds, sports courts and outdoor gyms.
- Outdoor markets (except for stalls selling food).
- Car showrooms.
- Auction Houses.

10. Regulation 5, leading, on from requirements for complete closure, sets out a series of enforceable restrictions and limited closures to those business's which are not included in Part 3 of the Schedule 2, namely:

C.3 Part 3, Schedule 2

- Food retailers, including food markets, supermarkets, convenience stores and 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.
- Laundrettes and dry cleaners.
- Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
- Veterinary surgeons and pet shops.
- Agricultural supplies shop.
- Storage and distribution facilities, including delivery drop off or collection points, where the facilities are in the premises of a business included in this Part.
- Car parks.
- Public toilets.

5 Further restrictions and closures during the emergency period

(1) A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop, or providing library services must, during the emergency period—

(a) cease to carry on that business or provide that service except by making deliveries or otherwise providing services in response to orders received—

(i) through a website, or otherwise by on-line communication,

- (ii) *by telephone, including orders by text message, or*
 - (iii) *by post;*
- (b) *close any premises which are not required to carry out its business or provide its services as permitted by sub-paragraph (a);*
- (c) *cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by sub-paragraph (a).*
- (2) *Paragraph (1) does not apply to any business which provides hot or cold food for consumption off the premises.*
- (3) *Subject to paragraph (4), a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period.*
- (4) *A person referred to in paragraph (3) may continue to carry on their business and keep any premises used in that business open—*
 - (a) *to provide accommodation for any person, who—*
 - (i) *is unable to return to their main residence;*
 - (ii) *uses that accommodation as their main residence;*
 - (iii) *needs accommodation while moving house;*
 - (iv) *needs accommodation to attend a funeral;*
 - (b) *to provide accommodation or support services for the homeless,*
 - (c) *to host blood donation sessions, or*
 - (d) *for any purpose requested by the Secretary of State, or a local authority.*
- (5) *A person who is responsible for a place of worship must ensure that, during the emergency period, the place of worship is closed, except for uses permitted in paragraph (6).*
- (6) *A place of worship may be used—*
 - (a) *for funerals,*
 - (b) *to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast, or*
 - (c) *to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).*
- (7) *A person who is responsible for a community centre must ensure that, during the emergency period, the community centre is closed except where*

it is used to provide essential voluntary activities or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).

(8) A person who is responsible for a crematorium or burial ground must ensure that, during the emergency period, the crematorium is closed to members of the public, except for funerals or burials.

(9) If a business referred to in paragraph (1) or (3) (“business A”) forms part of a larger business (“business B”), the person responsible for carrying on business B complies with the requirement in paragraph (1) or (3) to cease to carry on its business if it ceases to carry on business A.

D. Enforcement Powers and Offences

D.1 Notices and Fines

11. It is made clear that a relevant person (as designated) may take such action as is necessary to enforce any requirement imposed by regulation 4 or 5⁴. This can include a prohibition notice⁵ providing that the proper requirements are met, namely

- a. that the relevant person reasonably believes that the person is contravening a requirement in regulation 4 or 5, and
- b. it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to contravene the requirement.⁶

12. Fixed Penalty notices may also be issued⁷ provided that the proper requirements are met:

- a. A person is reasonably believed to have committed an offence under the Regulations (in the case of Local Authorities Regulation 4 and 5)⁸;
- b. is over the age of 18⁹;

⁴ Reg 8 (1)

⁵ Reg 8 (2)

⁶ Reg 8(2) (a) and (b)

⁷ Reg 10 (1)

⁸ Reg 10(1) (a)

- c. The Notice offers the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice¹⁰;
- d. The local authority specified in the notice must be the local authority (or as the case may be, any of the local authorities) in whose area the offence is alleged to have been committed (“the relevant local authority”)¹¹;
- e. The Notice gives reasonably detailed particulars of the circumstances alleged to constitute the offence¹²;
- f. The Notice states the period during which proceedings will not be taken for the offence¹³;
- g. The Notice must specify the amount of the fixed penalty¹⁴;
- h. The notice must state the name and address of the person to whom the fixed penalty may be paid¹⁵;
- i. The notice must specify permissible methods of payment¹⁶.

13. The amount specified in the notice must be £60 in the first instance¹⁷. The fixed penalty notice must specify that if paid within 14 days, the amount will be halved (£30). This allowance does not extend to repeat offenders, in that in the case of a second fixed penalty notice being received the amount shall be £120. In the case of the third and subsequent fixed penalty notices being issued the amount shall be double the amount specified in the last fixed penalty notice received by that person, to a maximum of £960¹⁸.

14. It is obvious to note that where a person is issued with a notice under the regulations in respect of an offence, no proceedings may be taken for the offence before the end of the period of 28 days following the date of the notice and that the person may not be convicted of the offence if they pay the fixed penalty before the end of that period.¹⁹

⁹ Reg 10 (1) (b)

¹⁰ Reg 10 (2)

¹¹ Reg 10 (3)

¹² Reg 10 (5) (a)

¹³ Reg 10 (5) (b)

¹⁴ Reg 10 (5) (c)

¹⁵ Reg 10 (5) (d)

¹⁶ Reg 10 (5) (e)

¹⁷ Reg 10 (6)

¹⁸ Reg 10 (7)

¹⁹ Reg 10 (4)

D.2 Offences and Prosecution

15. Regulation 9 sets out the creation of a number of new criminal offences, the most relevant being:

9 Offences and penalties

(1) *A person who—*

(a) *without reasonable excuse contravenes a requirement in regulation 4, 5 [...]*

commits an offence.

(2) *A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.*

[...]

(4) *An offence under this regulation is punishable on summary conviction by a fine.*

16. Where offences are committed by companies the now, more of less standard, wording pertaining to the consent connivance or neglect of corporate officers is included:

(5) *If an offence under this regulation committed by a body corporate is proved—*

(a) *to have been committed with the consent or connivance of an officer of the body, or*

(b) *to be attributable to any neglect on the part of such an officer, the officer (as well as the body corporate) is guilty of the offence and liable to be prosecuted and proceeded against and punished accordingly.*

(6) *In paragraph (5), “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.*

E. Concluding observations

17. It is clear that proceedings for an offence under these Regulations may be brought by the Crown Prosecution Service and any person designated by the Secretary of State²⁰. Similarly, the now well-known observations about the appropriate use of enforcement powers, and the necessity to have a coherent enforcement policy with reference to the Code for Crown Prosecutors still apply. Precaution will have to be taken to avoid the usual challenges of abuse of process, or questioning the Local Authorities decision to prosecute.
18. Whilst the crisis has required a reduction of liberty and autonomy unseen since the second world war, it is still essential that proper consideration is given to the appropriate use and invocation of the escalating scale of enforcement options which the Regulations afford to Local Authorities and their designated officers.

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²⁰ Reg 11