

March 2020 – THIRD EDITION

Restrictions on Movement and Business Closures

Welcome to a 3rd Edition in March 2020 of the Bulletin. This is a follow-up to the 2nd edition, which must now be considered obsolete as the regulations considered in it have been repealed! This edition considers restrictions on movement as well as the widespread closure of business premises.

Please feel free to circulate this Bulletin widely, and not simply within your Authority. If the information is useful to others, please pass it on.

As always, please feel free to contact us for any advice you may require, and we will aim to maintain normal service as far as possible during these unsettling times.

Lockdown

At 8:30 PM on Monday, 23 March 2020 the Prime Minister, Boris Johnson, announced the most stringent restrictions ever imposed on normal life in the UK. Extraordinary times require extraordinary actions, and these are (I hope) the most extraordinary legal actions that I will ever see.

Two days previously, pubs, restaurants and cinemas were closed, and strict guidelines were issued relating to social distancing (see Bulletin March 2020 - 2nd Edition), but over the weekend it was manifestly clear that these restrictions were not sufficient. Aided no doubt by the first weekend of the year with decent, warm spring-like weather, vast quantities of people congregated at beauty spots, parks, beaches and so on.

The science is clear: unless there are significant reductions in social contact, the spread of the coronavirus will cripple the NHS and ultimately the country as a whole.

Until 1 PM in England, and 4 PM in Wales on 26 March, however, there was no legal backing to the additional restrictions. That has now changed with the publication and the immediate implementation of The Health Protection (Coronavirus,

Restrictions) (England) Regulations 2020¹ and The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020². It is important to note that in both cases the regulations are made under the Public Health (Control of Disease) Act 1984, and not the Coronavirus Act 2020, the majority of which came into force on 25th March.

Although the regulations for both countries are similar, there are sufficient differences (beyond the comma in the title) to make it difficult to analyse them both together. As a result, the initial part of this article will consider the English regulations, with a similar approach following for the Welsh regulations.

Licensing Act 2003 Authorisations

Before considering each Country's regulations separately, what is the impact of these regulations (non-compliance) on any premises licence or club premises certificates issued under the 2003 Act?

On Saturday 21st March, the Times reported the following:

“Ken Marsh, head of the Metropolitan Police Federation, said: “It’s very simple. Under licensing laws we can revoke their licences, and then they are breaking the law.””³

Whilst it is true that any business operating in contravention of these regulations is committing a criminal offence, that does not allow the police to revoke their licence. A licence can only be revoked by the licensing authority following a review of that premises licence or club premises certificate. That would have to be a “normal” review under section 51 rather than a summary review under section 53A. This is because a summary review can only be sought in relation to serious crime or serious disorder. Although serious disorder is not defined, serious crime is by reference to section 81 (2) and (3) of the Regulation of Investigatory Powers Act 2000 and this offence does not appear to fall into those categories⁴.

¹ SI 2020/350 available at <http://www.legislation.gov.uk/uksi/2020/350/contents/made>

² SI 2020/353 available at <http://www.legislation.gov.uk/wsi/2020/353/contents/made>

³ *The Times* 21st March 2020 Page 1

⁴ Section 81 (2) and (3) of the Regulation of Investigatory Powers Act 2000

(2) In this Act—

(a) references to crime are references to conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom would constitute one or more criminal offences; and
(b) references to serious crime are references to crime that satisfies the test in subsection (3)(a) or (b).

(3) Those tests are—

(a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;

There is no doubt that breach of these regulations would be taken very seriously by a licensing authority on that subsequent review, but in the meantime the licence will continue to exist.

In the last Bulletin I said that the Pub closure powers were extraordinary powers for extraordinary times, and that it was disappointing that as a nation we had not heeded the sensible advice of the Government and those regulations were required. Without wishing to overuse the word, these are yet more extraordinary powers. There was significant evidence that the earlier provisions were not being fully complied with in some places, and there have been significant gatherings, as well as evidence of people travelling to undertake their one period of exercise well away from their own homes.

The United Kingdom is not a nation that will take kindly to a full-blown curfew, enforced by armed services personnel with instructions to use live ammunition to enforce it, and I sincerely hope that that never occurs. However, to avoid it, the public must heed the law, comply with it and use common sense and self-restraint. Failure to do so may not result in that individual's death, but may will cause the death of one of theirs, or somebody else's, loved ones.

Once again, I must pay tribute to all those working in local authorities and the NHS (in its widest sense including Public Health England and Public Health Wales) for their dedication and commitment to ensuring that the fabric of our society does not completely disintegrate at this troubling period. This is not simply the frontline staff, but also all those who are sometimes unsung, including backroom staff who enable frontline staff to function, and the refuse staff who are ensuring that we do not have other diseases spreading from uncollected waste. I should also like to thank the police and armed forces for the work they have done up till now, and the work that I suspect they will have to undertake in the future.

At the end of the article there are Template Prohibition Notices for both England (Appendices 1 to 3) and Wales (Appendices 4 to 6). In the absence of statutory notices, I hope that these will provide a basis for local authorities and police forces to draw up their own version. Please feel free to use, adapt and improve them as required. If you do that, please would you be kind enough to send me a copy of the modified form which can then be circulated for wider use?

(b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

England

All references to regulations are references to The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 unless otherwise stated. The new regulations repeal the previous regulations⁵, but regulation 2(2) makes it clear that they still apply for any offences committed before the new regulations came into effect. In addition, and importantly, the designation made by the Secretary of State on 22nd March⁶ is now deemed to be a designation made under regulations 8 and 11 of the new regulations. This states:

- “1. The Secretary of State makes the following designations in exercise of the powers conferred by regulation 4(1) and (2) of the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (“the Business Closure Regulations ”).
2. An officer appointed by a local authority to enforce the Business Closure Regulations is designated by the Secretary of State, to take such action as is necessary to enforce a closure or restriction imposed by those regulations.
3. All police constables are designated by the Secretary of State, to take such action as is necessary to enforce a closure or restriction imposed by the Business Closure Regulations.
4. All Local authorities and all police forces are designated by the Secretary of State as able to bring proceedings for any offence under the Business Closure Regulations.”

Updated Guidance was also issued on 26th March⁷.

The regulations extend the closure of premises beyond the initial list detailed under the previous regulations and also impose restrictions on people’s movement and gatherings. Enforcement lies with the police and local authorities. Non-compliance is a crime for which a fixed penalty notice can be offered. If that is either not offered or not accepted, an unlimited fine can be imposed following summary conviction. The police can arrest people who are not complying to maintain public health or public order.

⁵ Health Protection (Coronavirus, Business Closure) (England) Regulations 2020/327

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874349/DH_SOS_Designation_Letter.pdf

⁷ <https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

The regulations remain in effect for 6 months from 26 March⁸, and the restrictions last for the duration of the “emergency period”. That runs from 1 PM on 26 March and

“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.”⁹

The need for these restrictions must be reviewed at least every 21 days, and the first review must be undertaken by 16th April¹⁰. In addition,

“As soon as the Secretary of State considers that any restrictions or requirements set out in these Regulations are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England with the coronavirus, the Secretary of State must publish a direction terminating that restriction or requirement.”¹¹

It is also possible for particular restrictions or requirements to be terminated, either in their entirety or in relation to specified businesses or services¹².

The effect of the regulations is to prevent a wide range of businesses and locations from opening during the emergency period. These fall into 2 categories: the first category¹³ consists of premises providing food or drink for consumption on the premises; the second category consists of premises where people congregate¹⁴.

