



COVID-19 – Policing brief in response to Health Protection Regulations – updated



England

01.06.2020

- This pack covers The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 – reconciling powers in relation to business closures with powers to disperse gatherings and staying away overnight. As updated by The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020 on 22 April, 13 May and 1 June 2020.

A summary highlighting the changes from 1 June is available on the College of Policing website.

- We have published another briefing on the Coronavirus Act (providing powers relating to potentially infectious persons and powers to the Secretary of State to issue directions relating to events, gatherings and premises). This was published on 3 April 2020.

The Coronavirus Act briefing is available on the College of Policing website.

As the pandemic has developed, guidance and legislation has been produced and amended. This summary has been created as an explanation of the three main types of guiding document. 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.

The Health Protection Regulations (secondary legislation) – police powers under the Regulations are mainly about:

- enforcing a requirement to remain at home overnight, exceptions apply (Reg.6)
- enforcing a requirement not to gather (Reg.7)
- enforcing the closure of businesses (Reg.4) – operationally, it is agreed that this will be led by Trading Standards and local authorities, who have responsibility for issuing Prohibition Notices where required. The police may be called upon to support.
- **Yes, enforceable.** Anyone contravening these requirements commits an offence, punishable on summary conviction by a fine.

The Coronavirus Act 2020 (primary legislation) – police powers under the Act are mainly about directing people to be tested for coronavirus and enforcing medical directions. These powers will seldom be used and only when requested by a public health official (save for where totally impractical to do so).

Yes, enforceable. There are five main summary offences created by the legislation. These offences are punishable on summary conviction (magistrates court) by a fine not exceeding level 3 on the standard scale (£1,000).

Government guidance – is **not enforceable**, for example two-metre distancing, avoiding public transport or the wearing of face coverings in enclosed spaces. **Do not issue fines** to people for not adhering to government guidance.

The police response will be to follow the **four-step escalation principles**:

- 1 **Engage**
- 2 **Explain**
- 3 **Encourage**
- 4 **Enforce**

We **police by consent**. The initial police response should be to encourage voluntary compliance.

This could be through asking **individuals, groups** or **businesses** whether they have heard about the restrictions and why they may not be complying with them. This should be done by stressing the risks to public health and the NHS.

There is no power to '**stop and account**'.

The government has committed to creating a system that is **flexible, discretionary** and **pragmatic**. This will enable officers to make sensible decisions and employ their judgement. Enforcement should be a last resort.

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

Introduction

The Health Protection Regulations came into force on 26 March 2020 and apply to England only. These were subsequently amended on 22 April 2020, 13 May 2020 and 1 June 2020 and may be subject to further change. Wales, Scotland and Northern Ireland have equivalent legislation. The purpose of these powers is to prevent the spread of the virus, protect the NHS, and save lives.

The Regulations provide powers to a relevant person to:

- require the closure of premises and businesses (Reg.4 and 5). Local authorities and Trading Standards will lead on enforcing and monitoring the closure of business
- restrict overnight stays and gatherings (Reg.6 and 7)

A 'relevant person' is defined in Regulation 8 as a constable, a PCSO, or a person designated by the Secretary of State for the purposes of the regulation (or a person designated by a local authority for the purposes of this regulation – but only in relation to Reg.4 and Reg.5). Regulation 12 states that the Regulations will expire at the end of a period of six months, beginning with the day they come into force.

The need for the restrictions or requirements imposed by these Regulations will be reviewed by the Secretary of State at least once every 28 days. This will be an ever-changing picture and everyone in policing is encouraged to follow developments closely.

The approach to restrictions has changed. Rather than requiring a reasonable excuse to leave the place where a person is living, there are specific things that members of the public cannot do.

A person may now leave and remain outside of the place where they live for any reason, subject to restrictions on gatherings and overnight stays.

