

**NOTE ON COUNTY COUNCIL POWERS UNDER THE HEALTH PROTECTION
(CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO3) REGULATIONS
2020**

1 Purpose

- 1.1 To update on the new powers granted to upper tier local authorities to support local outbreak management.

2 The Regulations

- 2.1 The powers are contained in The Health Protection (Coronavirus, Restrictions) (England) (No3) Regulations 2020
- 2.2 The Regulations came into force at one minute past midnight on 18 July 2020. They expire at the end of 17 January 2021.
- 2.3 The powers in the Regulations are conferred on the County Council.
- 2.4 The Regulations are supplemented by quite detailed Guidance. This Note includes the implications of the Guidance where it relates to the general exercise of the powers. The Guidance should be consulted over more detailed process issues.

3 The Powers

3A Directions relating to individual premises (Regulation 4)

- 3A.1 A local authority may give a direction imposing prohibitions, requirements or restrictions in relation to the entry into, departure from, or location of persons in, specified premises in the local authority's area.
- 3A.2 A direction may be given only for the purposes of closing the premises, restricting entry to the premises, or securing restrictions in relation to the location of persons in the premises.
- 3A.3 A direction may impose a prohibition, requirement or restriction by reference to, among other things the number of persons in the premises, the purpose for which a person is in the premises, and the facilities in the premises.
- 3A.4 The direction may only have the effect of imposing a prohibition, requirement or restriction on the owner or any occupier of the premises and any other person involved in managing entry into, or departure from, the premises or the location of persons in them.
- 3A.5 A local authority may not give a direction in relation to—
- (a) any premises which forms part of essential infrastructure,
 - (b) vehicles, trains, vessels or aircraft used for public transport or the carriage or haulage of goods, or

- (c) a vessel not falling within paragraph (b), where the direction would be likely to have the effect of preventing a change-over of crew.
- 3A.6 The term "essential infrastructure" is not defined in the Regulations. A non-exhaustive list is given in the Guidance which states that local authorities should use their discretion to consider whether premises could be considered essential local or national infrastructure before using the power. It also states that while public transport is included in the list of essential infrastructure, this doesn't include taxis or private hire vehicles. In deciding whether to shut down transport services, local authorities should be mindful of their duty to facilitate home to school transport for eligible children.
- 3A.7 Before giving a direction under this Regulation a local authority must have regard to the need to ensure that members of the public have access to essential public services and goods.
- 3B *Directions relating to events (Regulation 5)*
- 3B.1 A local authority may give a direction imposing prohibitions, requirements or restrictions in relation to the holding of an event in its area. The direction may be given in relation to a specified event, or events of a specified description.
- 3B.2 A direction may only have the effect of imposing prohibitions, requirements or restrictions on the owner or any occupier of premises for an event to which the direction relates, the organiser of such an event, and any other person involved in holding such an event. This does not include a person whose only involvement in the event is, or would be, by attendance at the event.
- 3B.3 A direction may, among other things, impose requirements about informing persons who may be planning to attend an event of any prohibitions, requirements or restrictions imposed in relation to the holding of it.
- 3B.4 The Guidance states that local authorities would be expected, at a minimum, to:
- gather the relevant evidence, such as the location of the event, disease prevalence and transmission rates in the area, and the risks associated with the event, including for example, the anticipated level of attendance and the activities that are due to take place
 - consult neighbouring authorities of both tiers where relevant, (and the other tier in 2-tier authorities), concerning use of the power
 - engage with partners through the local Safety Advisory Group and Local Resilience Forum to ensure emergency services are aware of proposals and manage risk, including the risk that people may travel to other local spaces

