



NEXSTART

The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 2020 No. 750

The regulations come into force at 12.01 a.m. on 18th July 2020.

They apply in relation to England only.

The local authority (LA / Council) is given powers to give a “direction” which imposes

“prohibitions”

“requirements”

or “restrictions”

Directions relating to individual premises.

The LA can impose prohibitions requirements or restrictions on one or both of two different types of people:

- “the owner or any occupier of premises”
- “any other person involved in managing entry into / departure from/ location of persons in premises”.

The prohibitions / requirements / restrictions must relate to

“entry into” , “departure from” or “location of persons in” specified premises in the local authority’s area.

A direction under paragraph 4(1) may be given only for the purposes of—

(a) closing the premises,

(b) restricting entry to the premises, or

(c) securing restrictions in relation to the location of persons in the premises.

The LA can specify things like

- (a) the number of persons in the premises,
- (b) the purpose for which a person is in the premises, and
- (c) the facilities in the premises.

These are just given as specific examples in the Regulations – they are not the only things.

Directions relating to events

LAs may also give a direction imposing prohibitions, requirements or restrictions in relation to “the holding of an event” in its area.

This might be one particular named event, or to a whole category of events of a specified type.

The description does not have to be based on what the event is for, but could simply be a reference to the number of people who might attend, or reference to any event where there might be a “requirement for medical or emergency services to attend the event”, or “in any other way”.

The direction may be served on the organiser of such an event; any other person involved in holding such an event (this expressly does not include people who are just attending the event), or, in rather curious wording:

“the owner or any occupier of premises for an event to which the direction relates”.

What does “premises for an event” mean?

The direction can impose requirements on any or all of those people, which might include (but is not limited to) getting information about the LA intervention and what is required to people who may be planning to attend the event.

Directions relating to public outdoor places

The LA also has the power to give a direction imposing prohibitions, requirements or restrictions in relation to access to public outdoor places in its area; either one particular place, or all places of a specified description. The place/s need to be sufficiently well described to be able to identify the boundaries.

The LA itself needs to take reasonable steps to prevent or restrict public access to the public outdoor place/s in question, and so does anyone who owns, occupies or is responsible for the land.

No-one may enter or remain in a public outdoor place which is under a direction, unless they have a reasonable excuse, which might include (but is not limited to) ownership, occupation or responsibility for the land; needing to get access to or from the place where they live, or to children; needing to visit someone, or to provide care to a vulnerable person; needing to avoid injury, illness or danger; for legal reasons, or where reasonably necessary for work purposes or to facilitate a house move.

Conditions for directions.

A local authority has to find three conditions are *all* met before it can give a direction under regulation 4(1), 5(1) or 6(1)

- (a) that giving a direction responds to a serious and imminent threat to public health,
- (b) that the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and
- (c) that the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

The LA must specify the date and time on which the prohibition/ requirement/ restriction in the direction comes into effect, and the date and time on which it will end. There are rights of appeal to the Magistrates' Court, and the LA must specify the details of those rights when they serve the direction.

If the LA is going serve a direction, it must take reasonable steps to warn persons who own / occupy or carry on a business by giving advance notice of what they are going to do.

If they give a direction, the LA must notify the Secretary of State ASAP, and review their decision at least once every 7 days, to see if all three conditions still apply.

If even one of the conditions no longer applies then the LA must either revoke the direction outright, or replace it with another, different direction under Reg 4(1). 5(1) or 6(1). This sounds confusing, because if all three conditions have to be met, then how can the LA serve a fresh direction if one or more of the conditions is not met?

It means that the LA might have served one type of direction - for example, on a whole area, but then they realise that the risk is more localised, and they revoke the wider direction, and impose a direction, which still meets all three conditions, but, for

example, on just one set of premises. For any direction that they serve, all three conditions must always be met.

The LA must have regard to advice given by their Director of public health first before serving a direction.

If any of these directions names a particular person, then it must be given by the LA to that person in writing. Where a particular person is not named, the LA must post the direction on their website. In both cases, the LA must also publish the direction in such a way as the LA thinks will draw it to public attention for those who might be affected by it. The direction must explain which part of the regulations it is made under.

Anyone upon whom a direction has been served can make representations direct to the Secretary of State about it. The SoS must consider those representations as soon as possible, and give written reasons.

Any LA who gives a direction must notify all of the other LAs adjacent to it. A neighbouring LA who receives that information is under an obligation to consider whether it too needs to give a direction, and must inform the original notifying LA of what it decides to do. This is not circular, however, so if the neighbouring LA decides to give a direction, it does not have to notify the first LA back, and so on, because this would never end.

In all of these cases, the Secretary of State can require the LA to give a direction, if the LA were not planning to do it themselves, and the SoS can order the LA to revoke a direction or change it as well.

Enforcement

The Police do not have the power to give a direction under these regulations. However, both LA officers and the Police are given powers to enforce a direction once a LA has given it. LA officers and Police officers are given different powers of enforcement under the Regulations.

A LA designated officer may give a prohibition notice to a person if the LA officer reasonably believes that—

- (a) the person is contravening a direction under regulation 4(1) (individual premises) or 5(1) (events), and
- (b) it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to do so.

Where a police officer considers that an event is being held contrary to regulation 5(1), the constable may—

- (a) direct the event to stop,
- (b) direct a person to leave the event, and
- (c) remove a person from the event.

Where a constable considers that a person is, without reasonable excuse, in a public outdoor place contrary to regulation 7(3), the constable may—

- (a) direct that person to leave the place, and
- (b) remove that person from the place,

and can use reasonable force to do so if necessary. The officer can only exercise any of these powers if they consider that it is a necessary and proportionate means of ensuring compliance with a direction. There are special powers in relation to children.

Offences.

Regulation 13 creates offences if a person contravenes any of the directions without a reasonable excuse, or obstructs anyone carrying out their powers under the regulations. The offence can be committed by a company. The offence is summary only and attracts a fine.

The power of arrest (s.24 of the Police and Criminal Evidence Act 1984) applies to people who are breaching a direction with two additional powers of arrest:

- (a) to maintain public health, and
- (b) to maintain public order.

It is important to make clear that these are not new powers of arrest being introduced generally - this is specifically in connection with the offence of breaching the terms of a direction that has been given by the LA, which must go through all the steps outlined above.

Fixed penalty notices

A fixed penalty notice can be given to a person who commits an offence and is aged 18 or over. The fixed penalty notice gives an opportunity to the person served with it to pay a fine to the LA or to an officer of the Secretary of State.

The person served with a fixed penalty notice has 28 days to pay, before consideration of prosecution for the offence. The fixed penalty notice must have all relevant details on it. The fine is £50 if paid within 14 days, or £100 if not. The fine goes up if there are

repeat fixed penalty notices. The police and local authority officers have powers to serve fixed penalty notices, but in different circumstances under different parts of the regulations., so this would need to be understood carefully before serving.

Prosecutions for offences can be brought by the LA, or the CPS or a person designated by the Secretary of State.

Directions by county councils

County councils are also given the power of giving directions if they are in an area where there is also a district council. The county council may direct the district council to exercise any of the district council's functions in a specified way, but only if the county council considers that it is necessary and proportionate to do so to prevent / protect against/ delay/ control the spread of coronavirus infection in the district council's area.

A direction under this regulation may be varied or revoked by the county council, who must have regard to the advice of their Director of public health before acting.

The Regulations expire at the end of 17 January 2021, but anything that had already been started by then would continue to be valid.

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17 July 2020