

## JUNE BULLETIN SUPPLEMENT

### Restrictions on Movement and Business Closures **UPDATED**

*This June Bulletin Supplement looks at the Lockdown Regulations as amended from 1<sup>st</sup> June. The original restrictions were analysed in the 3<sup>rd</sup> Edition of the March Bulletin, and that analysis was updated in the April and May Bulletin Supplements as the Regulations were amended in both England and Wales. PLEASE NOTE THERE IS NO JUNE BULLETIN – ONLY THIS SUPPLEMENT. This update takes account of the further amendments to the regulations in both England and Wales, which relax the restrictions slightly. It therefore provides information on the current situation. Please refer to earlier issues for information on the provisions that applied on a particular date.*

As previously, additions or amendments to the PREVIOUSLY AMENDED regulations are in **Bold** text and referenced in the footnotes, and previous amendments are now underlined (i.e. only the recent amendments are in **bold**, previous amendments are now underlined). Where the narrative of the article has altered, that is now in *italics*. That should enable you to identify the changes without having to read the entire article if you are already familiar with it.

As with the earlier Supplements, please feel free to circulate this Bulletin Supplement 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 I am pleased to say that we are maintaining normal service.

### Lockdown

*The Prime Minister's statement on Thursday 28<sup>th</sup> May lead to amendments to the regulations in both England and Wales being introduced from 1<sup>st</sup> June.*

*There is now a clear difference between the restrictions in England and Wales and it remains to be seen what effect those different approaches will have. Both countries must re-evaluate the regulations before the end of June.*

*It is clear from dissent within the scientific community that these relaxations carry significant elements of risk. The Government has indicated that powers*

*will be introduced for regional lockdown if that proves to be necessary. The balance between public health and the health of the economy is clearly a fine one and that tightrope must be negotiated with extreme caution.*

*It must never be forgotten that the virus remains a killer and the staff of all our frontline services place themselves at significant risk on a daily basis. I applaud their courage and commitment and sincerely hope that their efforts will not be in vain. and will be properly appreciated by all, including the Government, for years to come.*

*In both Countries, the Government has issued large amounts of Guidance. Although some extracts are contained in this Supplement, it is not possible or practical to reproduce it all, so readers must ensure they check the relevant websites for the up-to-date guidance<sup>1</sup>. It is also vital to recognise that Guidance cannot create restrictions: it can only explain (or provide a guide to) the legislation. The College of Policing have also produced Guidance on enforcing the restrictions<sup>2</sup>.*

As in the previous supplements, at the end of the article there are Template Prohibition Notices for both England (Appendices 1 to 3) and Wales (Appendices 4 to 6). I have had feedback that these have been useful, so please continue to feel free to use, adapt and improve them as required.

**James T H Button**

**1<sup>st</sup> June 2020**

For further information please contact James Button on 01629 735566 or [james@jamesbutton.co.uk](mailto:james@jamesbutton.co.uk)

This Bulletin is for information only and does not constitute legal advice.  
James Button & Co is Authorised and Regulated by the Solicitors Regulation Authority 197525  
**James T H Button**, BA, Solicitor, CloL – Principal.

<sup>1</sup> <https://www.gov.uk/coronavirus> for England; <https://gov.wales/coronavirus> for Wales.

<sup>2</sup> <https://www.college.police.uk/What-we-do/COVID-19/Pages/COVID-19.aspx>

## England

All references to regulations are references to *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* as amended by *The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020*<sup>3</sup>, *The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 2) Regulations 2020*<sup>4</sup> and *The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020*<sup>5</sup> unless otherwise stated. These regulations repealed the previous regulations<sup>6</sup>, but regulation 2(2) makes it clear that the previous regulations 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 22<sup>nd</sup> March<sup>7</sup> 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.”

<sup>3</sup> 2020/447 available at <http://www.legislation.gov.uk/uksi/2020/447/contents/made>

<sup>4</sup> 2020/447 available at <http://www.legislation.gov.uk/uksi/2020/500/contents/made>

<sup>5</sup> 2020/4558 available at <http://www.legislation.gov.uk/uksi/2020/500/contents/made>

<sup>6</sup> *Health Protection (Coronavirus, Business Closure) (England) Regulations 2020/327*

<sup>7</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/874349/DH\\_SOS\\_Designation\\_Letter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874349/DH_SOS_Designation_Letter.pdf)

An additional designation was made on 4<sup>th</sup> April<sup>8</sup> which in turn was amended on 23<sup>rd</sup> April<sup>9</sup>. For completeness, the amended designations read as follows:

The Secretary of State makes the following designations, in relation to England, with immediate effect, in exercise of the powers conferred by regulations 8(12)(a)(iv), 10(11)(iii) and 11 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“the Restrictions Regulations”):

#### **Enforcement: general**

1. For the purposes of regulation 8 of the Restrictions Regulations, each specified authority (see paragraph 4 below) is hereby designated by the Secretary of State as a relevant person who may take such action as is necessary to enforce any requirement or restriction imposed by regulation 4 (business closures) or 5 (further business restrictions) of the Regulations, including giving a prohibition notice under regulation 8(2) of the Regulations in relation to any contravention of regulation 4 or 5.

...<sup>10</sup>

#### **Prosecutions**

3. For the purposes of regulation 11 of the Restrictions Regulations, each specified authority is designated as a person who may bring proceedings for:

- i. any offence of contravening a requirement or restriction in regulation 4 or 5 of the Regulations;
- ii. any offence of failing to comply with a prohibition notice given under regulation 8 of the Regulations;
- iii. any offence by an officer of a body corporate under regulation 9(5) of the Regulations.

#### **Specified authorities**

4. For the purposes of these designations, “a specified authority” means:

- i. a district council;

<sup>8</sup> <https://drive.google.com/file/d/1fMMjyl8-M7o8qjwb57JmwsaIRLNQBKA9/view>

<sup>9</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/882807/Designation-Order-Coronavirus-Regultions-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882807/Designation-Order-Coronavirus-Regultions-2020.pdf)

<sup>10</sup> Words omitted were repealed by the designation made on 23<sup>rd</sup> April 2020

- ii. a county council;
- iii. a London borough council;
- iv. the Common Council of the City of London;
- v. the Council of the Isles of Scilly.

The designations made on 23<sup>rd</sup> April, in addition to repealing paragraph 2 of the earlier designation add new elements and read as follows:

The Secretary of State makes the following designation, in relation to England, with immediate effect, in exercise of the powers conferred by regulations 10(3)(b), 10(11)(iii) of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“the Restrictions Regulations”):

**Enforcement: fixed penalty notices**

1. For the purposes of regulation 10 of the Restrictions Regulations, the Chief Executive Officer of the ACRO Criminal Records Office (hosted by the Chief Constable of Hampshire Constabulary) is hereby designated by the Secretary of State as “the designated officer” (who may be specified in a fixed penalty notice as the authority to whom payment of the fixed penalty may be made, and who may sign a certificate stating that payment of the fixed penalty was, or was not, received by the date specified in the certificate).

2. For the purposes of regulation 10 of the Restrictions Regulations, each specified authority is hereby designated by the Secretary of State as an authorised person who may issue a fixed penalty notice to anyone, aged 18 or over, who the authorised person reasonably believes has committed an offence of contravening a requirement or restriction in regulation 4 or 5 of the Restrictions Regulations.

3. For the purposes of paragraph 2, “a specified authority” means:

- (a) a district council;
- (b) a county council;
- (c) a London borough council;
- (d) the Common Council of the City of London;
- (e) the Council of the Isles of Scilly.

*Updated Guidance was issued on 28<sup>th</sup> May<sup>11</sup>.*

---

<sup>11</sup> <https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>. At the time of writing (31<sup>st</sup> May 2020) this has not been updated.

*The regulations relax the closure of certain premises and also relax certain 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, and the size of those penalties has been increased. 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 March<sup>12</sup>, 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."*<sup>13</sup>

*The need for these restrictions must be reviewed within 28 days from 28<sup>th</sup> May in accordance with Regulation 3 of the new regulations<sup>14</sup>. 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."*<sup>15</sup>

It is also possible for particular restrictions or requirements to be terminated, either in their entirety or in relation to specified businesses or services<sup>16</sup>.