3C *Directions relating to public outdoor places (Regulations 6 to 8)*

- 3C.1 A local authority may give a direction imposing prohibitions, requirements or restrictions in relation to access to a specified public outdoor place in its area, or public outdoor places in its area of a specified description. A direction may prohibit access at specified times.
- 3C.2 A “public outdoor place” is any outdoor place to which the public have or are permitted access, whether on payment or otherwise, and includes
- (a) land laid out as a public garden or used for the purpose of recreation by members of the public;
 - (b) land which is “open country”
 - (c) land which is “access land”
 - (d) any highway to which the public has access; and
 - (e) Crown land outdoors to which the public has access.
- 3C.3 A local authority which has given a direction and any person who owns, occupies or is responsible for land in a public outdoor place to which a direction relates must take reasonable steps to prevent or restrict public access to the public outdoor place or places to which the direction relates in accordance with the direction.
- 3C.4 No person may without reasonable excuse enter or remain in a public outdoor place to which a direction relates in contravention of a prohibition, requirement or restriction imposed by the direction. There is a non-exhaustive list of reasonable excuses in the Regulations
- 3C.5 A local authority may not, without the agreement of the appropriate authority, give a direction in relation to a public outdoor place which forms part of certain categories of Crown land.
- 3C.6 The regulations require the local authority to consider that a serious and imminent threat to health exists relating to COVID-19 transmission. The Guidance states that this could be where they are aware of a planned event, or where past experience indicates a high risk that the numbers of people expected to seek to use a space would make it unsafe, including for example a popular beach or an enclosed square in a metropolis.
- 3C.7 According to the Guidance, in such instances, local authorities would be expected, at a minimum, to:
- gather the relevant evidence, such as geographical boundary of the space, disease prevalence and transmission rates, and evidence relating to the risk attached

- consult neighbouring authorities of both tiers where relevant (and the other tier in two tier authorities), and about proposals to exercise the power
- engage with partners through the Local Resilience Forum to ensure emergency services are aware of proposals and manage risk, including the risk that people may travel to other local spaces

3C.8 The Guidance states that although all possible uses of the power cannot be known at present, the government would usually expect that the power would not be exercised so as to restrict social interaction between people living in the area and outside. They would usually expect directions to be drawn in such a way that visitors from outside the area, such as friends and family, would be able to visit people living within the area, unless the movement of people has been restricted within other regulations. They would not usually expect directions to prevent people from travelling within an area if the start and end of their journeys are outside it, for example long distance motorway journeys that pass through the area.

3C.9 The Guidance also states that a direction relating to a public outdoor place should not be used as a means to indirectly control premises, should the closure of a public outdoor place restrict access to premises in the vicinity. If the closure of a public outdoor place is deemed to be a necessary and proportionate measure, consideration should also be given to restriction of access to premises that may be an indirect consequence of such action. Any closure of premises will need to be considered separately in accordance with Regulation 4, and should not be the indirect consequence of restricting access to a public outdoor place.

3D *Directions to District Councils (Regulation 17)*

3D.1 A county council for an area for which there is also a district council may direct the district council to exercise any of the district council's functions in a specified way if, but only if, it considers that it is necessary and proportionate to do so in order to prevent, protect against, delay or otherwise control the incidence or spread of infection by coronavirus in the district council's area.

3D.2 A direction once given may be varied or revoked by the county council.

3D.3 In determining whether to give, vary or revoke such a direction, the county council must have regard to any advice given to it by its Director of Public Health.

3D.4 The Guidance gives no further commentary on this power.

4 Pre-conditions to the exercise of the Powers and notification requirements

- 4.1 A local authority may give a direction under regulation 4, 5 or 6 only if the authority considers that the following conditions are met—
- (a) that giving such a direction responds to a serious and imminent threat to public health,
 - (b) that the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and
 - (c) that the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.
- 4.2 In determining whether to give a direction under regulation 4, 5 or 6 the local authority must have regard to any advice given to it by its Director of Public Health.
- 4.3 Guidance states that before making a direction, local authorities will need to gather sufficient evidence to demonstrate that the above tests have been met. This evidence may come from a range of sources, including information provided to the local authority from local experts, through the Local Resilience Forum, from NHS Test and Trace (including the Joint Biosecurity Centre (JBC)), from Public Health England (PHE) and from other sources.
- 4.4 The Guidance states that a local authority should also consult the police prior to issuing a direction, and any neighbouring police forces if the direction prohibits, requires or restricts access to a premise, event or public outdoor place that is situated against a Local Resilience Forum boundary. Local authorities should be clear about why they are taking directive action and communicate this clearly to the Secretary of State, the person(s) to whom the direction applies and, where appropriate, those impacted by the direction.
- 4.5 Prior to issuing a direction, local authorities must have due regard to the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 and should consider carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics. Identifying disproportionate impact would not prohibit a local authority from taking action, but this should be balanced against the wider public health risk in a local authority's area, and mitigations should be considered and implemented wherever possible.

- 4.6 Where a local authority gives a direction under regulation 4, 5 or 6 the local authority must notify the Secretary of State as soon as reasonably practicable after the direction is given.
- 4.7 Guidance states that this should include a copy of the direction, the reason for issuing the direction, the location or area the direction relates to, the organisations and groups of people expected to be directly and indirectly affected by the direction, the stakeholders consulted on the decision on the direction (including NHS Test and Trace Regional Support and Assurance Teams, government departments and PHE), the date and time on which the restriction comes into effect, and the date and time on which it will end.