Staying overnight

- No person may, without reasonable excuse, stay overnight at any place other than the place where they are living.
- The list of reasonable excuses is not exhaustive and officers should use their discretion to determine what may be reasonable in the circumstances with which they are presented.
- You should note that the Health Protection Regulations provide no power of entry in these circumstances.
- Exemptions apply for the homeless.
- Reasonable excuses include, but are not limited to:
 - attending a funeral
 - an elite athlete and their coach or parent
 - moving house
 - work purposes or the provision of voluntary or charitable services
 - providing care or assistance to a vulnerable person
 - providing emergency assistance
 - avoiding injury, illness or to escape a risk of harm
 - obtaining medical assistance
 - fulfilling legal obligations or participating in legal proceedings
 - facilitating access between parents and children
 - it is not safe for a person to live there
 - it being unlawful to travel or there is some legal requirement to stay elsewhere
 - the place where they are living is not available for any other reason

Gatherings

A person may now leave and remain outside of the place where they live **for any reason**. However, no person may participate in a prohibited gathering which takes place in a public or private place, exceptions apply.

Outdoors: Gatherings of more than six people are not permitted.

Indoors: No gatherings are permitted.

You may direct gatherings to disperse, or direct any person at that gathering to return to their home. Only if the gathering is in a public place may you remove any such person to their home, using reasonable force if necessary.

The Health Protection Regulations provides no power of entry in these circumstances.

There is a gathering when two or more people are present together in the same place in order to engage in any form of social interaction or to undertake any other activity with each other, subject to the exceptions below.

Exceptions apply for:

- members of the same household
- a person attending a funeral
- an elite athlete and their coach or parent
- work purposes or the provision of voluntary or charitable services
- facilitating house moves
- providing care or assistance to a vulnerable person
- providing emergency assistance
- providing registered early years childcare
- avoiding injury, illness or to escape a risk of harm
- facilitating access between parents and children
- fulfilling legal obligations or participating in legal proceedings
- the purposes of education

Police powers

Should you encounter anyone in breach of these Regulations you may:

Under Reg.6 Staying overnight

- direct that person to return to the place where they are living

You cannot remove the person or use reasonable force

Under Reg.7 Gatherings

- direct the gathering to disperse
- direct any person in the gathering to return to the place where they are living
- only in a public place, use reasonable force in the exercise of the power to remove the person to the place where they are living

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

Where someone is believed to have **committed an offence** under these regulations and is 18 or over, you may issue them with a fine 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.**

Children

If you believe anyone is breaching the restrictions, including a child (someone under 18 years of age) and none of the exceptions apply, you can:

- **direct that person to return to the place where they are living**
- **remove that person to the place where they are living (only from a gathering in a public place)**
- **give the person concerned any reasonable instructions you consider to be necessary**
- **use reasonable force in the exercise of the power (only when removing them from a gathering in a public place)**

The powers also apply to an individual who is responsible for and is accompanying a child who is breaching these Regulations.

Your powers extend to direct anyone who has responsibility for the child, even if temporary, to secure compliance with the Regulations.

An FPN may be issued to a responsible adult who fails when directed to stop a child repeatedly breaching the restrictions on staying overnight or gatherings, to the extent reasonably practicable. It is the breach of the direction that can result in an FPN.

Recording

These are non-recordable offences. They can't be punished by imprisonment.

- Ensure you are adhering to your own force protocols and force management system recording.
- Biometrics are not required to be taken.

Powers of arrest

The necessity test under Section 24 PACE has been temporarily amended by the Health Protection Regulations 9(7) 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.

How do the English and Welsh Regulations 2020 vary?

Wales	England
<p>Staying inside (domestic/residential) – a person cannot be indoors with another person unless they are a member of their household, a carer or the person to whom they provide care.</p>	<p>Staying overnight – a person may not, without reasonable excuse, stay overnight at any place other than the place where they are living.</p>
<p>Work – the Regulations state that a person cannot leave or remain away from the place where they are living to work, or to provide voluntary or charitable services, where it would be reasonably practicable to do so from home.</p>	<p>Work – the police have no powers to enforce working from home.</p>
<p>Leaving your home – a person can now leave and remain outside of their home for any reason. However they are required to stay local to the place where they are living unless they have a 'reasonable excuse', exceptions apply.</p>	<p>Leaving your home – a person may now leave and remain outside of the place where they live for any reason, however, they are required to stay at the place where they are living overnight.</p>
<p>Gatherings – a person can gather outdoors with people from no more than one other household, there is no limit on the number of people in the gathering. Exceptions apply.</p>	<p>Gatherings – of no more than six people are permitted to gather outdoors. No gatherings are permitted indoors. Exceptions apply.</p>
<p>Two-metre distancing – measures are applicable on certain premises. Policing is not responsible for enforcing workplace social distancing, this requirement rests with Welsh local authorities.</p>	<p>Two-metre distancing – the police have no powers to enforce two-metre distancing.</p>