*The broad effect of the regulations remains the same but has altered the emphasis: to prevent a but reduced range of businesses and locations from opening during the emergency period. These still fall into 2 categories: the first category<sup>17</sup> consists of premises providing food or drink for consumption*

---

<sup>12</sup> Regulation 12 (1)

<sup>13</sup> Regulation 3(1)(b)

<sup>14</sup> Regulation 3(2) and regulation 3 of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558.

<sup>15</sup> Regulation 3(3)

<sup>16</sup> Regulation 3(4)

<sup>17</sup> Detailed in Part 1 of Schedule 2 to the Regulations

on the premises; the second category consists of premises where people congregate<sup>18</sup>.

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 subparagraph (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;
  - (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.”<sup>19</sup>

There is no prohibition on the sale of food or drink for consumption off the premises<sup>20</sup>, but it must be noted that the concept of premises is extended for

<sup>18</sup> Detailed in Part 2 of Schedule 2 to the Regulations

<sup>19</sup> Regulation 4(1)(a) & (b)

<sup>20</sup> Regulation 4(1)(b)

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.”<sup>21</sup>

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)”.

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.

---

<sup>21</sup> Regulation 4(3)



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, **including indoor games, recreation and entertainment venues**<sup>22</sup>.
19. Funfairs (whether outdoors or indoors), **theme parks and adventure parks and activities**.<sup>23</sup>
20. Playgrounds, indoor<sup>24</sup> sports courts and outdoor gyms and outdoor swimming pools<sup>25</sup>.
- ...<sup>26</sup>
- ...<sup>27</sup>
23. Auction Houses (except for livestock auctions)<sup>28</sup>.
- 23A. Social clubs.**
- 23B. Model villages.**
- 23C. Aquariums and zoos, including safari parks.**
- 23D. Visitor attractions at farms.**
- 23E.—(1) Indoor attractions at visitor attractions such as—**
- (a) botanical or other gardens, biomes or greenhouses;**
  - (b) heritage sites or film studios;**
  - (c) landmarks, including observation wheels or viewing platforms.**
- (2) For the purposes of sub-paragraph (1), an “indoor attraction” means those parts of a venue, including shops and visitor centres but not including toilets for visitors, which—**
- (a) would be considered to be enclosed or substantially enclosed for the purposes of section 2 of the Health Act 2006 under the Smoke Free (Premises and Enforcement) Regulations 2006**<sup>29</sup>; and

<sup>22</sup> Words in bold added by regulation 7(9)(a)(i) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>23</sup> Words in bold added by regulation 7(9)(a)(ii) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>24</sup> Word underlined added by regulation 2(5)(a) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500

<sup>25</sup> Words underlined added by regulation 2(7)(a) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

<sup>26</sup> Words omitted repealed by regulation 7(9)(a)(iii) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>27</sup> Words omitted repealed by regulation 7(9)(a)(iv) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>28</sup> Words underlined added by regulation 2(7)(c) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

<sup>29</sup> Regulation 2 of the Smoke Free (Premises and Enforcement) Regulations 2006/3368 defines enclosed or substantially enclosed as follows:

**“2.— Enclosed and substantially enclosed premises**

- (1) For the purposes of section 2 of the [Health] Act [2006], premises are enclosed if they—

**(b) are, in normal times, open for members of the public to visit for the purposes of recreation, whether or not for payment.”<sup>30</sup>**

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.”<sup>31</sup>*

*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 internet<sup>32</sup>, and any suitable premises detailed in that list can be used to host blood donation sessions<sup>33</sup>. In addition, regulation 4 (4) (the prohibition on the use of premises) does not apply to:*

**“(c) facilities for training for elite athletes, including indoor fitness studios, gyms, sports courts, indoor or outdoor swimming pools and other indoor leisure centres.”<sup>34</sup>**

*“Elite athlete” and associated terms are defined in regulation 1 (aa), (ab) and (4) in the following ways:*

**“(aa) “elite athlete” means an individual who—  
(i) derives a living from competing in a sport,  
(ii) is a senior representative nominated by a relevant sporting body,**

---

(a) have a ceiling or roof; and

(b) except for doors, windows and passageways, are wholly enclosed either permanently or temporarily.

(2) For the purposes of section 2 of the [Health] Act [2006], premises are substantially enclosed if they have a ceiling or roof but there is—

(a) an opening in the walls; or

(b) an aggregate area of openings in the walls,

which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

(3) In determining the area of an opening or an aggregate area of openings for the purposes of paragraph (2), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

(4) In this regulation “roof” includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including, for example, a canvas awning.”

<sup>30</sup> Words in bold added by regulation 7(9)(a)(v) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>31</sup> Regulation 4(4)

<sup>32</sup> Regulation 4(5)(a)

<sup>33</sup> Regulation 4(5)(b)

<sup>34</sup> Regulation 4 (5) (C) in bold added by regulation 2(4) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

- (iii) is a member of the senior training squad for a relevant sporting body, or
- (iv) is aged 16 or above and on an elite development pathway;

(ab) references to a “parent” of a child include any person who is not a parent of the child but who has parental responsibility for, or who has care of, the child, and for these purposes, a “child” is a person under the age of 18;”<sup>35</sup>

and

“(4) For the purposes of the definition of “elite athlete”, in paragraph (3)—

(a) “elite development pathway” means a development pathway established by the national governing body of a sport to prepare athletes—

(i) so that they may derive a living from competing in that sport, or

(ii) to compete at that sport at the Tokyo or Beijing Olympic or Paralympic Games, or, if that sport is not part of the Tokyo Olympic and Paralympic Games programme, in the Commonwealth Games to be held in Birmingham;

(b) “relevant sporting body” means the national governing body of a sport which may nominate athletes to represent—

(i) Great Britain and Northern Ireland at the Tokyo or Beijing Olympic or Paralympic Games, or

(ii) England, Wales, Scotland, Northern Ireland, Gibraltar, Guernsey, Jersey or the Isle of Man at the Commonwealth Games to be held in Birmingham in those sports which are not part of the Tokyo Olympic and Paralympic Games programme;

(c) “senior representative” means an individual who is considered by a relevant sporting body to be a candidate to qualify to compete on behalf of—

(i) Great Britain and Northern Ireland at the Tokyo or Beijing Olympic or Paralympic Games;

(ii) England, Wales, Scotland, Northern Ireland, Gibraltar, Guernsey, Jersey or the Isle of Man at the Commonwealth Games to be held in Birmingham in those sports which are not part of the Tokyo Olympic and Paralympic Games programme.”<sup>36</sup>

<sup>35</sup> Regulation 1(3) – words in bold added by regulation 2(2)(ae)(ii) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>36</sup> Regulation 1(3) – words in bold substituted by regulation 2(2)(b) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

Responsibility to ensure compliance with these requirements lies with the  
 “person responsible for carrying on a business”<sup>37</sup>  
 who is defined as including  
 “the owner, proprietor, and manager of that business”<sup>38</sup>.

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 business<sup>39</sup>.

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).”<sup>40</sup>

This does not apply to businesses providing hot and cold food for consumption off the premises<sup>41</sup>. 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)<sup>42</sup>. It is

<sup>37</sup> Regulation 4(1)

<sup>38</sup> Regulation 1(3)(b)

<sup>39</sup> Regulation 4(6)

<sup>40</sup> Regulation 5(1)

<sup>41</sup> Regulation 5(2)

<sup>42</sup> 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.

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<sup>43</sup>:

- “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. The following businesses—
  - (a) banks,
  - (b) building societies,
  - (c) credit unions,
  - (d) short term loan providers,
  - (e) savings clubs,
  - (f) cash points, and
  - (g) undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.<sup>44</sup>
- 34. Post offices.
- 35. Funeral directors.
- 36. Laundrettes and dry cleaners.

---

‘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.

<sup>43</sup> It is important to note that, although outdoor markets and car showrooms have been removed from the list in Part 2 of Schedule 2 (premises that must be closed), they have not been added to Part 3 (premises that are allowed to remain open).

<sup>44</sup> Original paragraph 33 deleted and the words underlined substituted by regulation 2(7)(d) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

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.
43. Garden Centres.
44. Outdoor sports courts<sup>45</sup>."