Restaurants, cafes, bars and public houses are detailed in Part 1 of Schedule 2 in the following terms (take note - which differ slightly from the repealed regulations):

- “1. Restaurants, including restaurants and dining rooms in hotels or members’ clubs.
- 2.—(1) Cafes, including workplace canteens (subject to sub-paragraph (2)), but not including—
 - (a) cafes or canteens at a hospital, care home or school;
 - (b) 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;

⁸ Regulation 12 (1)

⁹ Regulation 3(1)(b)

¹⁰ Regulation 3(2)

¹¹ Regulation 3(3)

¹² Regulation 3(4)

¹³ Detailed in Part 1 of Schedule 2 to the Regulations

¹⁴ Detailed in Part 2 of Schedule 2 to the Regulations

- (c) services providing food or drink to the homeless.
- (2) Workplace canteens may remain open where there is no practical alternative for staff at that workplace to obtain food.
- 3. Bars, including bars in hotels or members' clubs.
- 4. Public houses."

Beyond that, there are no definitions (for example a "public house" is not defined by any reference to the Licensing Act 2003 ("the 2003 Act")), therefore these terms will carry their usual everyday meaning, and it is highly likely that any court will be urged to take a purposive approach to the interpretation of these regulations. On that basis this is a very wide collection of premises.

The requirements under the regulations are that those premises 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."¹⁵

There is no prohibition on the sale of food or drink for consumption off the premises¹⁶, but it must be noted that the concept of premises is extended for the purposes of these regulations. As there is no precise definition of these various businesses, for example the "premises" as understood in relation to an authorisation under the 2003 Act does not automatically apply in the circumstances.

What the regulations say is that in relation to premises selling food or drink for consumption off the premises

"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) to be treated as part of the premises of that business."¹⁷

Obviously beer gardens, seating areas outside cafes, terraces and so on are part of the business premises, but this extends far further. Again, "adjacent" will carry its usual everyday meaning and the Shorter Oxford English Dictionary definition is:

¹⁵ Regulation 4(1)(a) & (b)

¹⁶ Regulation 4(1)(b)

¹⁷ Regulation 4(3)

“lying near to; adjoining; bordering (not necessarily touching)”.

This significantly extends the scope of this provision. A takeaway cafe situated in a public park, where there is a seating area adjacent to that operation will be prohibited from selling food or drink for consumption off the premises, notwithstanding the fact that they have no control over the use of that seating area, no responsibility for it, and apart from proximity, no commercial connection to it. The same would apply to a pub with an entrance directly from the pavement selling alcohol from a window to be consumed by people sitting on a public bench outside.

The second category of premises detailed in Part 2 to Schedule 2 are:

- “5. Cinemas.
- 6. Theatres.
- 7. Nightclubs.
- 8. Bingo halls.
- 9. Concert halls.
- 10. Museums and galleries.
- 11. Casinos.
- 12. Betting shops.
- 13. Spas.
- 14. Nail, beauty, hair salons and barbers.
- 15. Massage parlours.
- 16. Tattoo and piercing parlours.
- 17. Skating rinks.
- 18. Indoor fitness studios, gyms, swimming pools, bowling alleys, amusement arcades or soft play areas or other indoor leisure centres or facilities.
- 19. Funfairs (whether outdoors or indoors).
- 20. Playgrounds, sports courts and outdoor gyms.
- 21. Outdoor markets (except for stalls selling food).
- 22. Car showrooms.
- 23. Auction Houses.”

Again, these are concepts which are readily understandable although not specifically defined in detail.

Anybody responsible for carrying on any of those businesses detailed in Part 2 to Schedule 1

“must cease to carry on that business or to provide that service during the emergency period.”¹⁸

¹⁸ Regulation 4(4)

but cinemas, theatres, bingo halls, concert halls, museums and galleries can be used to broadcast a performance, and that can be by radio, television or internet¹⁹, and any suitable premises detailed in that list can be used to host blood donation sessions²⁰.

Responsibility to ensure compliance with these requirements lies with the “person responsible for carrying on a business”²¹ who is defined as including “the owner, proprietor, and manager of that business”²².

If any of those businesses form part of a larger business, then the person running the larger business complies with the regulations if they close down the smaller business²³.

Beyond that, any business which is not detailed in Part 3 of Schedule 2, and which is offering

“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).”²⁴

This does not apply to businesses providing hot and cold food for consumption off the premises²⁵. Again, in the absence of any specific

¹⁹ Regulation 4(5)(a)

²⁰ Regulation 4(5)(b)

²¹ Regulation 4(1)

²² Regulation 1(3)(b)

²³ Regulation 4(6)

²⁴ Regulation 5(1)

²⁵ Regulation 5(2)

definition for these regulations, “food” will carry the definition contained in the Food Safety Act 1990 which will include drink (including alcohol)²⁶. It is clear that pubs can sell alcohol for consumption off the premises (including the extended definition of premises noted above), provided their premises licence permits off-sales.

The list of premises which can remain open (detailed in Part 3 of Schedule 2) are as follows:

- “24. Food retailers, including food markets, supermarkets, convenience stores and corner shops.
- 25. Off licenses and licensed shops selling alcohol (including breweries).
- 26. Pharmacies (including non-dispensing pharmacies) and chemists.
- 27. Newsagents.
- 28. Homeware, building supplies and hardware stores.
- 29. Petrol stations.
- 30. Car repair and MOT services.
- 31. Bicycle shops.
- 32. Taxi or vehicle hire businesses.
- 33. Banks, building societies, credit unions, short term loan providers and cash points.
- 34. Post offices.
- 35. Funeral directors.
- 36. Laundrettes and dry cleaners.
- 37. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
- 38. Veterinary surgeons and pet shops.
- 39. Agricultural supplies shop.
- 40. 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.
- 41. Car parks.
- 42. Public toilets.”

²⁶ The definition of "food" in section 1 of the Food Safety Act 1990 is the same as that detailed in Regulation (EC) No. 178/2002. That states (Article 2):

“For the purposes of this Regulation, ‘food’ (or ‘foodstuff’) means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

‘Food’ includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.”

and the list of exemptions in article 2 (a) to (h) does not include alcohol.

Beyond that, the provision of holiday accommodation must also cease²⁷. This is extremely wide and includes holiday accommodation in

“a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house”²⁸

But any such business can remain 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.”²⁹

Places of worship must remain closed³⁰ except for

“(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).”³¹

And crematoria and burial grounds must also remain closed apart from funerals or burials³².

Finally, in relation to premises that must be closed, community centres must be 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).”³³.

²⁷ Regulation 5(3)

²⁸ Regulation 5(3)

²⁹ Regulation 5(4)

³⁰ Regulation 5(5)

³¹ Regulation 5(6)

³² Regulation 5(8)

³³ Regulation 5(7)

Draconian as those restrictions are, they are as nothing compared to the restrictions imposed on individuals. Regulations 6 and 7 restrict movement and association.

Regulation 6 effectively requires the vast majority of the population, except the homeless³⁴, to remain in “the place where they are living”³⁵ (which includes “the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises³⁶), and they can only leave if they have a reasonable excuse³⁷. Although regulation 6(2) appears to detail the list of reasonable excuses, it is vital to note that “a reasonable excuse includes” those matters detailed in regulation 6(2), and that is not an exhaustive list. Although it may be difficult to imagine any other activity being viewed as a reasonable excuse to justify leaving the place where a person lives, that is not impossible.

The government has issued guidance to people to assist with these requirements – “*Staying at Home and Away from Others (Social Distancing)*”³⁸

The reasons detailed in regulation 6 (2) are lengthy and detailed.

(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;

Vulnerable persons are defined in regulation 1(3)(c) as including:

- “(i) any person aged 70 or older;
- “(ii) any person under 70 who has an underlying health condition, including but not limited to, the conditions listed in Schedule 1
 - [1. Chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease, emphysema or bronchitis.
 - 2. Chronic heart disease, such as heart failure.

