

COVID-19 Policing brief in response to the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (‘the Restrictions Regulations’)

04.07.2020



Updates to the Health Protection (Coronavirus, Restrictions) Regulations came into effect on 13 July 2020. The updates do not affect the content of this briefing.

As the pandemic has developed, guidance and legislation has been produced and amended. While police officers and staff should be aware of the advice available, they must ensure they understand where their powers come from and the levels of enforcement permitted by legislation.

This latest set of Regulations sees a significant change to the enforcement options available. You should note, **all previous Health Protection (Coronavirus, Restriction) (England) Regulations have now been revoked.**

All your enforcement options, under the Health Protection Regulations, are contained within this briefing.

The following national legislation remains in force:

- The Coronavirus Act 2020
- The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020
- The Health Protection (Coronavirus, International Travel) (England) Regulations 2020.

Note: some requirements appearing in previous Restrictions Regulations now only appear in government guidance and therefore are no longer enforceable under the Restrictions Regulations.

Remember



The Health Protection Regulations (secondary legislation)

Yes, enforceable. Anyone contravening these requirements commits an offence, punishable on summary conviction by a fine



The Coronavirus Act 2020 (primary legislation)

Yes, enforceable. There are five main summary offences created by the legislation. These offences are punishable on summary conviction by a fine



Government guidance – is **not enforceable**. **Do not issue fines** to people for not adhering to government guidance.

The Restrictions Regulations

These regulations will be reviewed at least every 28 days. The first review must be carried out by 31 July 2020.

Requirement to close premises and businesses

Schedule 2 lists all the businesses that must still remain closed (although exceptions apply). This includes but is not limited to nightclubs, indoor swimming pools and indoor gyms. Local Authorities and Trading Standards will lead on enforcing and monitoring the closure of businesses.

Note: Whilst these Regulations come into force at 00.01 am on 4 July 2020, bars, pubs and social clubs are prohibited from opening before 06.00 am on 4 July 2020.

Power to restrict access to public places (also see 'restricted areas')

You will have seen the recent concerns over crowded beaches etc.

These Regulations now allow the Secretary of State to issue a direction restricting access to a specified public outdoor place, or to public outdoor places of a specified description, to enable a quick time response to a serious and imminent threat to public health, or to prevent, protect against or control the spread of infection.

It is possible that such directions may be made in respect of areas you police. If such a direction is made, it will be published on www.gov.uk as well as other appropriate places.

Such a direction would mean no person may enter or remain in the restricted area, without a reasonable excuse.

The list of reasonable excuses in the Regulations is non-exhaustive. You should make sure you are aware of any such directions that may affect local policing responses.

Restrictions on gatherings

No person may participate in a gathering which consists of more than 30 persons, and takes place*:

- in a private dwelling or houseboat
- on a vessel, other than a houseboat or a vessel used for public transport, or
- on public outdoor land (this is heavily qualified see advice below) examples may include beaches, the street, parks etc.

Public outdoor land – this is land used as a public outdoor place but **not** if it is operated as a visitor attraction, or part of premises used for the operation of a business, charity or public body.

An outside gathering of over 30 can take place, but certain conditions **must** be satisfied:

- i. the gathering must have been organised by a business, a charitable, benevolent or philanthropic institution, a public body, or a political body,
- ii. the person responsible for organising the gathering has carried out a risk assessment**, and
- iii. the gathering organiser has taken all reasonable measures to limit the risk of transmission of the coronavirus, taking into account the risk assessment.

**The risk assessment must satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999(1), whether or not the gathering organiser is subject to those Regulations.

Restrictions on gatherings (continued)

A gathering may also be permitted where it is reasonably necessary:

- for work purposes
- for the purposes of education or training
- for the purposes of childcare
- to provide emergency assistance
- to avoid injury or illness or to escape a risk of harm
- to fulfil a legal obligation

Officers may ask to see the risk assessment, if they think it will help them to determine if the organisers have taken all reasonable measures to prevent the spread of infection. They are not required to formally assess the risk assessment, absence of a risk assessment **may** indicate a failure to take all reasonable measures to prevent the spread of infection.

Note: No person may participate in an indoor gathering of more than thirty people if it would be of a kind mentioned in section 63(1) of the Criminal Justice and Public Order Act 1994 if it took place in the open air, such as **a rave or other unlicensed music event**.

Policing approach

We police by consent. The initial police response should be to encourage voluntary compliance. There is no power to 'stop and account'.

Policing will continue to apply the four-step escalation principles:

1. Engage
2. Explain
3. Encourage, and only as a last resort
4. Enforce

Enforcement options

Gatherings: Where a constable or PCSO considers that a number of people are gathered together in contravention of the Regulations, they may:

- **direct** the gathering to disperse
- **direct** any person in the gathering to return to the place where they are living
- **remove** any person from the gathering. Officers may use reasonable force, if necessary, in exercising this power.

Restricted areas: Where a constable or PCSO considers that a person is in a restricted area without a reasonable excuse in contravention of the Regulations, they may:

- **direct** that person to leave the restricted area immediately
- **remove** that person from the restricted area. Officers may use reasonable force, if necessary, in exercising this power.

Policing approach (continued)

Children

Where the person in contravention of the Regulations is a child and they are accompanied by an individual who has responsibility for them:

- a constable or PCSO may **direct** that individual to take the child to the place where they are living, the responsible individual must, so far as reasonably practicable, ensure that the child complies
- where the child repeatedly fails to comply with requirements, a constable or PCSO may **direct** the responsible individual to secure that the child complies with the restrictions. A breach of this direction can result in an FPN issued to the responsible individual.

Fixed penalty notices (FPNs)

Anyone contravening these requirements commits an offence, punishable on summary conviction by a fixed penalty notice. Where someone is believed to have committed an offence under these regulations and is 18 or over, you may issue them with an FPN for £100 payable within 28 days, but this is reduced to £50 if paid within 14 days. Court proceedings may be brought in cases of non-payment. The fine amounts double for each subsequent offence, up to £3,200 for the sixth and subsequent offences. This will take into account FPNs issued under previous Restrictions Regulations or the Leicester Regulations. The usual FPN process via ACRO applies.

Recording

These are non-recordable offences.

They can't be punished by imprisonment.

Powers of arrest

The necessity test under Section 24 PACE has been temporarily amended by the Health Protection Regulations to include:

- to maintain public health
- to maintain public order

Usual applications of Section 24 PACE still apply and officers' attention is specifically drawn to the necessity to arrest in relation to ascertaining name and address, and to protect a child or other vulnerable person from the person in question. In this context, this aspect is linked to the spread of infection. Officers may also wish to determine if breach of the peace powers apply.