Beyond that, the provision of holiday accommodation must also cease<sup>46</sup>. 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"<sup>47</sup>

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;

**(v) is isolating themselves from others as required by law;**  
**(vi) is an elite athlete, the coach of an elite athlete, or (in the case of an elite athlete who is under the age of 18), the parent of an elite athlete, and needs accommodation for the purposes of training or competition;"<sup>48</sup>**

- (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."<sup>49</sup>

*and in addition, those businesses can remain open*

<sup>45</sup> Words underlined added by regulation 2(5)(b) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500

<sup>46</sup> Regulation 5(3)

<sup>47</sup> Regulation 5(3)

<sup>48</sup> Words in bold added by regulation 2(5)(a) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 3) Regulations 2020/558

<sup>49</sup> Regulation 5(4)

“(aa) to provide accommodation for any person—  
 (i) who works in one of the critical sectors listed in the guidance titled "Guidance for critical workers who can access schools or educational settings" published by the Cabinet Office and the Department for Education and updated on 5th May 2020, and  
 (ii) whose need for accommodation is connected to their work;<sup>50</sup>

Places of worship must remain closed<sup>51</sup> except for<sup>52</sup>

“(a) for funerals,  
 (b) to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast, . . .<sup>53</sup>  
 (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), **or**  
**(d) for early years childcare provided by a person registered on the Early Years Register under Part 3 of the Childcare Act 2006**<sup>54</sup>”

“Childcare” is defined in regulation 1:

**“(za) “childcare” has the same meaning as in section 18 of the Childcare Act 2006, and “early years childcare” is childcare provided for a child who is a young child within the meaning of section 19 of that Act;”**<sup>55</sup>

The regulations relating to crematoria and burial grounds altered previously and regulation 5(8) now reads as follows:

“(8) Subject to paragraph (8A), a<sup>1</sup> person who is responsible for a crematorium ... must ensure that, during the emergency period, the crematorium is closed to members of the public, except for funerals or burials.

<sup>50</sup> Words underlined added by regulation 2(2) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500

<sup>51</sup> Regulation 5(5)

<sup>52</sup> Regulation 5(6)

<sup>53</sup> Words omitted repealed by regulation 2(5)(b)(i) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>54</sup> Words in bold added by regulation 2(5)(b)(ii) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>55</sup> Words in bold added by regulation 2(2)(a)(i) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

(8A) Paragraph (8) does not apply to the grounds surrounding a crematorium, including any burial ground or garden of remembrance.<sup>56</sup>

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

**“(a) 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), or  
(b) for early years childcare provided by a person registered on the Early Years Register under Part 3 of the Childcare Act 2006.”**<sup>57</sup>.

The original draconian restrictions have been relaxed slightly, and that is also true of the restrictions imposed on individuals. Regulations 6 and 7 restrict movement and association, and although they have been relaxed further, they are still onerous restrictions.

Regulation 6, which originally required the vast majority of the population to stay at home has amended again, this time significantly<sup>58</sup>. The prohibition is now on people staying overnight “at any place other than the place where they are living”. Regulation 6(1) now reads:

**“No person may, without reasonable excuse, stay overnight at any place other than the place where they are living.”**<sup>59</sup>

The **“place where they are living”**<sup>60</sup> includes **“the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises”**<sup>61</sup>, and they can only stay overnight somewhere else if they have a reasonable excuse<sup>62</sup>.

---

<sup>56</sup> Words in regulation 5(8) omitted, and regulation 5(8A) (underlined) added by regulation 2(3) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

<sup>57</sup> Regulation 5(7) as amended. Words in bold added by regulation 2(5)(c) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>58</sup> The whole of regulation 6 was substituted by regulation 2(6) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>59</sup> Words in bold added by regulation 2(6) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>60</sup> Regulation 6(1) – words in bold substituted by regulation 2(6) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>61</sup> Regulation 6(4) – words in bold substituted by regulation 2(6) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>62</sup> Regulation 6(1)



For obvious reasons, this restriction does not apply to the homeless<sup>63</sup>.

*Although regulation 6(2) appears to detail the list of reasonable excuses for staying overnight at a place other than the place where they are living, it remains vital to note that “a reasonable excuse include cases where” a person (“P” in the regulation) falls within one of the categories 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 Staying away from leaving the place where a person lives, that is not impossible.*

*The government has issued updated guidance (on 31st May) to people to assist with these requirements – “Staying alert and safe (Social Distancing)”<sup>64</sup>*

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

**“(2) For the purposes of paragraph (1), the circumstances in which a person (“P”) has a reasonable excuse include cases where—**

- (a) P needs to stay elsewhere to attend a funeral, as—**
  - (i) a member of the deceased person’s household,**
  - (ii) a close family member of the deceased person, or**
  - (iii) if no-one within paragraph (i) or (ii) is attending, a friend of the deceased person;**
- (b) P is an elite athlete, a coach of an elite athlete, or (in the case of an elite athlete who is under the age of 18), a parent of the elite athlete, and needs to stay elsewhere for the purposes of training or competition;**
- (c) P needs to stay elsewhere while moving house;**
- (d) it is reasonably necessary for P to stay elsewhere—**
  - (i) for work purposes, or for the provision of voluntary or charitable services;**
  - (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(a);**
  - (iii) to provide emergency assistance;**
  - (iv) to avoid injury or illness, or to escape a risk of harm;**
  - (v) to obtain medical assistance;**
- (e) P needs to stay elsewhere to fulfil a legal obligation or participate in legal proceedings;**
- (f) P is a child that does not live in the same household as their parents, or one of their parents, and the overnight stay is**

<sup>63</sup> Regulation 6(3)

<sup>64</sup> Available at <https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing>

necessary to continue existing arrangements for access to, and contact between, parents and children;  
**(g) P is unable to return to the place where P lives, because—**  
**(i) it is not safe for P to live there,**  
**(ii) P may not lawfully travel there, or is required by law to stay in another place, or**  
**(iii) the place where P is living is not available to P for any other reason.”<sup>65</sup>**

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.  
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 revised guidance states:

*“In line with scientific advice that the risk of transmitting the virus is much lower outside, the Government is permitting more social activity outside. You can spend time outdoors with members of your own household and, from Monday 1 June, you can meet in a gathering of up to six people you do not live with. This can be in a public outdoor space, or in a private garden or uncovered yard or terrace*

<sup>65</sup> Regulation 6(3) – words in bold substituted by regulation 2(6) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

....

*When you leave your home, you should follow the guidelines on staying safe outside your home. Most importantly, this includes the key advice that you should stay two metres apart from anyone outside of your household. Face coverings can help us protect each other and reduce the spread of the disease if you are in an enclosed space where social distancing is difficult and where you will come into contact with people you do not normally meet. If you are showing coronavirus symptoms, or if you or any of your household are self-isolating (including if you have been contacted by the test and trace programme), you should stay at home - this is critical to staying safe and saving lives.*

*By following this guidance, you are helping to protect yourself, your family, the NHS and your community.”<sup>66</sup>*

*In relation to the provision of care as a reason for being away from home overnight, this covers:*

“7(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),

<sup>66</sup> “*Staying alert and safe (Social Distancing)*” Paragraph 2. The Guidance is comprehensive and should be studied in conjunction with this analysis and the Regulations themselves.

- (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)."<sup>67</sup>

*Significant Guidance has been published relating to returning to work, with different advice for different sections of the economy.<sup>68</sup>*

*Regulation 7 restricts gatherings in public places to no more than 6 people outdoors and no more than 2 people indoors<sup>69</sup>. A "gathering" is defined in regulation 7(3) in the following terms:*

**"(3) For the purposes of this regulation—**

- (a) 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 with each other, or to undertake any other activity with each other;<sup>70</sup>**

*and "indoors" is defined as follows:*

- (b) a place is indoors if it would be considered to be enclosed or substantially enclosed for the purposes of section 2 of the Health Act 2006, under the Smoke Free (Premises and Enforcement) Regulations 2006".<sup>71</sup>**

*Again there are exceptions which are as follows:*

**"(2) This paragraph applies where—**

- (a) all the persons in the gathering are members of the same household;**
- (b) the person is attending a funeral, as—**
  - (i) a member of the deceased person's household,**
  - (ii) a close family member of the deceased person, or**
  - (iii) if no-one within paragraph (i) or (ii) is attending, a friend of the deceased person;**
- (c) the person concerned is an elite athlete, the coach of an elite athlete, or (in the case of an elite athlete under the age of 18), the parent of an elite athlete, and the gathering is necessary for training or competition;**
- (d) the gathering is reasonably necessary—**

<sup>67</sup> Paragraph 7(3B) Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006.