How do the English and Welsh Regulations 2020 vary?(continued)

Wales	England
<p>Powers of entry – Welsh Regulations have given powers of entry if a relevant person has reasonable grounds for suspecting that a requirement imposed by the Welsh Regulations is being, has been or is about to be contravened on the premises, and that it is necessary to enter the premises to ascertain this.</p>	<p>Powers of entry – the Health Protection Regulations provide no power of entry, although there may be other options under other laws, if other offences are observed.</p>
<p>Public paths and land – Welsh Regulations have imposed an obligation on relevant authorities to close public paths or access land liable to attract large numbers of people in close proximity. People are prohibited from using closed paths or access land. Relevant persons have powers to remove people from such closed areas.</p>	<p>Public paths and land – there are no restrictions on the use of public paths and land.</p>
<p>Police powers – in public or private, officers can direct a person to return home or remove them to that place. They may use reasonable force in exercising these powers as necessary. Officers can issue a fixed penalty notice or arrest if appropriate. The policing approach in Wales is to follow the four 'E's.</p>	<p>Police powers – in a private place, officers may direct a person to return home or direct a gathering to disperse. There are no powers in the Regulations to remove someone or use force in a private place. Direction, removal and/or use of force can be used in public. FPN and arrest apply, where appropriate. The policing approach in England is to follow the four 'E's.</p>
<p>Fine amounts – start at £60 for the first offence then double for each subsequent offence up to £1,920 for the sixth and subsequent offences. There is a reduction to £30 for the first fine only for payment within 14 days.</p>	<p>Fine amounts – start at £100 for the first offence then double for each subsequent offence up to £3,200 for the sixth and subsequent offences. There is a reduction to £50 for the first fine only for payment within 14 days.</p>

What does the officer/PCSO need to do on the street?

Penalty Notice for COVID-19

PART 1 - PROFORMA FOR OFFICER

Force Code

PNC checked? Yes No

Offender Details Title _____ Date of Birth _____

Surname _____

Forenames _____

Address _____

Postcode _____ Telephone _____

Email _____

PNC ID CODE _____ Self-Defined Ethnicity _____ Gender (circle) M | F | U

On _____ 20 _____ at _____ hours

At _____

(Delete as appropriate)

Contravene requirement to not participate in a gathering in public of more than two people – Coronavirus

Contravene requirement as to restriction of movement during emergency period – Coronavirus

Obstruct person carrying out a function under the regulations – Coronavirus

Contravene requirement from relevant person – Coronavirus

Contravene a direction or fail to comply with instruction – Coronavirus

Circumstances of the offence _____

Contrary to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.

Issuing Officer (PRINT NAME) _____

Signed _____ No. _____

Station _____ Station Code _____

Force _____ Date _____

ID CHECKS MUST BE COMPLETED

ID CHECKS MADE (details section must be filled in)

Driver's Licence Passport Bank / Credit Card Mobile Data

Travel / Photo Card National Insurance

Other (specify) _____

ID Document No. _____

Incident No. _____

BWV Ref No. _____ (if applicable)

Please forward the information via photograph or electronic format to: cv19.fpn@acro.pnn.police.uk

1. Police officer/PCSO takes the decision **that an offence has been committed** under these regulations and FPN needs to be issued.
2. The officer/PCSO takes the details required for the fine on a standard form, and reports the person for summons and gives them a caution.
3. The encounter should be recorded on body-worn video (where available) and sufficient information should be obtained to provide a statement if the person fails to make payment.
4. The officer/PCSO emails a copy of the standard form to a dedicated mailbox in ACRO – cv19.fpn@acro.pnn.police.uk
5. Everything else will be dealt with centrally and will only come back to the force if the person fails to make payment.