

COVID-19 Emergency Police Powers: What are they and how should they be exercised

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Presentation updated 22 April to incorporate new amendments to Regulations

Plan

1. Regulations under the Public Health (Control of Disease) Act 1984
2. Coronavirus Act 2020
3. Potential issues
4. Questions

Regulations under public health powers

1. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* [[link](#)] [[amendments](#)]
2. The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020** [[link](#)]
3. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*** [[link](#)]
4. The Health Protection (Coronavirus Restrictions) (Wales) Regulations * [[link](#)]

* Made under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1)

** Made under sections 25C(1), (3)(c), (4)(d) and 25F(2) of the Public Health Act (Northern Ireland) 1967

*** Made under para 1(1) of Sch.19 of Coronavirus Act 2020

**The Health Protection
(Coronavirus,
Restrictions) (England)
Regulations 2020**

Key points

1. Came into force on 26 March 2020
2. No debate or vote in Parliament
3. Give legal effect to the lockdown announced on 23 March 2020
4. Must be reviewed by SoS for Health every 21 days and any restriction is no longer necessary it must be terminated (Reg 3(3)) – first review was on 16 April
5. Amended on 22 April 2020 [[link](#)]

**The Health Protection
(Coronavirus,
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Key points

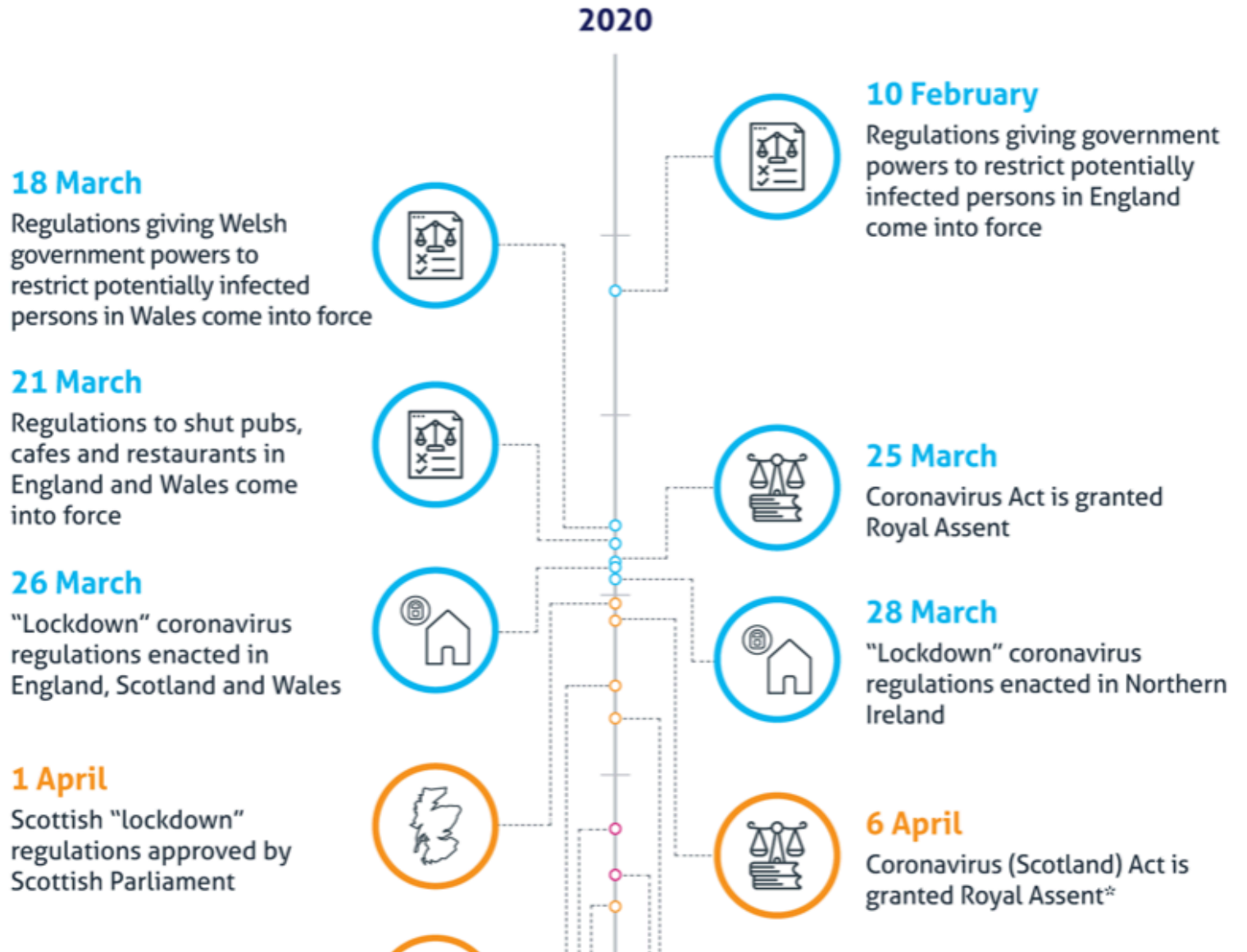
5. The 'emergency period' in the Regs is the period during which they are in force (Reg 3(1)(b))
6. Regs last 28 days unless they are approved by resolution in both houses of Parliament during that period - that period doesn't include adjournment (PHA 1984 s.45R(4)-(5))
7. So will last until 18 May unless terminated or confirmed by parliamentary resolutions
8. Longstop of 6 months (Reg 12)