³⁴ Regulation 6(4)

³⁵ Regulation 6(1)

³⁶ Regulation 6(3)

³⁷ Regulation 6(1)

³⁸ Available at <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others>

- 3. Chronic kidney disease.
- 4. Chronic liver disease, such as hepatitis.
- 5. Chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis, a learning disability or cerebral palsy.
- 6. Diabetes.
- 7. Problems with the spleen, such as sickle cell disease or removal of the spleen.
- 8. A weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy.
- 9. Being seriously overweight, with a body mass index of 40 or above.];
- (iii) any person who is pregnant."

The guidance states this relates to "shopping for basic necessities, for example food and medicine, which must be as infrequent as possible."³⁹

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

The guidance states this permits "one form of exercise a day, for example a run, walk, or cycle - alone or with members of your household."⁴⁰

- (c) to seek medical assistance, including to access any of the services referred to in paragraph 37 or 38 of Schedule 2 [37. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health and 38. Veterinary surgeons and pet shops];

The guidance states relates to: "any medical need, including to donate blood, avoid or escape risk of injury or harm, or to provide care or to help a vulnerable person."⁴¹

- (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, to a vulnerable person, or to provide emergency assistance;

³⁹ "Staying at Home and Away from Others (Social Distancing)" Paragraph 1

⁴⁰ "Staying at Home and Away from Others (Social Distancing)" Paragraph 1

⁴¹ "Staying at Home and Away from Others (Social Distancing)" Paragraph 1

This covers:

“(3B) *Relevant personal care means*—

- (a) physical assistance, given to a person who is in need of it by reason of age, illness or disability, in connection with—
 - (i) eating or drinking (including the administration of parenteral nutrition),
 - (ii) toileting (including in relation to the process of menstruation),
 - (iii) washing or bathing,
 - (iv) dressing,
 - (v) oral care, or
 - (vi) the care of skin, hair or nails,
- (b) the prompting, together with supervision, of a person who is in need of it by reason of age, illness or disability in relation to the performance of any of the activities listed in paragraph (a) where the person is unable to make a decision in relation to performing such an activity without such prompting and supervision, or
- (c) any form of training, instruction, advice or guidance which—
 - (i) relates to the performance of any of the activities listed in paragraph (a),
 - (ii) is given to a person who is in need of it by reason of age, illness or disability, and
 - (iii) does not fall within paragraph (b).⁴²

(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;

The Guidance states: “travelling for work purposes, but only where you cannot work from home”⁴³ and goes on to provide more details:

“4. Going to work

As set out in the section on staying at home, you can travel for work purposes, but only where you cannot work from home.

⁴² Paragraph 7(3B) Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006.

⁴³ “*Staying at Home and Away from Others (Social Distancing)*” Paragraph 1

With the exception of the organisations covered above in the section on closing certain businesses and venues, the government has not required any other businesses to close – indeed it is important for business to carry on.

Employers and employees should discuss their working arrangements, and employers should take every possible step to facilitate their employees working from home, including providing suitable IT and equipment to enable remote working.

Sometimes this will not be possible, as not everyone can work from home. Certain jobs require people to travel to, from and for their work – for instance if they operate machinery, work in construction or manufacturing, or are delivering front line services.

If you cannot work from home then you can still travel for work purposes, provided you are not showing coronavirus symptoms and neither you nor any of your household are self-isolating. This is consistent with advice from the Chief Medical Officer.

Employers who have people in their offices or onsite should ensure that employees are able to follow Public Health England guidelines including, where possible, maintaining a 2 metre distance from others, and washing their hands with soap and water often for at least 20 seconds (or using hand sanitiser gel if soap and water is not available).

Work carried out in people's homes, for example by tradespeople carrying out repairs and maintenance, can continue, provided that the tradesperson is well and has no symptoms. Again, it will be important to ensure that Public Health England guidelines, including maintaining a 2 metre distance from any household occupants, are followed to ensure everyone's safety.

No work should be carried out in any household which is isolating or where an individual is being shielded, unless it is to remedy a direct risk to the safety of the household, such as emergency plumbing or repairs, and where the tradesperson is willing to do so. In such cases, Public Health England can provide advice to tradespeople and households.

No work should be carried out by a tradesperson who has coronavirus symptoms, however mild.

As set out in the section on closing non-essential shops and public spaces, the government has ordered certain businesses and venues to close. The government has set out guidance on which organisations this requirement covers. Advice for employees of these organisations on employment and financial support is available at [gov.uk/coronavirus](https://www.gov.uk/coronavirus).

At all times, workers should follow the guidance on self-isolation if they or anyone in their household shows symptoms.⁴⁴

The remaining excuses are self-explanatory, and no further explanation or assistance is given in the guidance.

(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;

(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;

⁴⁴ “*Staying at Home and Away from Others (Social Distancing)*” Paragraph 4

(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 prohibits gatherings in public places of more than 2 people⁴⁵, but again there are exceptions which are as follows:

“(a) where all the persons in the gathering are members of the same household,

(b) where the gathering is essential for work purposes,

(c) to attend a funeral,

(d) where reasonably necessary—

(i) to facilitate a house move,

(ii) to provide care or assistance to a vulnerable person, including relevant personal care

within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006 [see above],

(iii) to provide emergency assistance, or

(iv) to participate in legal proceedings or fulfil a legal obligation.”⁴⁶

“Household” is not defined and will carry its usual everyday meaning; the Shorter Oxford English Dictionary definition is:

“the inmates of the house collectively; a domestic establishment”.

Any contravention of regulations 4, 5, 7 or 8 without a reasonable excuse is an offence, as is contravention of any requirement under regulation 6. In both cases this is punishable on summary conviction with an unlimited fine⁴⁷. Where the business is run by a body corporate, directors, managers, secretaries and other similar officers will be guilty of the offence (in addition to the body corporate itself) if it is proved that the offence was committed with their consent or connivance or as a result of any neglect on their part⁴⁸. In addition, any person who without reasonable excuse obstructs anyone carrying out a function under the regulations is also guilty of an offence⁴⁹.

⁴⁵ Regulation 7

⁴⁶ Regulation 7

⁴⁷ Regulation 9(1) & (4) and Magistrates Courts Act 1980 S32(9) and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664

⁴⁸ Regulation 9(5)

⁴⁹ Regulation 9(3)

Regulation 9(7) extends the police power of arrest contained in the section 24 of the Police and Criminal Evidence Act 1984 (PACE") to an offence under this regulation. Section 24 of PACE as amended by regulation 9(7) states:

- (1) A constable may arrest without a warrant—
 - (a) anyone who is about to commit an offence;
 - (b) anyone who is in the act of committing an offence;
 - (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
 - (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.
- (2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
- (3) If an offence has been committed, a constable may arrest without a warrant—
 - (a) anyone who is guilty of the offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
- (4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.
- (5) The reasons are—
 - (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
 - (b) correspondingly as regards the person's address;
 - (c) to prevent the person in question—
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss of or damage to property;
 - (iv) committing an offence against public decency (subject to subsection (6)); or
 - (v) causing an unlawful obstruction of the highway;
 - (d) to protect a child or other vulnerable person from the person in question;
 - (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
 - (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

**[(a) to maintain public health;
(b) to maintain public order.]**

(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.”

Regulation 10 allows a fixed penalty notice to be issued to anyone who has committed an offence under the regulations and is over the age of 18⁵⁰. Such a notice can only be issued by an “authorised person” which is a:

- “(i) a constable;
- (ii) a police community support officer;
- (iii) a person designated by the Secretary of State for the purposes of this regulation;
- (iv) subject to paragraph (12), a person designated by the relevant local authority for the purposes of this regulation;”⁵¹

but local authorities can only authorise a person for breaches of requirements or restrictions and regulations 4 or 5 (closure of premises)⁵². Issue of the fixed penalty notice stays criminal proceedings for at least 28 days⁵³, and provided the fixed penalty has been paid before that time no prosecution can take place⁵⁴. The penalty is £60 in respect of the first fixed penalty notice to be issued under these regulations⁵⁵ (reducing to £30 if paid within 14 days)⁵⁶. For the second fixed penalty notice the penalty is £120⁵⁷ (with no reduction for early payment)⁵⁸, doubling to £240 for the third, £480 for the fourth, finally peaking and plateauing at £960 for the fifth and any subsequent notices⁵⁹. Before the time somebody has racked up 5 offences under these regulations, I would expect a local authority to be considering injunctive relief using the powers contained in section 2 to 2 of the Local Government Act 1972.