<sup>68</sup> <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19> updated 29th May

<sup>69</sup> Regulation 7(1) substituted by regulation 2(7) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>70</sup> Regulation 7(3)(a) substituted by regulation 2(7) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>71</sup> Regulation 7(3)(b) substituted by regulation 2(7) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558. See Footnote 23 above.

- (i) for work purposes, or for the provision of voluntary or charitable services;**
- (ii) to facilitate a house move;**
- (iii) 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;**
- (iv) to provide emergency assistance;**
- (v) for the purposes of early years childcare provided by a person registered on the Early Years Register under Part 3 of the Childcare Act 2006;**
- (vi) to enable one or more persons in the gathering to avoid injury or illness or to escape a risk of harm;**
- (vii) to continue existing arrangements for access to, and contact between, parents and children where the children do not live in the same household as their parents, or one of their parents;**
- (e) the person concerned is fulfilling a legal obligation or participating in legal proceedings;**
- (f) the gathering takes place at an educational facility and is reasonably necessary for the purposes of education.”<sup>72</sup>**

“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 fine<sup>73</sup>. 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 part<sup>74</sup>. In addition, any person who without reasonable excuse obstructs anyone carrying out a function under the regulations is also guilty of an offence<sup>75</sup>.

<sup>72</sup> Regulation 7(2) substituted by regulation 2(7) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>73</sup> 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

<sup>74</sup> Regulation 9(5)

<sup>75</sup> 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.<sup>76]</sup>”

(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(1) allows a fixed penalty notice to be issued to anyone who has committed an offence under the regulations and is “aged 18 or over<sup>77</sup>”.

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;”<sup>78</sup>

A local authority can only issue fixed penalty notice in respect of an offence committed within its area, but an officer designated by the Secretary of State does not have any geographic limits in relation to the issue of fixed penalty notice. This is made clear in the newly substituted regulation 10(3):

“(3) The authority specified in the notice must be—

(a) the local authority (or as the case may be, any of the local authorities) in whose area the offence is alleged to have been committed (“the relevant local authority”), or

(b) an officer designated by the Secretary of State, or by the relevant local authority, for the purposes of this regulation (“the designated officer”).”<sup>79</sup>

<sup>76</sup> Words underlined are deemed to have been added by regulation 9(7) of The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020/350

<sup>77</sup> This phrase underlined replaced the previous “over the age of 18” and was substituted by regulation 2(6)(a) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

<sup>78</sup> Regulation 10(11)(a)

<sup>79</sup> Words underlined substituted for the original subsection (3) by regulation 2(6)(c) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

It is very important to recognise and appreciate that local authorities can only authorise a person for breaches of requirements or restrictions and regulations 4 or 5 (closure of premises)<sup>80</sup>.

Regulation 3 of the new amendment regulations makes it clear that regulations 9 and 10 as originally enacted apply to any offences committed before the most recent amendments came into effect.<sup>81</sup>

Issue of the fixed penalty notice stays criminal proceedings for at least 28 days<sup>82</sup>, and provided the fixed penalty has been paid before that time no prosecution can take place<sup>83</sup>. The fixed penalty amounts have increased significantly and are now as follows. £100 in respect of the first fixed penalty notice to be issued under these regulations<sup>84</sup> (reducing to £50 if paid within 14 days)<sup>85</sup>. For the second fixed penalty notice the penalty is £200<sup>86</sup> (with no reduction for early payment)<sup>87</sup>, doubling to £400 for the third, £800 for the fourth, £1,600 for the fifth, finally peaking and plateauing at £3,200 for the sixth and any subsequent notices<sup>88</sup>. Before the time somebody has racked up 6 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.

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:

---

<sup>80</sup> Regulation 10(12)

<sup>81</sup> See regulation 3 of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500

<sup>82</sup> Regulation 10(4)(a)

<sup>83</sup> Regulation 10(4)(b)

<sup>84</sup> Regulation 10(6) amended by regulation 4(a) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500

<sup>85</sup> Regulation 10(7) amended by regulation 4(b)(i) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500

<sup>86</sup> Regulation 10(9)(b)(ii)(aa) amended by regulation 4(b)(ii)(aa) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500

<sup>87</sup> Regulation 10(9)(b)(i)

<sup>88</sup> Regulation 10(9)(b)(ii)(bb) amended by regulation 4(b)(ii)(bb) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020/500



“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;”<sup>89</sup>

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 closures<sup>90</sup>) 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.<sup>91</sup>

Where a local authority runs Executive Arrangements, these are Executive functions<sup>92</sup>, and the power to designate such an officer would lie with the Senior Executive Member, which is the Leader or directly elected Mayor <sup>93</sup>. 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 appointed. The Guidance<sup>94</sup> 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

<sup>89</sup> Regulation 8(12)

<sup>90</sup> Regulation 8(13)

<sup>91</sup> 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

<sup>92</sup> 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.

<sup>93</sup> See S9E Local Government Act 2000

<sup>94</sup> “*Staying at Home and Away from Others (Social Distancing)*” Paragraph 5

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”<sup>95</sup>.

It is therefore important that local authorities and the police have a draft of a suitable notice if required<sup>96</sup>.

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 **staying overnight at a place other than**<sup>97</sup> 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,  
 . . .<sup>98</sup>
- (b) . . .<sup>99</sup>.

*The position in relation to children who are staying overnight at a place other than 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 the child is<sup>100</sup> living and so far as is reasonably practicable ensure that the child complies with any*

<sup>95</sup> Regulation 8(2)

<sup>96</sup> See Appendices 1 to 3 to this Article

<sup>97</sup> Regulation 8(3) – words in bold substituted by regulation 2(8)(a)(i) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>98</sup> Regulation 8(3) – words omitted repealed by regulation 2(8)(a)(ii) and (iii) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>99</sup> Regulation 8(4) - the power to use reasonable force to enforce a direction was repealed by Regulation 7(3)(a) substituted by regulation 2(8)(b) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>100</sup> Regulation 8(5)(a) Words underlined substituted for the original “they are” by regulation 2(5)(a) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

direction or instruction that has been given by the relevant person<sup>101</sup>. 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 restriction, so far as is reasonably practicable<sup>102</sup>. 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 1989<sup>103</sup>)”<sup>104</sup>

Regulation 8(9) has been modified and now reads as follows:

“Where a relevant person considers that **a number of**<sup>105</sup> 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 **a gathering in a public place**<sup>106</sup> to the place where they are living.”<sup>107</sup>

and in those circumstances, the revised regulation 8 paragraphs (10), (10A), (10B) and (10C) apply. These state:

“(10) A relevant person exercising the power in paragraph (9)(c) to remove a person in a gathering **in a public place**<sup>108</sup> to a place where they are living may use reasonable force, if necessary, in exercise of the power.

(10A) Where a person who is in a gathering in contravention of regulation 7 is a child accompanied by an individual who has responsibility for the child—

- (a) the relevant person may direct that individual to take the child to the place where the child is living, and

<sup>101</sup> Regulation 8(5)(b)

<sup>102</sup> Regulation 8(6)

<sup>103</sup> 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.”

<sup>104</sup> Regulation 8(7)

<sup>105</sup> Regulation 8(9) – words in bold substituted by regulation 2(8)(e)(i) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>106</sup> Regulation 8(9) – words in bold substituted by regulation 2(8)(e)(ii) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

<sup>107</sup> Regulation 8(9)

<sup>108</sup> Regulation 8(10) – words in bold substituted by regulation 2(8)f) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment)(No 3) Regulations 2020/558

(b) that individual must, so far as reasonably practicable, ensure that the child complies with any direction or instruction given by the relevant person to the child.

(10B) Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction in regulation 7, the relevant person may direct any individual who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with that restriction.

(10C) A relevant person may only exercise the power in paragraph (9), (10A) or (10B) if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the restriction in regulation 7"<sup>109</sup>.

---

<sup>109</sup> Words underlined substituted for the original paragraph (10), with the addition of paragraphs (10A), (10B) and (10C) by regulation 2(5)(b) of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020/447

## Wales

All references to regulations are references to The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 as amended by The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020<sup>110</sup>, The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020<sup>111</sup>, The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020<sup>112</sup>, The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 4) Regulations 2020<sup>113</sup> and The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020<sup>114</sup> unless otherwise stated. These regulations repealed the previous regulations<sup>115</sup>, but regulation 2(2) makes it clear that they still apply for any offences committed before the new regulations came into effect. This is reinforced by regulation 3 of the latest amendment which states:

**“ . Regulations 12 and 13 of the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 continue to have effect in relation to any offence committed, or reasonably believed to have been committed, before these Regulations came into force as if the amendments set out in regulation 2 had not been made.”**

Updated Guidance was published on 21<sup>st</sup> May<sup>116</sup>.

