
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 103

**The Health Protection (Coronavirus)
(Restrictions) (Scotland) Regulations 2020**

PART 4

Enforcement

Enforcement of requirements

7.—(1) A relevant person may take such action as is necessary to enforce any requirement imposed by these Regulations.

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

- (a) the person is contravening a requirement in these Regulations, and
- (b) it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to contravene the requirement.

(3) Where a relevant person considers that a person is outside the place where they are living, the relevant person may—

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

(4) A constable, exercising the power in paragraph (3)(b) to remove a person to the place where they are living, may use reasonable force, if necessary, in exercise of the power.

(5) Where the person outside the place where they are living 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 they are living, and
- (b) that individual must, so far as reasonably practicable, ensure that the child complies with any such direction or instruction given by the relevant person to the child.

(6) Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction in regulation 5(1), 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.

(7) For the purposes of this regulation, an individual has responsibility for a child if the individual—

- (a) has custody or charge of the child for the time being, or
- (b) has parental responsibility for the child.

(8) A relevant person may only exercise a power in paragraph (3), (5) or (6) if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the requirement.

(9) Where a relevant person considers that three or more people are gathered together in contravention of regulation 6, 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, or
- (c) remove any person in the gathering to the place where they are living.

(10) Paragraphs (4) to (7) of this regulation apply to the exercise of a power under paragraph (9) as they apply to the exercise of a power under paragraph (3), (5) or (6).

(11) A relevant person exercising a power under paragraph (3), (5), (6) or (9) may give the person concerned any reasonable instructions they consider to be necessary.

(12) For the purposes of this regulation, a “relevant person” means—

- (a) a constable, or
- (b) subject to paragraph (13), a person designated by a local authority for the purposes of this regulation.

(13) A local authority may only designate a person for the purposes of this regulation in relation to a requirement in regulation 3 or 4.

(14) For the purposes of this Part, references to a requirement include references to a restriction.

Offences and penalties

8.—(1) A person who contravenes a requirement in regulation 3 to 7 commits an offence.

(2) A person who obstructs any person carrying out a function under these Regulations commits an offence.

(3) A person who contravenes a direction given under regulation 7, or fails to comply with a reasonable instruction or a prohibition notice given by a relevant person under regulation 7, commits an offence.

(4) It is a defence to a charge of committing an offence under paragraph (1), (2) or (3) to show that the person, in the circumstances, had a reasonable excuse.

(5) In paragraph (4), a reasonable excuse includes the need—

- (a) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household) or for a vulnerable person and supplies for the essential upkeep, maintenance and functioning of the household or the household of a vulnerable person, or to obtain money,
- (b) to take exercise, either alone or with other members of their household,
- (c) to seek medical assistance, including to access any of the services referred to in paragraph 37 or 38 of schedule 1,
- (d) to provide care or assistance to a vulnerable person, including to provide emergency assistance,
- (e) to donate blood,
- (f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living,
- (g) to attend a funeral of—
 - (i) a member of the person’s household,
 - (ii) a close family member, or
 - (iii) if no-one within sub-paragraphs (i) or (ii) are attending, a friend,

- (h) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings,
 - (i) to access critical public services, including—
 - (i) childcare or educational facilities (where these are still available to the child in relation to whom that person is the parent of, or has parental responsibility for or care of, the child),
 - (ii) social services,
 - (iii) services provided by the Department of Work and Pensions,
 - (iv) services provided to victims (such as victims of crime),
 - (j) in relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child,
 - (k) in the case of a minister of religion or worship leader, to go to their place of worship,
 - (l) to move house where reasonably necessary,
 - (m) to avoid injury, illness or to escape a risk of harm.
- (6) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding the statutory maximum.
- (7) If an offence under this regulation committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to any neglect on the part of such an officer,
- the officer (as well as the body corporate) commits the offence and is liable to be prosecuted and proceeded against and punished accordingly.
- (8) In paragraph (7), “officer” in relation to a body corporate means —
- (a) in the case of a company—
 - (i) a director, secretary, manager or similar officer, or
 - (ii) where the affairs of the company are managed by its members, a member,
 - (b) in the case of a limited liability partnership, a member,
 - (c) in the case of a partnership other than a limited liability partnership, a partner,
 - (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

Fixed penalty notices

9.—(1) A constable may issue a fixed penalty notice to a person that the constable reasonably believes—

- (a) has committed an offence under these Regulations, and
- (b) is aged 16 years or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty in accordance with these Regulations.

(3) The penalty payable in respect of a fixed penalty notice, subject to paragraph (4), is £60.

(4) Unless paragraph (5) applies, if £30 is paid before the end of the period of 28 days beginning with the date of the fixed penalty notice, then that is the amount of the fixed penalty (and the fixed penalty notice must make known the effect of this paragraph).

(5) If the person to whom a fixed penalty notice is given has already received a fixed penalty notice under these Regulations—

- (a) paragraph (4) does not apply, and
- (b) the penalty payable in the case of—
 - (i) the second fixed penalty notice received is £120,
 - (ii) the third and subsequent fixed penalty notice received is double the amount specified in the last fixed penalty notice received by that person, to a maximum of £960.

(6) For the purposes of these Regulations—

- (a) the form of a fixed penalty notice,
- (b) the effect of a fixed penalty notice, and
- (c) the procedure that applies to a fixed penalty notice,

are the same as those that apply to a fixed penalty notice given under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004⁽¹⁾, as provided for in sections 129 to 134 of that Act, subject to the modifications in paragraph (7).

(7) The modifications are—

- (a) section 129(1) is to be disregarded,
- (b) the definitions of “fixed penalty notice” in sections 129(2) and 134 are to be construed as a reference to a notice under paragraph (1),
- (c) the definition of “prescribed area” in section 129(2) is to be disregarded,
- (d) section 130(1), (2) and (3)(f) is to be disregarded,
- (e) the references to “section 129” in section 131(1) and section 133(1) are to be construed as references to this regulation,
- (f) section 131(5) and (6) is to be disregarded, and
- (g) the definition of “fixed penalty offence” in section 134 is to be construed as though it referred to an offence of the type referred to in paragraph (1)(a).

(1) 2008 asp 8.