There is no indication within the regulations how the police or local authorities should deal with crimes committed under these regulations by people under the age of 18, although the position in relation to enforcement of requirements for children is addressed in regulation 8.

⁵⁰ Regulation 10(1)

⁵¹ Regulation 10(11)(a)

⁵² Regulation 10(12)

⁵³ Regulation 10(4)(a)

⁵⁴ Regulation 10(4)(b)

⁵⁵ Regulation 10(6)

⁵⁶ Regulation 10(7)

⁵⁷ Regulation 10(9)(b)(ii)(aa)

⁵⁸ Regulation 10(9)(b)(i)

⁵⁹ Regulation 10(9)(b)(ii)(bb)

Regulation 11 allows prosecutions to be brought by the CPS and as a result of the Secretary of State's designation, local authorities.

Regulation 8 covers enforcement and regulation 8(1) states:

“A relevant person may take such action as is necessary to enforce any requirement imposed by regulation 4, 5 or 7”

“Relevant person” is defined as:

- “(i) a constable,
- (ii) a police community support officer,
- (iii) subject to paragraph (13), a person designated by a local authority for the purposes of this regulation, or
- (iv) a person designated by the Secretary of State for the purposes of this regulation;”⁶⁰

There is no reference to any “a person designated by a local authority for the purposes of this regulation” in the regulations themselves (beyond the limitation that this can only relate to premises closures⁶¹) or the parent Public Health (Control of Disease) Act 1984 (“the 1984 Act”). Therefore, it would seem that this is any local authority officer designated by the local authority for that purpose. This would appear to require a specific designation to the individual officer.⁶²

Where a local authority runs Executive Arrangements, these are Executive functions⁶³, and the power to designate such an officer would lie with the Senior Executive Member, which is the Leader or directly elected Mayor⁶⁴. In authorities running alternative arrangements (i.e. the committee system) the power to designate will lie with full Council unless there is a specific delegation for such extraordinary requirements given to an officer of the authority under the Council's existing Scheme of Delegations.

It would appear therefore that any officer would need to be appointed in that way. There is however, no limitation on the types of officers who can be

⁶⁰ Regulation 8(12)

⁶¹ Regulation 8(13)

⁶² This can be contrasted with a delegation which can be to a head of service or section head which then covers officers acting under their direction and control – see *R (app Raphael) v Highbury Corner Magistrates' Court* [2011] LLR 340 CA

⁶³ This is because the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853 do not specify the Public Health (Control of Disease) Act 1984 in either schedule 1 or schedule 2 and therefore by virtue of S9D(2) Local Government Act 2000 are the responsibility of the executive.

⁶⁴ See S9E Local Government Act 2000

appointed. The Guidance⁶⁵ states that this will be monitored, and compliance enforced by, environmental health and trading standards officers with the assistance of the police, but there is no restriction to that effect within the regulations and therefore licensing officers and other local authority enforcement officers could be appointed by their authority.

Such a relevant person can issue a prohibition notice for contravention of regulations 4 or 5 provided the issue of such notice is

“necessary and proportionate . . . For the purpose of preventing that person from continuing to contravene the requirement”⁶⁶.

It is therefore important that local authorities and the police have a draft of a suitable notice if required⁶⁷.

It would also be possible for a Health and Safety Inspector to issue a prohibition notice under section 22 of the Health and Safety at Work etc Act 1974 because continued use of the premises would “involve a risk of serious personal injury”.

If a relevant person:

“considers that a person is outside the place where they are living in contravention of regulation 6(1), the relevant person may—

- (a) direct that person to return to the place where they are living, or
- (b) remove that person to the place where they are living.”⁶⁸

and can use reasonable force to exercise that power⁶⁹.

The position in relation to children who are outside the place where they are living is slightly different. If they are accompanied by an individual who has responsibility for that child, the direction can be given to the individual to take the child to the place where they living⁷⁰ and so far as is reasonably practicable ensure that the child complies with any direction or instruction that has been given by the relevant person⁷¹. If a child repeatedly fails to comply with restrictions under regulation 6(1) then the individual can be directed by the relevant person to secure compliance by the child with that

⁶⁵ “*Staying at Home and Away from Others (Social Distancing)*” Paragraph 5

⁶⁶ Regulation 8(2)

⁶⁷ See Appendices 1 to 3 to this Article

⁶⁸ Regulation 8(3)

⁶⁹ Regulation 8(4)

⁷⁰ Regulation 8(5)(a)

⁷¹ Regulation 8(5)(b)

restriction, so far as is reasonably practicable⁷². An individual has responsibility for child if that person

- “(a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child (within the meaning of the Children Act 1989⁷³)”⁷⁴

Where 3 or more people are gathered together in contravention of regulation 7, the relevant person may:

- “(a) direct the gathering to disperse;
- (b) direct any person in the gathering to return to the place where they are living;
- (c) remove any person in the gathering to the place where they are living.”⁷⁵

and in those circumstances, reasonable force and all the provisions noted above in relation to children apply⁷⁶

⁷² Regulation 8(6)

⁷³ Section 3(1) of the Children Act 1989 defines “parental responsibility” as meaning: “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”

⁷⁴ Regulation 8(7)

⁷⁵ Regulation 8(9)

⁷⁶ Regulation 8(10)

Wales

All references to regulations are references to The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 unless otherwise stated. The new regulations repeal the previous regulations⁷⁷, but regulation 2(2) makes it clear that they still apply for any offences committed before the new regulations came into effect.

Updated Guidance was published on 24th March⁷⁸.

The regulations extend the closure of premises beyond the initial list detailed under the previous regulations, impose restrictions on people's movement and gatherings and contain powers to close public footpaths and land. Enforcement lies with the police, local authorities and National Parks. Non-compliance is a crime for which a fixed penalty notice can be offered. If that is either not offered or not accepted, an unlimited fine can be imposed following summary conviction. The police can arrest people who are not complying to maintain public health or public order.

The regulations remain in effect for 6 months from 26 March⁷⁹, and the restrictions last for the duration of the "emergency period". That runs from 1 PM on 26 March and

"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 Welsh ministers terminating the requirement or restriction."⁸⁰

The need for these restrictions must be reviewed at least every 21 days, and the 1st review must be undertaken by 15th April⁸¹. In addition,

"(3) As soon as the Welsh Ministers consider that a requirement or restriction imposed by these Regulations is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with the coronavirus, the Welsh Ministers must publish a direction terminating the requirement or restriction.."⁸²

⁷⁷ Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020/327 and the Health Protection (Coronavirus: Closure of Leisure Businesses, Foot Paths and Access Land) (Wales) Regulations 2020/334

⁷⁸ <https://gov.wales/full-guidance-staying-home-and-away-others>

⁷⁹ Regulation 12 (1)

⁸⁰ Regulation 3(1)(b)

⁸¹ Regulation 3(2)

⁸² Regulation 3(3)

It is also possible for particular restrictions or requirements to be terminated, either in their entirety or in relation to specified businesses or services⁸³.

The effect of regulations 4-7 is to prevent a wide range of businesses and locations from opening during the emergency period. These fall into 2 categories: the first category⁸⁴ consists of premises providing food or drink for consumption on the premises; the second category consists of premises where people congregate⁸⁵.