Institute for Government

Parliament's role in the coronavirus crisis

Ensuring the government's response is effective, legitimate and lawful

Raphael Hogarth

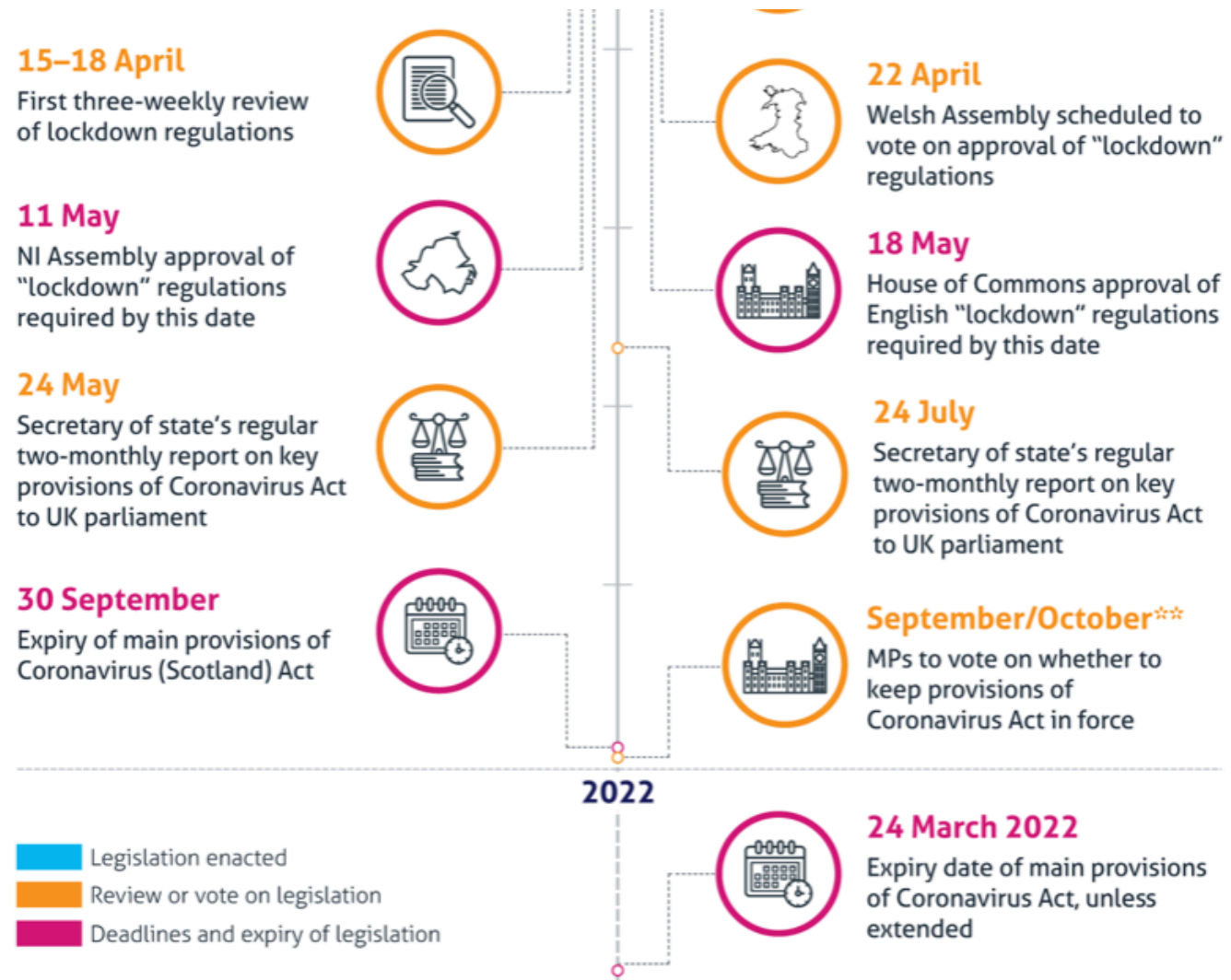


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*Enacted measures in Scotland concerning justice, planning, licensing, renters, early release of prisoners