The amendments slightly relax the restrictions on people's movement and on gatherings from two households are now allowed. The powers to close public footpaths and land are unaltered. 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

---

<sup>110</sup> SI 2020/399

<sup>111</sup> SI 2020/452

<sup>112</sup> SI 2020/497

<sup>113</sup> SI 2020/529

<sup>114</sup> SI 2020/557

<sup>115</sup> 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

<sup>116</sup> <https://gov.wales/staying-home-and-away-others-guidance>. At the time of writing (31<sup>st</sup> May 2020) this has not been updated.

can arrest people who are not complying to maintain public health or public order.

The regulations remain in effect for 6 months from 26 March<sup>117</sup>, 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 requirement or restriction imposed by these Regulations on the earlier of—  
(i) the revocation of the provision imposing the requirement or restriction, or  
(ii) the expiry of these Regulations under regulation 15.”<sup>118</sup>

The need for these restrictions must be reviewed at least every 21 days. A fourth review must be held on or before 17<sup>th</sup> June<sup>119</sup>. That requirement is contained in regulation 3(2) as amended which states:

“(2) The Welsh Ministers must review the need for restrictions and requirements imposed by these Regulations and whether those restrictions and requirements are proportionate to what the Welsh Ministers seek to achieve by them,<sup>120</sup> every 21 days, with the first review being carried out by [16]<sup>2</sup> April 2020.”

The power for the Welsh ministers to amend or terminate particular restrictions or requirements either in their entirety or in relation to specified businesses or services has been repealed<sup>121</sup>.

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 category<sup>122</sup> consists of premises providing food or drink for consumption on the premises; the second category consists of premises where people congregate<sup>123</sup>.

---

<sup>117</sup> Regulation 15 (1)

<sup>118</sup> Regulation 3(1)(b) underlined as substituted by regulation 2(2) of *The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 4) Regulations 2020/529*. Paragraphs (3), (4) and (4A) were repealed by regulation 2(2)(b) of *The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020/497*

<sup>119</sup> Regulation 3(2). The first review was undertaken on 15<sup>th</sup> April, with the second on 6<sup>th</sup> May and the third on 27<sup>th</sup> May.

<sup>120</sup> Words underlined inserted by regulation 2(2)(a) of *The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020/497*

<sup>121</sup> Regulation 3 (3) and (4) were repealed by regulation 2(2)(b) of *The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020/497*

<sup>122</sup> Detailed in Part 1 of Schedule 2 to the Regulations

<sup>123</sup> Detailed in Part 2 of Schedule 2 to the Regulations

A definition of “premises” has been added into regulation 1:

“(da) “premises” includes any building or structure and any land;”<sup>124</sup>

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 subparagraph (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—
  - (a) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises;

---

<sup>124</sup> Words underlined added by regulation 7(2) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

(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))."<sup>125</sup>

There is no prohibition on the sale of food or drink for consumption off the premises<sup>126</sup>, 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."<sup>127</sup>

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)".

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.

Where a cafe or canteen at the hospital, care home, school, prison, military or defence establishment, or providing food or drink to the homeless is open, then there are new additional social distancing requirements:

"(5A) Paragraph (5B) applies—

---

<sup>125</sup> Regulation 4(1)(a) & (b)

<sup>126</sup> Regulation 4(1)(b)

<sup>127</sup> Regulation 4(3)



(a) to premises used to carry on a business or provide a service mentioned in sub-paragraph (1)(a), (b) or (c) of paragraph 2 of Schedule 1, or  
(b) where premises used to carry on a business or provide a service listed in Part 2 or 3 of Schedule 1 are used for a purpose mentioned in paragraph (5).

(5B) Where this paragraph applies, the person responsible for carrying on the business or providing the service must, during the emergency period, take all reasonable measures to ensure —

(a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),

(b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and

(c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).<sup>128</sup>

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.
9. Concert halls.
10. Museums, galleries, . . . <sup>129</sup> 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.

---

<sup>128</sup> Words underlined added by regulation 3(2) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>129</sup> Word omitted by regulation 2(5)(a) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020/497

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 livestock markets and<sup>130</sup> stalls selling food).
23. Car showrooms.
24. Auction houses except for livestock auctions<sup>131</sup>.

### 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. It should be noted that libraries can now be open.

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.”<sup>132</sup>

but cinemas, theatres, bingo halls, concert halls, museums, galleries,<sup>133</sup> 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 internet<sup>134</sup>, and any suitable premises detailed in that list can be used to host blood donation sessions<sup>135</sup>. Also, museums, galleries, libraries and archive services can be used to provide

<sup>130</sup> Words underlined added by regulation 6(10)(b) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>131</sup> Words underlined added by regulation 6(10)(c) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>132</sup> Regulation 4(4)

<sup>133</sup> The ability to use libraries for these purposes was abolished from 11th May by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020/497, as libraries can now be open for any purpose

<sup>134</sup> Regulation 4(5)(a)

<sup>135</sup> Regulation 4(5)(b)

information or other services through websites, online communication, telephone and post<sup>136</sup>.

All premises used for businesses or services listed in part 2 or part 3 of schedule 1 (that is paragraphs 5 to 28) can be used for any purpose if requested by the Welsh ministers or a local authority. This is a result of the substituted regulation 4(5)(b) which now reads:

“(b) premises used for the businesses or services listed in Part 2 or 3 of Schedule 1 for any purpose as may be requested by the Welsh Ministers or a local authority;”<sup>137</sup>.

Responsibility to ensure compliance with these requirements lies with the

“person responsible for carrying on a business”<sup>138</sup>

who is defined as including

“the owner, proprietor, and manager of that business”<sup>139</sup>.

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 business<sup>140</sup>.

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

“offering goods for sale or for hire in a shop 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);

---

<sup>136</sup> Regulation 4(5)(c)

<sup>137</sup> Regulation 4(5)(b) (underlined) substituted for the original by regulation 6(3)(b) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>138</sup> Regulation 4(1)

<sup>139</sup> Regulation 1(3)(d)

<sup>140</sup> Regulation 4(6)

(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 subparagraph (a)."<sup>141</sup>

This does not apply to businesses providing hot and cold food for consumption off the premises<sup>142</sup>. 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)<sup>143</sup>. 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 4 of Schedule 1) has been amended and is 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.
- 33A. Garden centres and plant nurseries.<sup>144</sup>
- 34. Petrol stations.
- 35. Car repair and MOT services.
- 36. Bicycle shops.

---

<sup>141</sup> Regulation 6(2)

<sup>142</sup> Regulation 4(1)(b) subject to the social distancing requirements specified in regulation 6(1).

<sup>143</sup> 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.

<sup>144</sup> Words underlined inserted by regulation 2(5)(b) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020/497

37. Taxi or vehicle hire businesses.
38. Banks, building societies, credit unions, short term loan providers, savings clubs, cash points and undertakings which by way of business operate currency exchange offices, transmit money (or any representation of money) by any means or cash cheques which are made payable to customers.<sup>145</sup>
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.
48. Libraries<sup>146</sup>

Beyond that, the provision of holiday accommodation must also cease<sup>147</sup>. This is extremely wide and includes accommodation in campsites and mobile homes as well as other premises

But any such business can remain open in certain circumstances:

“(3) In so far as regulation 4(4) applies to any other business listed in Part 3 of Schedule 1, the obligation on the person responsible for carrying on the business applies subject to the need to provide accommodation for any persons staying in that accommodation when these Regulations come into force and who—

(a) are unable to return to their main residence, or

(b) are using the accommodation as their main residence.