Restaurants, cafes, bars and public houses are detailed in Part 1 of Schedule 1 in the following terms (take note - which differ slightly from the repealed regulations):

- “1. Restaurants, including restaurants and dining rooms in hotels or members’ clubs.
- 2.—(1) Cafés, including workplace canteens (subject to sub-paragraph (2)), but not including—
 - (a) cafés or canteens at a hospital, care home or school;
 - (b) 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;
 - (c) services providing food or drink to the homeless.
- (2) Workplace canteens may remain open where—
 - (a) there is no practical alternative for staff at that workplace to obtain food; and
 - (b) all reasonable measures are taken to ensure that a distance of 2 metres is maintained between any person using the canteen.
- 3. Bars, including bars in hotels or members’ clubs.
- 4. Public houses.”

Beyond that, there are no definitions (for example a “public house” is not defined by any reference to the Licensing Act 2003 (“the 2003 Act”)), therefore these terms will carry their usual everyday meaning, and it is highly likely that any court will be urged to take a purposive approach to the interpretation of these regulations. On that basis this is a very wide collection of premises.

The requirements under the regulations are that

- “(1) A person responsible for carrying on a business which is listed in Part 1 of Schedule 1 must, during the emergency period—

⁸³ Regulation 3(4)

⁸⁴ Detailed in Part 1 of Schedule 2 to the Regulations

⁸⁵ Detailed in Part 2 of Schedule 2 to the Regulations

- (a) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises;
- (b) cease selling food or drink for consumption on its premises (but if the business sells food and drink for consumption off the premises it may continue to do so subject to regulation 6(1))."⁸⁶

There is no prohibition on the sale of food or drink for consumption off the premises⁸⁷, but it must be noted that the concept of premises is extended for the purposes of these regulations. As there is no precise definition of these various businesses, for example the “premises” as understood in relation to an authorisation under the 2003 Act does not automatically apply in the circumstances.

What the regulations say is that in relation to premises selling food or drink for consumption off the premises

“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) to be treated as part of the premises of that business.”⁸⁸

Obviously beer gardens, seating areas outside cafes, terraces and so on are part of the business premises, but this extends far further. Again, “adjacent” will carry its usual everyday meaning and the Shorter Oxford English Dictionary definition is:

“lying near to; adjoining; bordering (not necessarily touching)”.⁸⁹

This significantly extends the scope of this provision. A takeaway cafe situated in a public park, where there is a seating area adjacent to that operation will be prohibited from selling food or drink for consumption off the premises, notwithstanding the fact that they have no control over the use of that seating area, no responsibility for it, and apart from proximity, no commercial connection to it. The same would apply to a pub with an entrance directly from the pavement selling alcohol from a window to be consumed by people sitting on a public bench outside.

The second category of businesses or services that must cease to carry on are detailed in Part 2 & 3 of Schedule 1 are:

- 5. Cinemas.
- 6. Theatres.
- 7. Nightclubs.
- 8. Bingo halls.

⁸⁶ Regulation 4(1)(a) & (b)

⁸⁷ Regulation 4(1)(b)

⁸⁸ Regulation 4(3)

9. Concert halls.
10. Museums, galleries, libraries and archive services.
11. Casinos.
12. Betting shops.
13. Nail, beauty, hair salons and barbers.
14. Massage parlours.
15. Establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture.
16. Skating rinks.
17. Swimming pools.
18. Indoor fitness studios, gyms, spas or other indoor leisure centres or facilities.
19. Bowling alleys, amusement arcades and indoor play areas.
20. Funfairs (whether outdoors or indoors).
21. Playgrounds, sports courts and outdoor gyms.
22. Outdoor markets (except for stalls selling food).
23. Car showrooms.
24. Auction houses.

PART 3

25. Holiday sites.
26. Camping sites.
27. Hotels and bed and breakfast accommodation.
28. Other holiday accommodation (including holiday apartments, hostels and boarding houses)."

Again, these are concepts which are readily understandable although not specifically defined in detail.

Anybody responsible for carrying on any of those businesses detailed in Part 2 to Schedule 1

“must cease to carry on that business or to provide that service during the emergency period.”⁸⁹

but cinemas, theatres, bingo halls, concert halls, museums, galleries, libraries, archive services, indoor fitness studios, gyms, spas or other indoor leisure centres or facilities can be used to broadcast a performance (without an audience) by radio, television or internet⁹⁰, and any suitable premises detailed in that list can be used to host blood donation sessions⁹¹. Also, museums, galleries, libraries

⁸⁹ Regulation 4(4)

⁹⁰ Regulation 4(5)(a)

⁹¹ Regulation 4(5)(b)

and archive services can be used to provide information or other services through websites, online communication, telephone and post⁹².

Responsibility to ensure compliance with these requirements lies with the “person responsible for carrying on a business”⁹³ who is defined as including “the owner, proprietor, and manager of that business”⁹⁴.

If any of those businesses form part of a larger business, then the person running the larger business complies with the regulations if they close down the smaller business⁹⁵.

Beyond that, any business which is not detailed in Part 4 of Schedule 1, and which is offering

“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).”⁹⁶

This does not apply to businesses providing hot and cold food for consumption off the premises⁹⁷. Again, in the absence of any specific definition for these regulations, “food” will carry the definition contained in the Food Safety Act 1990 which will include drink (including alcohol)⁹⁸. It is

⁹² Regulation 4(5)(c)

⁹³ Regulation 4(1)

⁹⁴ Regulation 1(3)(d)

⁹⁵ Regulation 4(6)

⁹⁶ Regulation 6(2)

⁹⁷ Regulation 4(1)(b) subject to the social distancing requirements specified in regulation 6(1).

⁹⁸ The definition of “food” in section 1 of the Food Safety Act 1990 is the same as that detailed in Regulation (EC) No. 178/2002. That states (Article 2):

clear that pubs can sell alcohol for consumption off the premises (including the extended definition of premises noted above), provided their premises licence permits off-sales.

The list of premises which can remain open (detailed in Part 4 of Schedule 1) are as follows:

- “29. Food retailers, including food markets, supermarkets, convenience stores, corner shops and establishments selling food or drink for consumption on the premises (including establishments listed in Part 1 which, by virtue of regulation 4(1), have ceased selling food and drink for consumption on the premises).
- 30. Off licenses and licensed shops selling alcohol (including breweries).
- 31. Pharmacies (including non-dispensing pharmacies) and chemists.
- 32. Newsagents.
- 33. Homeware, building supplies and hardware stores.
- 34. Petrol stations.
- 35. Car repair and MOT services.
- 36. Bicycle shops.
- 37. Taxi or vehicle hire businesses.
- 38. Banks, building societies, credit unions, short term loan providers and cash points
- 39. Post offices.
- 40. Funeral directors.
- 41. Laundrettes and dry cleaners.
- 42. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
- 43. Veterinary surgeons and pet shops.
- 44. Agricultural supplies shops.
- 45. Storage and distribution facilities, including delivery drop off points.
- 46. Car parks.
- 47. Public toilets.”

“For the purposes of this Regulation, ‘food’ (or ‘foodstuff’) means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

‘Food’ includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.”

and the list of exemptions in article 2 (a) to (h) does not include alcohol.

Beyond that, the provision of holiday accommodation must also cease⁹⁹. This is extremely wide and includes accommodation in campsites and mobile homes as well as other premises

But any such business can remain open to

- “(a) provide accommodation for any persons staying in that accommodation when these Regulations come into force and who—
 - (i) are unable to return to their main residence, or
 - (ii) are using the accommodation as their main residence;
- (b) carry on the business, or keep any premises used in the business open, for any purpose as may be requested by the Welsh Ministers or a local authority.”¹⁰⁰

The person responsible for any business that does remain open must attempt to maintain social distancing. They must:

- “(a) take all reasonable measures to ensure that a distance of 2 metres is maintained between any persons on the business premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) take all reasonable measures to ensure that persons are only admitted to the business premises in sufficiently small numbers to make it possible to maintain that distance, and
- (c) take all reasonable measures to ensure that a distance of 2 metres is maintained between persons waiting to enter the business premises (except between two members of the same household, or a carer and the person assisted by the carer).”¹⁰¹

Whilst this is a laudable aim, it is difficult to see how the person responsible for running the business can realistically control people waiting to enter those business premises.