5 Review and Revocation of Directions

- 5.1 Where a local authority gives a direction under regulation 4, 5 or 6 the local authority must, at least once every 7 days, review whether the conditions in paragraph 4.1 above continue to be met.
- 5.2 If on a review of a direction a local authority considers that one or more of the conditions in paragraph 4.1 is no longer met in relation to the direction, the local authority must by notice
- (a) revoke the direction without replacement, or
 - (b) revoke the direction and replace it with a further direction under regulation 4, 5 or 6 in relation to which the local authority considers that the conditions in paragraph 4.1 are met.
- 5.3 In determining whether to revoke a direction, a local authority must have regard to any advice given to it by its Director of Public Health.

6 Powers of the Secretary of State

- 6.1 The Secretary of State may give a direction to a local authority requiring the authority to give a direction under regulation 4, 5 or 6, if the Secretary of State considers that the pre-conditions in paragraph 4.1 would be met in relation to the local authority direction.
- 6.2 If the Secretary of State considers that one or more of the pre-conditions in paragraph 4.1 is no longer met in relation to a direction given by a local authority, the Secretary of State must direct the local authority to revoke the direction without replacement, or revoke the direction and replace it with a further direction in relation to which the Secretary of State considers that the pre-conditions in paragraph 4.1 would be met.
- 6.3 A direction given by the Secretary of State may be revoked by the Secretary of State.
- 6.4 Before giving or revoking a direction to a local authority, the Secretary of State must consult the Chief Medical Officer or one of the Deputy Chief Medical Officers of the Department of Health and Social Care.

7 Right of Appeal/Representations

- 7.1 A person on whom a direction under Regulation 4, 5 or 6 imposes a prohibition, requirement or restriction or who owns, occupies or is responsible for land or premises in a public outdoor place to which a direction relates may appeal against the direction to a magistrates' court and make representations to the Secretary of State about the direction.
- 7.2 Where a person makes representations to the Secretary of State the Secretary of State must consider the representations as soon as is reasonably practicable, and decide whether it would be appropriate to exercise its power to give directions to the local authority
- 7.3 The Secretary of State must provide written reasons for the decision to the person who made the representations, and the local authority which gave the direction to which the representations relate.
- 7.4 The Guidance states that should a recipient of a direction wish to appeal, the appeal should be lodged as soon as possible and, where possible, submitted within the 7-day review period.
- 7.5 An appellant would need to be able to satisfy the court on the balance of probabilities that the decision made by the local authority was wrong – in that it did not satisfy the three conditions listed in the introduction section above – and bring forward any supplementary evidence to support the appeal. This may include reasons as to why the appellant deems the direction should not have been made, and why the local authority's reasons for taking action do not meet the conditions as they are set out in Regulation 2(1).
- 7.6 The Guidance states that the recipient of a notice must fulfil the requirement of the direction until the appeal is resolved.

8 Formalities and Publication

- 8.1 A direction under Regulation 4, 5 or 6 must
- (a) state the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which it will end, and
 - (b) give details of the right of appeal to a magistrates' court, and the time within which such an appeal may be brought.
- 8.2 Where a local authority gives a direction under Regulation 4, 5 or 6 it must take reasonable steps to give advance notice of the direction to
- (a) a person carrying on a business from the premises to which the direction relates,
 - (b) if different, any person who owns or occupies the premises;

- (c) the organiser of the event,
- (d) if different, any person who owns or occupies the premises for the event
- (e) a person carrying on a business from premises within a public outdoor place to which the direction relates, and

ensure that the direction is brought to the attention of any person who owns, occupies or is responsible for any land or premises in a public outdoor place to which the direction relates.