(3A) In so far as regulation 4(4) applies to a business listed in Part 3 of Schedule 1, the obligation on the person responsible for carrying on the business applies subject to the need to—

...<sup>148</sup>

<sup>145</sup> Words underlined added by regulation 6(10)(d) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>146</sup> Word underlined inserted by regulation 2(5)(c) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 3) Regulations 2020/497

<sup>147</sup> Regulation 5

<sup>148</sup> Words omitted deleted by regulation 6(4) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

(b) carry on the business by providing information or other services—

(i) through a website, or otherwise by on-line communication,

(ii) by telephone, including enquiries by text message, or

(iii) by post.”<sup>149</sup>

(3B) Paragraph (3C) applies where premises used for a business listed in Part 3 of Schedule 1 are used—

(a) to provide accommodation in accordance with paragraph (3), or

(b) to carry on the business in accordance with paragraph (3A).

(3C) Where this paragraph applies, the person responsible for carrying on the business must, during the emergency period, take all reasonable measures to ensure—

(a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),

(b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and

(c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).”<sup>150</sup>

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

<sup>149</sup> Words underlined ((3) & (3A)) substituted and added by regulation 2 of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

<sup>150</sup> Words underlined ((3B) & (3C)) added by regulation 3(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

(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).”<sup>151</sup>

In addition

“(2A) Where premises are not closed because they are premises required in order to carry on a business as permitted by paragraph (2)(a), the person responsible for carrying on the business must, during the emergency period, take all reasonable measures to ensure—

(a) that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),

(b) that persons are only admitted to the premises in sufficiently small numbers to make it possible to maintain that distance, and

(c) that a distance of 2 metres is maintained between persons waiting to enter the premises (except between two members of the same household, or a carer and the person assisted by the carer).<sup>152</sup>

This places a significant responsibility on the person responsible for running the business and requires them to attempt to control people waiting to enter those business premises, and whilst the evidence shows that most people will abide by the social distancing requirements, it is difficult to see how the person responsible for running the business can enforce this if the queue to enter the premises is on land that is not under their control.

Places of worship must remain closed<sup>153</sup> 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 (except between two members of the same household, or a carer and the person assisted by the carer),<sup>154</sup> the place may be used—

---

<sup>151</sup> Regulation 6(1)

<sup>152</sup> Words underlined added by regulation 3(4)) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>153</sup> Regulation 7(1)

<sup>154</sup> Words underlined added by regulation 4(a) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

**(aa) for the solemnization of a marriage or formation of a civil partnership, where a party to the marriage or civil partnership is seriously ill and not expected to recover,<sup>155</sup>**

(a) for funerals,

**(b) to broadcast (whether over the internet or as part of a radio or television broadcast)—**

**(i) an act of worship (without a congregation);**

**(ii) a solemnization of a marriage or formation of a civil partnership allowed by sub-paragraph (aa);**

**(iii) a funeral, or<sup>156</sup>**

(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).<sup>157</sup>

Crematoria must usually be closed but can open for funerals or burials provided all reasonable measures are taken to ensure that the social distancing requirements are complied with <sup>158</sup>.

“(4) If all reasonable measures are taken to ensure a distance of 2 metres is maintained between every person in the crematorium (except between two members of the same household, or a carer and the person assisted by the carer) <sup>159</sup>, the crematorium may open to members of the public for funerals or burials (and to broadcast a funeral or burial whether over the internet or otherwise).”

Cemeteries can also remain open provided social distancing is maintained:

(4A) A person responsible for a cemetery must take all reasonable measures to ensure a distance of 2 metres is maintained between every person at a burial taking place in the cemetery during the emergency period (except between two members of the same household, or a carer and the person assisted by the carer).<sup>160</sup>

---

<sup>155</sup> Words in bold added by regulation 2(2)(a) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>156</sup> Words in bold substituted by regulation 2(2)(b) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>157</sup> Regulation 7(2)

<sup>158</sup> Regulation 7(3) & (4)

<sup>159</sup> Words underlined added by regulation 4(b) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

<sup>160</sup> Words underlined added by regulation 4(c) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399



For the purposes of regulation 7 the following definitions have been inserted as well:

“(6) For the purposes of this regulation—

(a) "burial" includes the internment of a dead person's ashes;

(b) "cemetery" includes a burial ground and any other place for the internment of the dead.”<sup>161</sup>

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 (except between two members of the same household, or a carer and the person assisted by the carer)<sup>162</sup> while those services are provided.”<sup>163</sup>.

Where activities are taking place, people involved must have regard to any guidance issued by the Welsh ministers in relation to social distancing as a consequence of the new regulation 7A:

“7A.— Guidance on maintaining distance of 2 metres between persons

(1) A person subject to a requirement or restriction in—

(a) regulation 4(1) as it applies to workplace canteens,

(aa) regulation 4(5B),

(ab) regulation 5(3C),

(b) regulation 6(1) or (2A),

(c) regulation 6A(1), or

(d) regulation 7(1), (3), (4A) or (5).

must have regard to guidance issued by the Welsh Ministers about reasonable measures to be taken to ensure that a distance of 2 metres is maintained between persons.

(2) The Welsh Ministers—

(a) may revise guidance issued under paragraph (1), and

<sup>161</sup> Words underlined added by regulation 4(e) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

<sup>162</sup> Words underlined added by regulation 4(d) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

<sup>163</sup> Regulation 8(5)

(b) must publish the guidance (and any revisions).  
(3) Guidance under this regulation may incorporate (by reference or transposition) guidance, codes of practice or other documents published by another person (for example, a trade association, body representing members of an industry or a trade union).<sup>164</sup>

*Draconian as those restrictions are, they are as nothing compared to the restrictions imposed on individuals and although there has been a slight easing of those restrictions, they are still extremely restrictive. Regulations 8 and 9 restrict movement, association and entry to land and paths.*

*A revised Regulation 8 is contained within the latest amendments. This does relax the restrictions slightly, but still imposes severe restrictions on peoples general liberty, and effectively prohibits the vast majority of the population, except the homeless<sup>165</sup>, from leaving “the area local to place where they are living”<sup>166</sup>. There is no longer a definition contained in regulation 8 (it was formerly in regulation 8(3) and the only definition is now contained in regulation 8A(3) which states:*

**“For the purposes of this regulation, the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises<sup>167</sup>.**

*It can be seen that is limited to regulation 8A, although it may need to be applied to regulation 8, it is an unsatisfactory situation.*

*A person can only leave they can only leave “the area local to place where they are living”<sup>168</sup>if they have a reasonable excuse<sup>169</sup>. In addition, it is now made clear that a person cannot be indoors with anyone who is not a member of their household, their carer or someone for whom they are caring*

*The revised Regulation 8(1) states:*

**“During the emergency period, no person may, without reasonable excuse—**

---

<sup>164</sup> Words underlined added by regulation 5 of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399 and paragraphs (aa), (ab) & (b) added and substituted by regulations 6(7)(a) and 6(7)(b) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>165</sup> Regulation 8(5)

<sup>166</sup> Regulation 8(1)

<sup>167</sup> Words in bold added by regulation 2(4) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>168</sup> Regulation 8(1)

<sup>169</sup> Regulation 8(1)

- (a) leave the area local to the place where they are living or remain away from that area;**
- (b) be indoors with another person who is not—**
  - (i) a member of their household,**
  - (ii) their carer, or**
  - (iii) a person they are providing care to.”<sup>170</sup>**

*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 any other activity being viewed as a reasonable excuse to justify leaving the place where a person lives, that is not impossible. However the most recent amendments do restrict that significantly with the introduction of regulations 8(3) and (4). These state:*

**“(3) For the purposes of paragraph (1)(a), it is not a reasonable excuse for a person to leave the area local to the place where the person is living to do something, or remain away from the area to do something, if it would be reasonably practicable for them to do that thing within the area.”<sup>171</sup>**

*This is clearly an attempt to limit the distance that people will travel when undertaking activity that falls within the concept of a “reasonable excuse”. The difficulty is that it is extremely vague. There is no definition of the “area local to the place where the person is living”, so it will bear its everyday meaning. “Local” is a word that is used in a wide variety of ways and as a consequence does not have any single precise meaning. The Concise Oxford Dictionary contains a number of definitions, of which the most useful would appear to be “belonging to, existing in, or peculiar to certain place(s); of one’s own neighbourhood; of all affecting apart and not the whole”. There is certainly no clear distance attached to the phrase.*

*Welsh Assembly Government has issued guidance to people to assist with these requirements – “Staying at Home and Away from Others Guidance”<sup>172</sup>*

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

**“(a) obtain supplies from any business or service listed in Part 4 of Schedule 1 including—**

---

<sup>170</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>171</sup> Words in bold added by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>172</sup> Available at <https://gov.wales/staying-home-and-away-others-guidance>. At the time of writing (31<sup>st</sup> May 2020) this has not been updated.