Places of worship must remain closed¹⁰² except in the following circumstances

“If all reasonable measures are taken to ensure a distance of 2 metres is maintained between every person in the place of worship, the place may be used—

- (a) for funerals,

⁹⁹ Regulation 5

¹⁰⁰ Regulation 5(3)

¹⁰¹ Regulation 6(1)

¹⁰² Regulation 5(5)

- (b) to broadcast (without a congregation) an act of worship or funeral (whether over the internet or as part of a radio or television broadcast), or
- (c) to provide essential voluntary services or, upon the request of the Welsh Ministers or a local authority, urgent public services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency)."¹⁰³

Crematoria must also remain closed apart from funerals or burials which are subject to the social distancing requirements ¹⁰⁴.

Finally, in relation to premises that must be closed, community centres must be closed except where

- “(a) it is used to provide essential voluntary services or, upon the request of the Welsh Ministers or a local authority, urgent public services (including the provision of food banks or other support for the homeless or vulnerable persons, blood donation sessions or support in an emergency), and
- (b) all reasonable measures are taken to ensure that a distance of 2 metres is maintained between every person on the premises while those services are provided.”¹⁰⁵

Draconian as those restrictions are, they are as nothing compared to the restrictions imposed on individuals. Regulations 8 and 9 restrict movement, association and entry to land and paths.

Regulation 8 effectively requires the vast majority of the population, except the homeless¹⁰⁶, to remain in “the place where they are living”¹⁰⁷ (which includes “the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises¹⁰⁸), and they can only leave if they have a reasonable excuse¹⁰⁹. Although regulation 8(2) appears to detail the list of reasonable excuses, it is vital to note that “a reasonable excuse includes” those matters detailed in regulation 8(2), and that is not an exhaustive list. Although it may be difficult to imagine

¹⁰³ Regulation 7(2)

¹⁰⁴ Regulation 7(3) & (4)

¹⁰⁵ Regulation 8(5)

¹⁰⁶ Regulation 8(4)

¹⁰⁷ Regulation 8(1)

¹⁰⁸ Regulation 8(3)

¹⁰⁹ Regulation 8(1)

any other activity being viewed as a reasonable excuse to justify leaving the place where a person lives, that is not impossible.

Welsh Assembly Government has issued guidance to people to assist with these requirements – *“Full Guidance on Staying at Home and Away from Others”*¹¹⁰

The reasons detailed in regulation 8(2) are lengthy and detailed.

“(a) to obtain from any business listed in Part 4 of Schedule 1 —

- (i) basic necessities, including food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;
- (ii) supplies (including money) for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;

Vulnerable persons are defined in regulation 1(3)(c) as including:

“(i) any person aged 70 or older;

(ii) any person under 70 who has an underlying health condition, including but not limited to, the conditions listed in Schedule 2

- [1. Chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease, emphysema or bronchitis.
- 2. Chronic heart disease, such as heart failure.
- 3. Chronic kidney disease.
- 4. Chronic liver disease, such as hepatitis.
- 5. Chronic neurological conditions, such as Parkinson’s disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy.
- 6. Diabetes.
- 7. Problems with the spleen, such as sickle cell disease or if the spleen has been removed.
- 8. A weakened immune system, including as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy.
- 9. Being seriously overweight, with a body mass index of 40 or above.];

(iii) any person who is pregnant.”

¹¹⁰ Available at <https://gov.wales/full-guidance-staying-home-and-away-others>

The guidance states this relates to “shopping for basic necessities, for example food and medicine, which must be as infrequent as possible.”¹¹¹

- (b) to take exercise, no more than once a day, either alone or with other members of the household;

The guidance states this permits “one form of exercise a day, for example a run, walk, or cycle - alone or with members of your household.”¹¹²

- (c) to seek medical assistance, including to access any of the services referred to in paragraph 42 of Schedule 1 [42. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health] or accessing veterinary services;

The guidance states this relates to: “any medical need, or to provide care or to help a vulnerable person.”¹¹³

- (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, to a vulnerable person, or to provide emergency assistance;

This covers:

“(3B) *Relevant personal care* means—

- (a) physical assistance, given to a person who is in need of it by reason of age, illness or disability, in connection with—

- (i) eating or drinking (including the administration of parenteral nutrition),
- (ii) toileting (including in relation to the process of menstruation),
- (iii) washing or bathing,
- (iv) dressing,
- (v) oral care, or
- (vi) the care of skin, hair or nails,

- (b) the prompting, together with supervision, of a person who is in need of it by reason of age, illness or disability in relation to the performance of any of the activities listed in

¹¹¹ “Full Guidance on Staying at Home and Away from Others” Paragraph 2

¹¹² “Full Guidance on Staying at Home and Away from Others” Paragraph 2

¹¹³ “Full Guidance on Staying at Home and Away from Others” Paragraph 2

paragraph (a) where the person is unable to make a decision in relation to performing such an activity without such prompting and supervision, or

- (c) any form of training, instruction, advice or guidance which—
 - (i) relates to the performance of any of the activities listed in paragraph (a),
 - (ii) is given to a person who is in need of it by reason of age, illness or disability, and
 - (iii) does not fall within paragraph (b).¹¹⁴

(e) to donate blood;

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

The Guidance states: “travelling to and from work, but only where this absolutely cannot be done from home”¹¹⁵.

The remaining excuses are self-explanatory, and no further explanation or assistance is given in the guidance.

(g) to attend a funeral of—

- (i) of a member of the person’s household,
- (ii) of a close family member (including a partner, child, step-child or foster child, or parent),
- (iii) of a friend, if no member of the deceased’s household or close family member of the deceased is attending, or
- (iv) as the carer of a person who is attending as a person mentioned in sub-paragraph (i), (ii) or (iii);

(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 the person’s child);
- (ii) social services;
- (iii) services provided by the Department of Work and Pensions;

¹¹⁴ Paragraph 7(3B) Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006.

¹¹⁵ “Full Guidance on Staying at Home and Away from Others” Paragraph 2

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

(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 8(5) prohibits gatherings in public places of more than 2 people, but again there are exceptions which are as follows:

- “(a) where all the persons in the gathering are members of the same household,
- (b) where the gathering is essential for work purposes,
- (c) to attend a funeral, or
- (d) where necessary—
 - (i) to facilitate a house move,
 - (ii) to provide care or assistance to a vulnerable person, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006,
 - (iii) to provide emergency assistance, or
 - (iv) to participate in legal proceedings, or fulfil a legal obligation.”¹¹⁶

“Household” is not defined and will carry its usual everyday meaning; the Shorter Oxford English Dictionary definition is:

“the inmates of the house collectively; a domestic establishment”.