- 8.3 A direction relating to a public outdoor place must specify or describe the public outdoor place or places to which it relates in sufficient detail to enable the boundaries of the place or places to be determined,
- 8.4 Where a local authority gives a direction under regulation 4, 5 or 6 which imposes a prohibition, requirement or restriction on a person specified by name, or revokes such a direction, the direction or notice of revocation
 - (a) must be given in writing to that person, and
 - (b) may be published in such manner as the local authority considers appropriate to bring it to the attention of other persons who may be affected by it.
- 8.5 In any other case, a direction given by a local authority under regulation 4, 5 or 6 or notice of revocation of such a direction
 - (a) must be published on the website of the local authority, and
 - (b) may be published in such other manner as the local authority considers appropriate to bring it to the attention of persons who may be affected by the direction or the revocation.
- 8.6 A direction given by a local authority under regulation 4(1), 5(1) or 6(1) must specify the power in these Regulations under which the direction is given.
- 8.7 As well as the above, the Guidance states that notice of the direction should be issued in the form of a written letter and/or email communication, clearly stating the powers under which the direction is being made and the reason for invoking, or revoking, the direction. This should include the basis on which the three conditions are met and why a specific prohibition, requirement or restriction is necessary.

9 Notification of directions to and by other local authorities

- 9.1 Where the county council gives a direction under regulation 4, 5 or 6, or revokes such a direction, the initiating authority must notify—
 - (a) any local authority whose area is adjacent to its area; and
 - (c) the district councils in its area.

- 9.2 Where the county council is notified by another local authority under paragraph 9.1 it must consider, as soon as may be reasonably practicable, whether to exercise its own powers under the Regulations, notify the notifying authority of what it has decided to do, and notify the district councils of the matter notified to it and of its own decision.

10 Enforcement

- 10.1 A local authority designated officer or a constable may take such action as is necessary to enforce a direction under regulation 4, 5 or 6.
- 10.2 A local authority designated officer may give a prohibition notice to a person if the officer reasonably believes that the person is contravening a direction under regulation 4 or 5, and it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to do so.
- 10.3 Where a constable considers that an event is being held in contravention of a direction under regulation 5(1), the constable may direct the event to stop, direct a person to leave the event, and remove a person from the event.
- 10.4 Where a constable considers that a person is, without reasonable excuse, in a public outdoor place in contravention of the Regulations, the constable may direct that person to leave the place, and remove that person from the place.
- 10.5 A “local authority designated officer” means a person designated by a local authority for the purposes of enforcing the Regulations.
- 10.6 The Guidance states that following a direction being issued, local authorities should ensure a multi-agency approach, to limit the need to enforce under policing powers alone.

11 Offences and Penalties

- 11.1 A person commits an offence if, without reasonable excuse, they:-
- (a) contravene a direction under regulation 4,
 - (b) contravene a direction under regulation 5,
 - (c) own, occupy or are responsible for land in a public outdoor place to which a direction under regulation 6 relates and do not take reasonable steps to prevent or restrict public access to that land in accordance with the direction.
 - (d) obstruct a person carrying out a function under these Regulations, including any local authority designated officer or constable, or
 - (e) contravene a direction given under enforcement powers, or fails to comply with a reasonable instruction or a prohibition notice.

- (f) enter or remain in a public outdoor place to which a direction under regulation 6 relates in contravention of a prohibition, requirement or restriction imposed by the direction

11.2 An offence is punishable on summary conviction by a fine.

12 Fixed Penalty Notices

- 12.1 An authorised person may issue a fixed penalty notice to anyone that the authorised person reasonably believes has committed an offence under the Regulations, and is aged 18 or over.
- 12.2 If the fixed penalty notice is the first issued to the person, the amount of the fixed penalty is £50, if paid within 14 days of the notice and otherwise £100.
- 12.3 If the fixed penalty notice is not the first fixed penalty notice issued to the person the amount of the fixed penalty is as follows—
 - (a) if it is the second fixed penalty notice, £200,
 - (b) if it is the third fixed penalty notice, £400,
 - (c) if it is the fourth fixed penalty notice, £800,
 - (d) if it is the fifth fixed penalty notice, £1,600,
 - (e) if it is the sixth fixed penalty notice and for any subsequent fixed penalty notice, £3,200.
- 12.4 Fixed penalty notices issued under other Coronavirus Restriction Regulations are included in determining how many fixed penalty notices have been issued
- 12.5 A person designated by the local authority is authorised to issue a fixed penalty notice for offences under paragraphs 11.1(a), (b) or (c) above or for obstruction of a local authority designated officer. Otherwise the power is vested in a constable.
- 12.6 Proceedings for an offence under the Regulations may be brought by a local authority, the Crown Prosecution Service and any person designated by the Secretary of State (but this does not affect any other power to bring proceedings for such an offence).

13 Advice

- 13.1 The Guidance states that local authorities are encouraged to seek advice in advance of exercising powers under these Regulations, should they require any practical support, and may contact NHS Test and Trace at directionnotification@dhsc.gov.uk.