**(i) food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons;**  
**(ii) supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;**<sup>173</sup>

Vulnerable persons are defined in regulation 1(3)(e) 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;
- (iv) any child
- (v) any person who is a vulnerable adult within the meaning given by section 60(1) of the Safeguarding Vulnerable Groups Act 2006.”<sup>174</sup>

*The guidance states this relates to:*

---

<sup>173</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>174</sup> Words underlined added by regulation 6(2) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No25) Regulations 2020/452

*“the need to obtain supplies and services for you or your household, for example food, medicine, and essential household maintenance, we encourage everyone to make this as infrequently as possible.”<sup>175</sup>*

*The ability to leave home to obtain or deposit money has been retained:*

**(b) to obtain money from or deposit money with any business or service listed in paragraph 38 or 39 of Schedule 1;**<sup>176</sup>

*The ability to leave home to collect goods that have been ordered which was added as regulation 8(2)(ab) by the number 3 amendment regulations has been removed. There is no direct replacement but it would appear to be covered by regulation 8(2)(a). This is certainly a more restrictive position than that which existed between 11<sup>th</sup> May and 31<sup>st</sup> May.*

Exercising is no longer regarded as a reasonable excuse. Rather it is an exception to requirement to stay at home imposed by regulation 8(1) allowed by regulation 8 (4):

**“ Paragraph (1)(a) does not apply to a person who is exercising, but only where the exercise starts and finishes at the place where the person is living.”<sup>177</sup>**

*Welsh Assembly Government issued significant guidance on exercise on 24<sup>th</sup> April which was updated on 11<sup>th</sup> May.<sup>178</sup>*

**“(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;”<sup>179</sup>**

The guidance states this relates to: “any medical need, or to provide care or to help a vulnerable person.”<sup>180</sup>

---

<sup>175</sup> “*Staying at Home and Away from Others Guidance*” Paragraph 2. At the time of writing (31<sup>st</sup> May 2020) this has not been updated.

<sup>176</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>177</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>178</sup> “*Leaving home to exercise: guidance*” available at <https://gov.wales/leaving-home-exercise-guidance>. At the time of writing (31<sup>st</sup> May 2020) this has not been updated.

<sup>179</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>180</sup> “*Staying at Home and Away from Others Guidance*” Paragraph 2. At the time of writing (31<sup>st</sup> May 2020) this has not been updated.

**“(d) provide or receive 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, where the person receiving the care is a vulnerable person <sup>181</sup>;**

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).”<sup>182</sup>

**“(e) provide or receive emergency assistance;”<sup>183</sup>**

**“(f) donate blood;”<sup>184</sup>**

---

<sup>181</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>182</sup> Paragraph 7(3B) Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006.

<sup>183</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>184</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

**“(g) work or provide voluntary or charitable services (but see also regulation 8A)”<sup>185</sup>;**

**“(h) enable work to be undertaken at any premises (but see also regulation 8A)”<sup>186</sup>;**

These 2 excuses are subject to the new regulation 8A which states:

**“Requirement to continue to work from home where practicable  
8A.—(1) During the emergency period, in the circumstances referred to in paragraph (2) no person may leave the place where they are living, or remain away from that place, for the purposes of work or to provide voluntary or charitable services.**

**(2)The circumstances are that it is reasonably practicable for the person to work or to provide voluntary or charitable services from the place where they are living.**

**(3) For the purposes of this regulation, the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.”<sup>187</sup>**

The Guidance states: “travelling to and from work, but only where this absolutely cannot be done from home”<sup>188</sup>. There is an additional restriction in relation to work contained in regulation 6A:

“6A.— General restriction on places of work

(1) A person responsible for work being carried out at premises where a person is working must, when such work is being carried out during the emergency period, take all reasonable measures to ensure that a distance of 2 metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer).<sup>189</sup>

(2) Paragraph (1) does not apply to premises—

---

<sup>185</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>186</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>187</sup> Words in bold added by regulation 2(4) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>188</sup> “*Staying at Home and Away from Others Guidance*” Paragraph 2. At the time of writing (31<sup>st</sup> May 2020) this has not been updated.

<sup>189</sup> Words underlined added by regulation 3 of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

- (a) used in the carrying on of a business, or provision of a service, listed in Schedule 1, or
- (b) to which regulation 6(2A) applies.”<sup>190</sup>

This supplements the social distancing requirements already contained in regulation 6.

The ability to attend a marriage or civil partnership (in very limited circumstances) is a new addition:

- “(i) attend a solemnization of a marriage or formation of a civil partnership, where a party to the marriage or civil partnership is seriously ill and not expected to recover—**
  - (i) as a party to the marriage or civil partnership,**
  - (ii) if invited to attend, or**
  - (iii) as the carer of a person attending.”<sup>191</sup>**

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

- (j) attend a funeral—**
  - (i) as a person responsible for arranging the funeral,**
  - (ii) if invited by a person responsible for arranging the funeral,**
  - or**
  - (iii) as the carer of a person attending;<sup>192</sup>**

- (k) visit a cemetery, burial ground or garden of remembrance to pay respects to a deceased person;<sup>193</sup>**

- (l) meet a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;<sup>194</sup>**

- (m) access or receive critical public services, including—**
  - (i) childcare or educational services (where these are still available to a child in relation to whom the person is the parent, or has parental responsibility for, or has care of);**

---

<sup>190</sup> Original subparagraph (2) deleted and the words underlined substituted by regulation 3(5) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>191</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>192</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>193</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>194</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557



- (ii) social services;**
- (iii) services provided by the Department for Work and Pensions;**
- (iv) services provided to victims (such as victims of crime or domestic violence);<sup>195</sup>**

**(n) visit a library;<sup>196</sup>**

**(o) in relation to children who do not live in the same household as their parents, or one of their parents, 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;<sup>197</sup>**

**(p) in the case of a minister of religion or worship leader, go to their place of worship;<sup>198</sup>**

**(q) move house where the move cannot be postponed;<sup>199</sup>**

**(r) avoid injury or illness or escape a risk of harm.<sup>200</sup>**

The new Regulation 8B prohibits outdoor gatherings of people from more than 2 households, but again there are exceptions which are as follows:

**“Restrictions on gathering with other persons**

**8B. During the emergency period no person may participate in a gathering outdoors except—**

- (a) where the persons gathering are members of no more than two households,**
- (b) where the gathering is essential for work purposes,**
- (c) to attend a funeral, or**
- (d) where the gathering is necessary—**
  - (i) to facilitate a house move,**
  - (ii) to provide care or assistance to a vulnerable person, including relevant personal care within the**

<sup>195</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>196</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>197</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>198</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>199</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>200</sup> Words in bold substituted by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

**meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006,**  
**(iii) to provide emergency assistance to any person, or**  
**(iv) to participate in legal proceedings, or fulfil a legal obligation.”<sup>201</sup>**

“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”<sup>202</sup>) 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
  - (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.”<sup>203</sup>

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.”<sup>204</sup>

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;

---

<sup>201</sup> Regulation 8B Words in bold added by regulation 2(5) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>202</sup> Regulation 9(7)

<sup>203</sup> Regulation 9(1)

<sup>204</sup> Regulation 9(2)

(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.<sup>205</sup>

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 powers<sup>206</sup>. The relevant authority must then publish a list of closed parts and land and erecting maintain notices informing the public of the closure<sup>207</sup>

*Any contravention of regulations 4, 6, 7, 8A, 8B 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 fine<sup>208</sup>. 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 part<sup>209</sup>. In addition, any person who without reasonable excuse obstructs anyone carrying out a function under the regulations is also guilty of an offence<sup>210</sup>.

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

---

<sup>205</sup> Regulation 9(7)(b) & (c)

<sup>206</sup> Regulation 9(3)

<sup>207</sup> Regulation 9(5)

<sup>208</sup> 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

<sup>209</sup> Regulation 12(6)

<sup>210</sup> Regulation 12(3)

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.]<sup>211</sup>

(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."