Regulation 9 allows a local authority, a National Park authority, Natural Resources Wales or the National Trust (defined as “relevant authorities”¹¹⁷) to

- “(a) close the public path or access land, and
- (b) keep it closed until the earlier of—
 - (i) the end of the emergency period, or

¹¹⁶ Regulation 7

¹¹⁷ Regulation 9(7)

(ii) the time when the authority considers that closure is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in its area with the coronavirus.”¹¹⁸

where the relevant authority consider paths and land in its area

- “(a) to be liable to large numbers of people congregating or being in close proximity to each other, or
- (b) the use of which otherwise poses a high risk to the incidence or spread of infection in its area with the coronavirus.”¹¹⁹

In relation to these powers, the following definitions apply:

- (b) “public path” means a footpath, bridleway, byway, restricted byway or cycle track and—
 - (i) “footpath”, “bridleway” and “cycle track” have the same meaning as in section 329(1) of the Highways Act 1980;
 - (ii) “byway” means a byway open to all traffic within the meaning given by section 66(1) of the Wildlife and Countryside Act 1981;
 - (iii) “restricted byway” has the meaning given by section 48(4) of the Countryside and Rights of Way Act 2000;
- (c) “access land” includes land to which the public has access by virtue of its ownership by the National Trust, but otherwise has the same meaning as in section 1(1) of the Countryside and Rights of Way Act 2000.¹²⁰

Any path or land already closed under the Health Protection (Coronavirus: Closure of Leisure Businesses, Foot Paths and Access Land) (Wales) Regulations 2020/334 is deemed to be close under these powers¹²¹. The relevant authority must then publish a list of closed parts and land and erecting maintain notices informing the public of the closure¹²²

Any contravention of regulations 4, 6, 7, 8(5) or 9(4) without a reasonable excuse is an offence, as is contravention of any requirement under regulation 8(1). In both cases this is punishable on summary conviction with an unlimited fine¹²³. Where the business is run by a body corporate, directors, managers,

¹¹⁸ Regulation 9(1)

¹¹⁹ Regulation 9(2)

¹²⁰ Regulation 9(7)(b) & (c)

¹²¹ Regulation 9(3)

¹²² Regulation 9(5)

¹²³ Regulation 12(1) & (4) and Magistrates Courts Act 1980 S32(9) and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664

secretaries and other similar officers will be guilty of the offence (in addition to the body corporate itself) if it is proved that the offence was committed with their consent or connivance or as a result of any neglect on their part¹²⁴. In addition, any person who without reasonable excuse obstructs anyone carrying out a function under the regulations is also guilty of an offence¹²⁵.

Regulation 12(5) extends the police power of arrest contained in the section 24 of the Police and Criminal Evidence Act 1984 (PACE") to an offence under this regulation. Section 24 of PACE as amended by regulation 9(7) states:

- (1) A constable may arrest without a warrant—
 - (a) anyone who is about to commit an offence;
 - (b) anyone who is in the act of committing an offence;
 - (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
 - (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.
- (2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
- (3) If an offence has been committed, a constable may arrest without a warrant—
 - (a) anyone who is guilty of the offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
- (4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.
- (5) The reasons are—
 - (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
 - (b) correspondingly as regards the person's address;
 - (c) to prevent the person in question—
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss of or damage to property;

¹²⁴ Regulation 12(6)

¹²⁵ Regulation 12(3)

- (iv) committing an offence against public decency (subject to subsection (6)); or
- (v) causing an unlawful obstruction of the highway;
- (d) to protect a child or other vulnerable person from the person in question;
- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

[(a) to maintain public health;
(b) to maintain public order.]

(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.”

Regulation 13 allows a fixed penalty notice to be issued to anyone who has committed an offence under the regulations and is over the age of 18¹²⁶. Such a notice can only be issued by a “relevant person” which is a:

- (a) a constable,
- (b) a police community support officer, or
- (c) a person designated by—
 - (i) the Welsh Ministers,
 - (ii) a local authority,
 - (iii) a National Park authority in Wales, or
 - (iv) Natural Resources Wales,

for the purposes of this regulation and regulations 11, 12 and 13 (but see paragraphs (12) and (13)).”¹²⁷

but local authorities can only designate a person for breaches of requirements or restrictions and regulations 4, 6, 7 or 9 (closure of premises and places of worship and access to land)¹²⁸. Issue of the fixed penalty notice stays criminal proceedings for at least 28 days¹²⁹, and provided the fixed penalty has been paid before that time no prosecution can take place¹³⁰. The penalty is £60 in respect of the first fixed penalty notice to be issued under these regulations¹³¹ (reducing to £30 if paid within 14 days)¹³². For the

¹²⁶ Regulation 10(1)

¹²⁷ Regulation 10(11)

¹²⁸ Regulation 10(12)

¹²⁹ Regulation 13(4)(a)

¹³⁰ Regulation 13(4)(b)

¹³¹ Regulation 13(6)

¹³² Regulation 13(7)

second fixed penalty notice the penalty is £120¹³³ (with no reduction for early payment).

There is no indication within the regulations how the police or local authorities should deal with crimes committed under these regulations by people under the age of 18, although the position in relation to enforcement of requirements for children is addressed in regulation 10.

There is no reference to any “a person designated by a local authority for the purposes of this regulation” in the regulations themselves or the parent Public Health (Control of Disease) Act 1984 (“the 1984 Act”). Therefore, it would seem that this is any local authority officer designated by the local authority for that purpose. This would appear to require a specific designation to the individual officer.¹³⁴

These are Executive functions¹³⁵, and the power to designate such an officer would lie with the Senior Executive Member, which is the elected Mayor, the Leader or Council Manager¹³⁶.

It would appear therefore that any officer would need to be appointed in that way. There is however, no limitation on the types of officers who can be appointed.

Such a relevant person can issue a prohibition notice for contravention of regulations 4, 6 or 7 provided the issue of such notice is

“necessary and proportionate . . . for the purpose of preventing that person from continuing to contravene the requirement”¹³⁷.

It is therefore important that local authorities and the police have a draft of a suitable notice if required¹³⁸.

It would also be possible for a Health and Safety Inspector to issue a prohibition notice under section 22 of the Health and Safety at Work etc Act 1974 because continued use of the premises would “involve a risk of serious personal injury”.

¹³³ Regulation 13(8)

¹³⁴ This can be contrasted with a delegation which can be to a head of service or section head which then covers officers acting under their direction and control – see *R (app Raphael) v Highbury Corner Magistrates' Court* [2011] LLR 340 CA

¹³⁵ This is because the Local Authorities (Functions and Responsibilities) (Wales) Regulations 2007/399 do not specify the Public Health (Control of Disease) Act 1984 in either schedule 1 or schedule 2 and therefore by virtue of S13 Local Government Act 2000 are the responsibility of the executive.

¹³⁶ See Ss 14 to 16 Local Government Act 2000

¹³⁷ Regulation 8(2)

¹³⁸ See Appendices 4 to 6 to this Article

Regulation 14 prohibits prosecutions being brought by anyone apart from the Director of Public Prosecutions or any person designated by the Welsh Ministers¹³⁹.

Regulation 10 covers enforcement and regulation 10(1) states:

“(1) A relevant person may give a prohibition notice to a person if the relevant person reasonably believes that—

- (a) the person is contravening a requirement in regulation 4, 6 or 7, 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.”

“Relevant person” is defined as above¹⁴⁰.

If a relevant person:

“considers that a person (“P”) is contravening the requirement in regulation 8(1), the relevant person may—

- (a) direct P to return to the place where P is living;
- (b) remove P to that place.”¹⁴¹

And can use reasonable force to exercise that power¹⁴².

The position in relation to children who are outside the place where they are living is slightly different. If they are accompanied by an individual who has responsibility for that child, the direction can be given to the individual to take the child to the place where they living¹⁴³ and so far as is reasonably practicable ensure that the child complies with any direction or instruction that has been given by the relevant person. An individual has responsibility for child if that person

- “(a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child (within the meaning of the Children Act 1989¹⁴⁴)”¹⁴⁵

¹³⁹ No obvious designation has been made in respect of this.

¹⁴⁰ Regulation 10(11)

¹⁴¹ Regulation 10(2)

¹⁴² Regulation 10(3)(b)

¹⁴³ Regulation 10(4)(a)

¹⁴⁴ Section 3(1) of the Children Act 1989 defines “parental responsibility” as meaning:

“all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”

¹⁴⁵ Regulation 10(5)

Where 3 or more people are gathered together in contravention of regulation 8(5), the relevant person may:

- “(a) direct the gathering to disperse;
- (b) direct any person in the gathering to return to the place where they are living;
- (c) remove any person in the gathering to the place where they are living.”¹⁴⁶

and in those circumstances, reasonable force and all the provisions noted above in relation to children apply¹⁴⁷

Regulation 11 allows a relevant person to enter premises, using reasonable force if necessary¹⁴⁸ when they have:

- “(a) reasonable grounds for suspecting that a requirement imposed by these Regulations is being, has been or is about to be contravened on the premises, and
- (b) considers it necessary to enter the premises for the purpose of ascertaining whether the requirement is being, has been or is about to be contravened.”¹⁴⁹

They can be accompanied by other people and take equipment and materials as appear to be appropriate¹⁵⁰, and if the premises are unoccupied must leave them effectively secured¹⁵¹.