** Deadline depends on length of recess and parliamentary sitting days

Regulations 4-5:

Closure of premises

1. Requirements to close premises and businesses listed in Sch 2 Part 1 during the emergency
2. Prohibition of selling food and drink on premises
3. All businesses not listed in Sch 2 Part 3 must close
4. Holiday accommodation, places of worship, community centres, crematorium, and burial grounds closed except for specified purposes

Regulation 6:

Restrictions on movement

1. During the emergency period no person may leave **or be outside of** the place where they are living without 'reasonable excuse'
2. Reg 6 contains a non-exhaustive list of reasonable excuses ("a reasonable excuse includes the need..." – Reg 6(2))

Words added on 22 April 2020 by The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020. Nb this wording only applies to events which occurred from 11am on 22 April when the Regulations came into force.

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Words added on 22 April 2020 by The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020.

Reasonable excuses include the need to:

(a) to **obtain basic necessities**, including food and medical supplies for those in the same household (including any pets or animals in the household) or for vulnerable persons and supplies **for the essential upkeep, maintenance and functioning of the household**, or the household of a vulnerable person, or to obtain money, including from any business listed in Part 3 of Schedule 2;

Now amended: to replace “or to obtain money” with “to obtain money from or deposit money with any business listed in paragraphs 33 or 34 of Schedule 2”

(b) to **take exercise** either alone or with other members of their household;

(c) to **seek medical assistance**, including to access any of the services referred to in paragraph 37 or 38 of Schedule 2;

(d) to **provide care or assistance**, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006(1), to a vulnerable person, or to provide emergency assistance;

(e) to **donate blood**;

(f) to **travel for the purposes of work** or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living;

(g) to **attend a funeral** of—

(i) a member of the person’s household,

(ii) a close family member, or

(iii) if no-one within sub-paragraphs (i) or (ii) are attending, a friend;

(ga) to visit a burial ground or garden of remembrance, to pay respects to a member of the person’s household, a family member or friend;”

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The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Reasonable excuses include the need to:

(h) **to fulfil a legal obligation**, including attending court or satisfying bail conditions, or to participate in legal proceedings;

(i) **to access critical public services**, including—

(i) childcare or educational facilities (where these are still available to a child in relation to whom that person is the parent, or has parental responsibility for, or care of the child);

(ii) social services;

(iii) services provided by the Department of Work and Pensions;

(iv) services provided to victims (such as victims of crime);

(j) in relation to children who do not live in the same household as their parents, or one of their parents, **to continue existing arrangements for access to, and contact between, parents and children**, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;

(k) **in the case of a minister of religion or worship leader, to go to their place of worship**;

(l) **to move house** where reasonably necessary;

(m) **to avoid injury or illness or to escape a risk of harm.**

Regulation 7

Restrictions on gatherings

1. During the emergency period, no person may participate in a gathering in a public place of more than two people
2. There are a number of (exhaustive) exceptions to this restriction:
 1. People from the same household
 2. Gatherings essential for work purposes
 3. Attending a funeral
 4. Reasonably necessary to facilitate a house move, provide care or assistance to a vulnerable person, provide emergency assistance or to participate in legal proceedings or fulfil a legal obligations

**The Health Protection
(Coronavirus,
Restrictions) (England)
Regulations 2020**

Enforcement powers

- Contained in Reg 8
- A 'relevant person' who can exercise the powers under Reg 8 is:
 - (i) a constable,
 - (ii) a police community support officer,
 - (iii) a person designated by a local authority for the purposes of this regulation (A local authority may only designate a person for the purposes of this regulation in relation to a requirement in regulation 4 or 5)
 - (iv) a person designated by the Secretary of State for the purposes of this regulation;

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Enforcement powers

1. A relevant person may “take such action as is necessary” to enforce any requirement imposed by regulations 4, 5 or 7 (Reg 8(1)) -- Applies to closures of premises (Regs 4&5) public gatherings (Reg 7)
2. Prohibition notice may be given if relevant person reasonably believes that (a) a person is contravening Reg 5/5 and (b) necessary and proportionate to avoid future contravention (Reg 8(2))