---

<sup>211</sup> Words underlined are deemed to have been added by regulation 12 (5) of The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020/353

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 18<sup>212</sup>. 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)).”<sup>213</sup>

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) <sup>214</sup>. Issue of the fixed penalty notice stays criminal proceedings for at least 28 days<sup>215</sup>, and provided the fixed penalty has been paid before that time no prosecution can take place<sup>216</sup>. The penalty is £60 in respect of the first fixed penalty notice to be issued under these regulations<sup>217</sup> (reducing to £30 if paid within 14 days)<sup>218</sup>. For the second fixed penalty notice the penalty is £120<sup>219</sup> (with no reduction for early payment), doubling to £240 for the third, £480 for the fourth, £960 for the fifth, finally peaking and plateauing at £1920 for the sixth and any subsequent notices<sup>220</sup>. Before the time somebody has racked up 6 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 10.

---

<sup>212</sup> Regulation 10(1)

<sup>213</sup> Regulation 10(11)

<sup>214</sup> Regulation 10(12)

<sup>215</sup> Regulation 13(4)(a)

<sup>216</sup> Regulation 13(4)(b)

<sup>217</sup> Regulation 13(6)

<sup>218</sup> Regulation 13(7)

<sup>219</sup> Regulation 13(8)(b)(i)

<sup>220</sup> Regulation 13(8)(b)(iii) to (v) added by regulation 2(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 4) Regulations 2020/529

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.<sup>221</sup>

These are Executive functions<sup>222</sup>, and the power to designate such an officer would lie with the Senior Executive Member, which is the elected Mayor, the Leader or Council Manager <sup>223</sup>.

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”<sup>224</sup>.

It is therefore important that local authorities and the police have a draft of a suitable notice if required<sup>225</sup>.

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”.

Regulation 14 prohibits prosecutions being brought by anyone apart from the Director of Public Prosecutions or any person designated by the Welsh Ministers<sup>226</sup>.

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

---

<sup>221</sup> 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

<sup>222</sup> 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.

<sup>223</sup> See Ss 14 to 16 Local Government Act 2000

<sup>224</sup> Regulation 8(2)

<sup>225</sup> See Appendices 4 to 6 to this Article

<sup>226</sup> No obvious designation has been made in respect of this.

“ (1) A relevant person may give a prohibition notice to a person if the relevant person . . .<sup>227</sup> —

(a) has reasonable grounds for suspecting that<sup>228</sup> the person is contravening a requirement in regulation 4, 5(3C)<sup>229</sup>, 6, 6A<sup>230</sup> or 7<sup>3</sup>, and

(b) considers<sup>231</sup> 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 above<sup>232</sup>.

If a relevant person:

“has reasonable grounds for suspecting<sup>233</sup> that a person (“P”) is contravening **a requirement in regulation 8(1) or 8A**<sup>234</sup>, the relevant person may—

(a) direct P to return to the place where P is living **(if P is not already there)**<sup>235</sup>;

(b) remove P to that place**(if P is not already there)**<sup>236</sup>.”<sup>237</sup>

*The relevant person can require P to follow instructions and can also use reasonable force to exercise that power:*

“(3) A relevant person may—

(a) when exercising the power in paragraph (2)(a) or (b), direct P to follow such instructions as the relevant person considers necessary;

---

<sup>227</sup> Words omitted by regulation 5(2)(a) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>228</sup> The words underlined inserted by regulation 5(2)(b)(i) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>229</sup> The word underlined added by regulation 5(2)(b)(ii) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>230</sup> The word underlined added by regulation 7(4)(a) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020/399

<sup>231</sup> Word underlined added by regulation 5(2)(c) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>232</sup> Regulation 10(11)

<sup>233</sup> Words underlined substituted by regulation 5(3) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>234</sup> Words in bold substituted by regulation 2(6)(a)(i) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>235</sup> Words in bold substituted by regulation 2(6)(a)(ii) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>236</sup> Words in bold substituted by regulation 2(6)(a)(iii) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>237</sup> Regulation 10(2)

(b) use reasonable force in the exercise of the power in paragraph (2)(b)."<sup>238</sup>.

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 living<sup>239</sup> 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 1989<sup>240</sup>)”<sup>241</sup>

Regulation 10(7) is amended to reflect the replacement of regulation 895) by regulation 8A. it now reads as follows:

“Where a relevant person has reasonable grounds for suspecting<sup>242</sup> that . . .<sup>243</sup> people are gathered together in contravention of regulation **8B**<sup>244</sup>, 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.”<sup>245</sup>

In those circumstances, reasonable force and all the provisions noted above in relation to children apply:

“(8) A relevant person exercising the power in paragraph (7)—

---

<sup>238</sup> Regulation 10(3) underlined substituted by regulation 5(4) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>239</sup> Regulation 10(4)(a)

<sup>240</sup> 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.”

<sup>241</sup> Regulation 10(5)

<sup>242</sup> Words underlined substituted by regulation 5(6) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>243</sup> Words omitted repealed by regulation 2(6)(b)(i) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>244</sup> Words in bold substituted by regulation 2(6)(b)(ii) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>245</sup> Regulation 10(7)



(a) to direct a gathering to disperse, or  
(b) to remove a person to the place where they are living,  
may use reasonable force, if necessary, in exercise of the power.  
(8A) Where a relevant person has reasonable grounds to suspect that  
a person ("P") is in a gathering in contravention of regulation **8B**<sup>246</sup> and  
is a child accompanied by an individual ("I") who has responsibility for  
P—  
(a) the relevant person may direct I to take P to the place  
where P is living, and  
(b) I must, so far as reasonably practicable, ensure that P  
complies with any direction or instruction given by the relevant  
person to P.  
(8B) A relevant person may only exercise a power in paragraph (7) or  
(8A) if the relevant person considers that it is necessary and  
proportionate to do so.<sup>247</sup>

Regulation 11 allows a relevant person to enter premises, using reasonable force if necessary<sup>248</sup> 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.”<sup>249</sup>

They can be accompanied by other people and take equipment and materials as appear to be appropriate<sup>250</sup>, and if the premises are unoccupied must leave them effectively secured<sup>251</sup>.

---

<sup>246</sup> Word in bold substituted by regulation 2(6)(c) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 5) Regulations 2020/557

<sup>247</sup> Regulation 10(8) underlined substituted and (8A) & (8B) underlined added by regulation 5(7) of The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No 2) Regulations 2020/452

<sup>248</sup> Regulation 11(2)(a)

<sup>249</sup> Regulation 11(1)

<sup>250</sup> Regulation 11(2)(b)

<sup>251</sup> Regulation 11(3)(b)

## Appendix 1 – England as at 1<sup>st</sup> June 2020

### Requirement to close premises (Prohibited Activities) Regulation 4

#### Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended)

### PROHIBITION NOTICE

To the person carrying on the business *[name of person if known]*, as an 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 / Indoor games, recreation and entertainment venue / Funfair (whether outdoors or indoors) / Theme park / Adventure Park and activity / Playground / Indoor Sports court / Outdoor gym / Outdoor swimming pool / Auction House (except for a livestock auction) / Social club / Model village / Aquarium / Zoo (including a safari park) / Visitor attraction at a farm / Indoor attraction at a visitor attraction (excluding toilets) .\*

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 as at 1<sup>st</sup> June 2020

### Requirement to close premises (Non Essential Premises) Regulation 5

#### Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended)

#### 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 / Savings Club / Cash point / An undertaking which by way of business operates currency exchange offices, transmits money (or any representation of money) by any means or cashes cheques which are made payable to customers / 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 / Garden Centre / Outdoor sports court.\*

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 as at 1<sup>st</sup> June 2020**

**Requirement to close premises (Holiday Accommodation) Regulation 5**

**Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended)**

**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 as at 1<sup>st</sup> June 2020**

**Requirement to close premises (Prohibited Activities) Regulation 4**

**Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (as amended)**

**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 / 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 market (except for a livestock market or a stall selling food) / Car showroom / Auction House (except for a livestock auction).\*

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 as at 1<sup>st</sup> June 2020

### Requirement to close premises (Non Essential Premises) Regulation 6

#### Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (as amended)

##### 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 / Garden centre or plant nursery / 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 / Savings club / Cash point /An undertaking which by way of business operates currency exchange offices, transmits money (or any representation of money) by any means or cashes cheques which are made payable to customers. / 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 or aquacultural supplies shop / Livestock market or auction / Storage or distribution facility including delivery drop off points / Car park / Public toilet / Library.\*

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 as at 1<sup>st</sup> June 2020**

**Requirement to close premises (Holiday Sites) Regulation 5**

**Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (as amended)**

**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*