James T H Button
27th March 2020

For further information please contact James Button on 01629 735566 or james@jamesbutton.co.uk

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James T H Button, BA, Solicitor, CLoL – Principal.

¹⁴⁶ Regulation 10(7)

¹⁴⁷ Regulation 10(8)

¹⁴⁸ Regulation 11(2)(a)

¹⁴⁹ Regulation 11(1)

¹⁵⁰ Regulation 11(2)(b)

¹⁵¹ Regulation 11(3)(b)

Appendix 1 - England

Requirement to close premises (Prohibited Activities) Regulation 4

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

PROHIBITION NOTICE

To the person carrying on the business *[name of person if known]*, as a owner/proprietor/manager*

[Name and address of premises]

The above premises open to the public and being a Restaurant / Café / Workplace canteen / Bar / Public house / Cinema / Theatre / Nightclub / Bingo hall / Concert hall / Museum / Galley / Casino / Betting shop / Spa / Nail salons / Beauty salon / Hair salon / Barber / Massage parlour / Tattoo parlour / Piercing parlour / Skating rink / Indoor fitness studio/ Gym / Swimming pool / Bowling alley / Amusement arcade/ Soft play area / Other indoor leisure centre or facility / Funfair (whether outdoors or indoors) / Playground / Sports court/ Outdoor gym / Outdoor markets (except for stalls selling food) / Car showroom / Auction House.*

is contravening regulation 4 of the above regulations and you as the person carrying on the business are committing a criminal offence punishable on conviction with an unlimited fine.

These premises must cease trading in contravention of the regulations immediately.

If you have any questions relating to this notice you may contact:

Name	
Address	
Phone number	

[local authority/police constabulary name]*

[date]

* Delete as applicable

Appendix 2 - England

Requirement to close premises (Non Essential Premises) Regulation 5

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

PROHIBITION NOTICE

To the person carrying on the business *[name of person if known]*, as a owner/proprietor/manager*

[Name and address of premises]

The above premises open to the public and not being a Food retailer, including food market, supermarket, convenience store or corner shop / Off licence or licensed shops selling alcohol (including a brewery) / Pharmacy (including a non-dispensing pharmacy) or chemist / Newsagent / Homeware, building supply or hardware store / Petrol station / Car repair or MOT service premises / Bicycle shop / Taxi (hackney carriage or private hire) or vehicle hire business / Bank / Building society / Credit union / Short term loan provider / Cash point / Post office / Funeral director / Laundrette / Dry cleaners / Provider of dental services / Optician / Provider of audiology services / Provider of, chiropody services / Chiropractor/ Osteopath / Provider of other medical or health services, including services relating to mental health / Veterinary surgeon / Pet shops / Agricultural supplies shop / Storage or distribution facility including delivery drop off or collection points, where the facilities are in the premises of a business included in this list / Car park / Public toilet.*

is contravening regulation 5 of the above regulations and you as the person carrying on the business are committing a criminal offence punishable on conviction with an unlimited fine.

These premises must cease trading in contravention of the regulations immediately.

If you have any questions relating to this notice you may contact:

Name	
Address	
Phone number	

[local authority/police constabulary name]*

[date]

* Delete as applicable

Appendix 3 - England

Requirement to close premises (Holiday Accommodation) Regulation 5

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

PROHIBITION NOTICE

To the person carrying on the business *[name of person if known]*, as a owner/proprietor/manager*

[Name and address of premises]

The above holiday accommodation and being a Hotel / Hostel/ Bed and breakfast accommodation / Holiday apartment / Holiday home / Holiday cottage / Holiday bungalow / Campsite / Caravan park / Boarding house*

In continuing use is contravening regulation 5 of the above regulations and you as the person carrying on the business are committing a criminal offence punishable on conviction with an unlimited fine.

These premises must cease trading in contravention of the regulations immediately.

If you have any questions relating to this notice you may contact:

Name	
Address	
Phone number	

[local authority/police constabulary name]*

[date]

* Delete as applicable

Appendix 4 - Wales

Requirement to close premises (Prohibited Activities) Regulation 4

Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

PROHIBITION NOTICE

To the person carrying on the business *[name of person if known]*, as a owner/proprietor/manager*

[Name and address of premises]

The above premises open to the public and being a Restaurant / Café / Workplace canteen / Bar / Public house / Cinema / Theatre / Nightclub / Bingo hall / Concert hall / Museum / Galley / Library/ Archive premises / Casino / Betting shop / Nail salons / Beauty salon / Hair salon / Barber / Massage parlour / Tanning Salon / Piercing studio / Tattoo studio / Electrolysis studio / Acupuncture studio / Skating rink / Swimming pool / Indoor fitness studio/ Gym / Spas / Other indoor leisure centre or facility / Bowling alley / Amusement arcade/ Indoor play area / Funfair (whether outdoors or indoors) / Playground / Sports court/ Outdoor gym / Outdoor markets (except for stalls selling food) / Car showroom / Auction House.*

is contravening regulation 4 of the above regulations and you as the person carrying on the business are committing a criminal offence punishable on conviction with an unlimited fine.

These premises must cease trading in contravention of the regulations immediately.

If you have any questions relating to this notice you may contact:

Name	
Address	
Phone number	

[local authority/police constabulary name]*

[date]

* Delete as applicable

Appendix 5 - Wales

Requirement to close premises (Non Essential Premises) Regulation 6

Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

PROHIBITION NOTICE

To the person carrying on the business *[name of person if known]*, as a owner/proprietor/manager*

[Name and address of premises]

The above premises open to the public and not being a Food retailer, including food market, supermarket, convenience store or corner shop / establishments selling food or drink for consumption on the premises which has ceased that activity / Off licence or licensed shops selling alcohol (including a brewery) / Pharmacy (including a non-dispensing pharmacy) or chemist / Newsagent / Homeware, building supply or hardware store / Petrol station / Car repair or MOT service premises / Bicycle shop / Taxi (hackney carriage or private hire) or vehicle hire business / Bank / Building society / Credit union / Short term loan provider / Cash point / Post office / Funeral director / Laundrette / Dry cleaners / Provider of dental services / Optician / Provider of audiology services / Provider of chiropody services / Chiropractor/ Osteopath / Provider of other medical or health services, including services relating to mental health / Veterinary surgeon / Pet shops / Agricultural supplies shop / Storage or distribution facility including delivery drop off points / Car park / Public toilet.*

is contravening regulation 6 of the above regulations and you as the person carrying on the business are committing a criminal offence punishable on conviction with an unlimited fine.

These premises must cease trading in contravention of the regulations immediately.

If you have any questions relating to this notice you may contact:

Name	
Address	
Phone number	

[local authority/police constabulary name]
[date]*

* Delete as applicable

Appendix 6 - Wales

Requirement to close premises (Holiday Sites) Regulation 5

Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020

PROHIBITION NOTICE

To the person carrying on the business *[name of person if known]*, as a owner/proprietor/manager*

[Name and address of premises]

The above holiday site and being land on which a mobile home or caravan is station for the purposes of human habitation

In continuing use is contravening regulation 5 of the above regulations and you as the person carrying on the business are committing a criminal offence punishable on conviction with an unlimited fine.

These premises must cease trading in contravention of the regulations immediately.

If you have any questions relating to this notice you may contact:

Name	
Address	
Phone number	

[local authority/police constabulary name]

[date]

* Delete as applicable