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Enforcement powers

3. A relevant person who "considers that a person is outside the place where they are living" in contravention of reg 6(1) may (a) direct the person to return to the place where they are living or (b) remove that person to the place where they are living (Reg 8(3))
4. A relevant person removing a person under Reg 8(3) may use reasonable force if necessary (Reg 8(4))

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Regulations 2020**

Enforcement powers

Children outside without reasonable excuse

5. Where the person without reasonable excuse is a child, relevant person can direct an individual accompanying them with responsibility for the child to take the child to the place they are living and “so far as reasonably practicable, ensure that the child complies with any direction or instruction given by the relevant person to the child” (Reg 8(5))
6. Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction in regulation 6(1), the relevant person may direct any individual who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with that restriction (Reg 8 (6))
7. Must be necessary and proportionate enforcement (Reg 8(8))

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Words added on 22 April 2020 by The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020.

Enforcement powers

Children participating in a gathering in contravention of Regulation 7

8. Where a person who is in a gathering in contravention of regulation 7 is a child accompanied by an individual who has responsibility for the child—
9. (a) the relevant person may direct that individual to take the child to the place where the child is living, and
10. (b) that individual must, so far as reasonably practicable, ensure that the child complies with any direction or instruction given by the relevant person to the child. (new Regulation 8 (10A))
11. Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction in regulation 7, the relevant person may direct any individual who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with that restriction (new Regulation 8 (10B))

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Words added on 22 April 2020 by The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020.

Enforcement powers

Dispersal of unlawful gatherings

11. Where a relevant person considers 3 or more people are gathered together in contravention of Reg 7 they may (a) direct the gathering to disperse, (b) direct any person in the gathering to return to a place where they are living, (c) remove any person in the gathering to the place where they are living (Reg 8(9))
12. A relevant person may only exercise the power in paragraph (9), (10A) or (10B) if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the restriction in regulation 7 (Reg 8 (10C) as amended
13. The relevant person may use reasonable force if necessary to remove a person from a gathering (Reg 8(10) as amended)

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Offences and penalties

Regulation 9

1. A person who without reasonable excuse contravenes Regs 4, 5, 6, 7 or 8 commits an offence (Reg 9(1))
2. A person who obstructs without reasonable excuse a person carrying out a function under these Regs commits an offence (Reg 9(2))
3. A person who without reasonable excuse contravenes a direction given under Reg 8 or fails to comply with a reasonable instruction or prohibition notice commits an offence (Reg 9(3))

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Offences and penalties

Regulation 9

4. Offences punishable on summary conviction by a fine (Reg 9(4))
5. Also applies to bodies corporate (Reg 9(5))
6. S.24 PACE (power of arrest without warrant) applies if (a) to maintain public health and (b) to maintain public order (Reg 9(7))

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Words added on 22 April 2020 by The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020.

Enforcement powers

Reg 10 - Fixed Penalty Notices

1. An authorised person may issue a fixed penalty notice to anyone that the authorised person reasonably believes— (a) has committed an offence under these Regulations; (b) is over the age of 18 (Reg 10(1)) – **now amended to “aged 18 or over”**
2. An authorised person is a a constable, a police community support officer, a person designated by the Secretary of State for the purposes of this regulation, a person designated by the relevant local authority for the purposes of this regulation;
3. FPN permits a person to discharge any liability to conviction for the offence by payment of a fixed penalty (Reg 10(2))
4. £60/£30 if paid within 14 days (Reg 10(7)(a))
5. Amount doubles for subsequent FPNs up to £960 (Reg 7(b))

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Useful guidance and reports

1. National Police Chiefs Council and College of Policing: *Briefing for police: The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* [[link](#)]
2. National Police Chiefs Council and College of Policing: *Coronavirus Act 2020: police working with health professionals to make people safer and save lives* [[link](#)]
3. Crown Prosecution Service: *Interim CPS Case Review Guidance – Application of the Public Interest Covid-19 crisis response* [[link](#)]
4. Joint Committee on Human Rights – *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 & The Lockdown Restrictions* [[link](#)]

JCHR report – Comparison between Regs and government guidance

Type of restriction or requirement	Specific restriction or requirement	Law or Advisory Guidance
Restrictions on premises and businesses	Requirements to close certain premises and businesses during the emergency (including for example, those selling food/drink, holiday accommodation, places of worship, community centres, crematorium, and burial grounds).	LAW³⁷
Restrictions on movement	During the emergency period, no person may leave the place where they are living without reasonable excuse (see para 8(ii) above for non-exhaustive list of reasonable excuses).	LAW³⁸
	Leaving home to exercise is limited to once per day, either alone or with members of the same household.	GUIDANCE³⁹ in England, Scotland and Northern Ireland. LAW⁴⁰ in Wales
	When going for a walk, run, or cycle, you must minimise the time you are out of your home.	GUIDANCE⁴¹
	If you (or a person in your care) have a specific health condition that requires you to leave the home to maintain your health - including if that involves travel beyond your local area - then you can do so. This could, for example, include where individuals with learning disabilities or autism require specific exercise in an open space two or three times each day - ideally in line with a care plan agreed with a medical professional.	GUIDANCE⁴²
	Only go outside for food, health reasons or work (but only if you cannot work from home).	GUIDANCE⁴³
	If you go out, stay 2m away from other people at all times	GUIDANCE⁴⁴
	Stay local and use open spaces near your home where possible – do not travel unnecessarily.	GUIDANCE⁴⁵
Restrictions on gatherings	During the emergency period, no person may participate in a gathering in a public place or more than two people.	LAW⁴⁶

	There are a number of exceptions to this restriction: where all the persons in the gathering are members of the same household, where the gathering is essential for work purposes, to attend a funeral, where reasonably necessary: to facilitate a house move, to provide care or assistance to a vulnerable person, including relevant personal care, to provide emergency assistance, or to participate in legal proceedings or fulfil a legal obligation	
Requirement to self-isolate	Anyone who has symptoms or is in a household where someone has symptoms should not go to work and should self-isolate.	GUIDANCE⁴⁷
Requirement to close public areas	Relevant authorities must close certain public paths and land during the emergency period if it is liable to large numbers congregating / persons in close proximity / poses a high risk to spread of infection.	N/A in England, Scotland and Northern Ireland. LAW⁴⁸ in Wales
Other requirements or restrictions	Wash your hands as soon as you get home	GUIDANCE⁴⁹

Coronavirus Act 2020

Coronavirus Act 2020

1. Came into force on 26 March 2020
2. Expires 24 March 2022 unless extended
3. Must be renewed every 6 months
4. Powers only apply during the “transmission control period” which is activated and de-activated by the Secretary of State for Health

Coronavirus Act 2020

Schedule 21: Police powers relating to potentially infectious persons

A person is "potentially infectious" if:

(a) the person 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

(b) the person has been in an infected area within the 14 days preceding that time.

- Sch. 21 para 2

Coronavirus Act 2020

Schedule 21: Police powers relating to potentially infectious persons

if, during a transmission control period—

(a) a constable, or

(b) an immigration officer in the course of exercising any of their functions,

has reasonable grounds to suspect that a person in England is potentially infectious.

(2) The immigration officer or constable may, subject to sub-paragraph (3)—

(a) **direct** the person to go immediately to a place specified in the direction which is suitable for screening and assessment, or

(b) **remove** the person to a place suitable for screening and assessment.

(Sch. 21 para 7(1)-(2))

Coronavirus Act 2020

Schedule 21: Police powers relating to potentially infectious persons

Three important requirements

(1) Proportionality

An immigration officer or constable may exercise the powers conferred by this paragraph in relation to a person only if the officer or constable considers that it is necessary and proportionate to do so—

- (a) in the interests of the person,
- (b) for the protection of other people, or
- (c) for the maintenance of public health.

(Sch. 21 para 7(2))

Coronavirus Act 2020

Schedule 21: Police powers relating to potentially infectious persons

Three important requirements:

(2) Provision of information

Where an immigration officer or constable exercises the power to direct or remove a person under this paragraph, the officer or constable must inform that person—

- (a) of the reason for directing or removing them, and
- (b) that it is an offence—
 - (i) in a case where a person is directed, to fail without reasonable excuse to comply with the direction, or
 - (ii) in a case where a person is removed, to abscond.

(3) Consultation of public health official

(5) An immigration officer or constable must, before exercising the powers conferred by this paragraph, consult a public health officer to the extent that it is practicable to do so. • (Sch. 21 para 7(3)-(5))

Coronavirus Act 2020

Schedule 21: Police powers relating to potentially infectious persons

Further powers

1. Keeping a potentially infectious person at a place which is suitable for screening and assessment until a public health officer can assess them – for no more than 24 hours subject to 24-hour extension by superintendent or above (Sch. 21 para 13)

Offences

1. A person who fails, without reasonable excuse, to comply with a direction under paragraphs 6 and 7 is guilty of a criminal offence and liable on summary conviction to fine of up to £1,000 (Sch. 21 - para 23)

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Potential issues

1. Interferences with Arts 8, 9, 11 and possibly 5 ECHR
2. Vires of the Regulations
3. Clarity of particular requirements and lack of public understanding
4. Consistency with Government guidance
5. Overzealous police enforcement
6. Encouragement of citizens to report on each other