
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 344

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020

PART 3

Enforcement

Enforcement of requirements

4.—(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 the person contravening a requirement in these Regulations 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 a direction or instruction given by the relevant person to the child.

(4) Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with a requirement mentioned in paragraph (5), 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 requirement.

(5) The requirements mentioned in paragraph (4) are those in Part 3 of each of schedules 1 to 5.

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

- (a) care or control of the child for the time being, or
- (b) parental responsibilities, within the meaning of section 1(3) of the Children (Scotland) Act 1995⁽¹⁾, in relation to the child.

(7) Where a relevant person considers that persons are gathered together in contravention of the requirements mentioned in paragraph (5), the relevant person may—

- (a) direct the gathering to disperse,
- (b) direct any person in the gathering to return to the place where the person is living, or
- (c) remove any person in the gathering to the place where the person is living.

(1) 1995 c.36.

(8) A relevant person may only exercise a power in paragraph (3), (4) or (7) if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the requirement.

(9) A relevant person exercising a power under paragraph (3), (4) or (7) may give the person concerned any reasonable instructions the relevant person considers necessary.

(10) A constable, exercising the power in paragraph (7)(c) to remove a person to the place where the person is living, may use reasonable force, if necessary, in exercise of the power.

(11) For the purpose of this regulation, a “relevant person” means—

- (a) a constable, or
- (b) subject to paragraph (12), a person designated by a local authority.

(12) A local authority may only designate a person for the purpose of this regulation in relation to the requirements in Part 1 (closure of premises) and Part 2 (other restrictions on business) in each of schedules 1 to 5.

(13) For the purpose of this Part, references to a requirement include references to a restriction.

Offences and penalties

5.—(1) It is an offence for a person to contravene any of the restrictions or requirements in schedules 1 to 5 and 7 other than a restriction or requirement in—

- (a) schedule 1, paragraphs 3(b) and 4,
- (b) schedule 2, paragraphs 4(b) and 5,
- (c) schedule 3, paragraphs 7(b) and 8,
- (d) schedule 4, paragraphs 6(b) and 7, or
- (e) schedule 5, paragraphs 8(b) and 9.

(2) It is an offence for a person to obstruct any person carrying out a function under these Regulations.

(3) It is an offence for a person to—

- (a) contravene a direction given under regulation 4, or
- (b) fail to comply with an instruction or prohibition notice given under regulation 4.

(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) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding the statutory maximum.

(6) If an offence under this regulation committed by a body corporate is proved to—

- (a) have been committed with the consent or connivance of an officer of the body, or
- (b) 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.

(7) In paragraph (6), “officer” in relation to a body corporate means in the case of—

- (a) 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) a limited liability partnership, a member,
- (c) a partnership other than a limited liability partnership, a partner, or

- (d) another body or association, a person who is concerned in the management or control of its affairs.

Power of entry

6.—(1) A relevant person may enter premises—

- (a) for the purpose of the performance of that person’s functions under these Regulations, and
- (b) if the condition in paragraph (3)(a) is met.

(2) A relevant person may enter premises at any time if—

- (a) that person reasonably suspects that an offence under regulation 5(1) is taking place on the premises,
- (b) that person reasonably believes that it is necessary and proportionate to enter the premises for the purpose of preventing the continuation of the offence, and
- (c) a condition in paragraph (3)(b), (c) or (d) is met.

(3) The condition is that—

- (a) the person who appears to be the occupier of the premises has consented to the relevant person entering the premises,
- (b) the relevant person—
 - (i) has requested permission to enter the premises from the person who appears to be the occupier of the premises, but permission has been refused, and
 - (ii) reasonably believes the situation to be urgent,
- (c) the occupier of the premises is temporarily absent and the relevant person reasonably believes the situation to be urgent, or
- (d) the entry is effected under the authority of a warrant issued under paragraph (10).

(4) For the purposes of paragraph (3)(b)(ii) and (c), a reasonable belief in urgency means that the relevant person considers immediate entry to the premises to be necessary and proportionate for the purpose of preventing the continuation of the offence and for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination with coronavirus.

(5) Where the offence referred to in paragraph (2)(a) is a contravention of paragraph 8 of schedule 1, paragraph 9 of schedule 2, paragraph 12 of schedule 3, paragraph 11 of schedule 4 or paragraph 13 of schedule 5, a constable must reasonably suspect that there is a gathering inside a private dwelling which consists of more than six persons.

(6) A relevant person entering premises in accordance with paragraph (1) or (2) may—

- (a) use reasonable force to enter the premises if necessary, and
- (b) take such other persons, equipment and materials onto the premises as the relevant person considers necessary.

(7) A relevant person must, if requested to do so, provide a document or any other thing showing the relevant person’s authority to exercise the power of entry in this regulation.

(8) Subject to paragraph (9), for the purposes of this regulation, “relevant person” has the meaning in regulation 4(11).

(9) A relevant person within the meaning of regulation 4(11)(b) may only enter premises in relation to a requirement in Part 1 (closure of premises) or Part 2 (other restrictions on business) in any of schedules 1 to 5.

(10) A sheriff or justice of the peace may by warrant authorise a relevant person to enter the premises.

(11) A warrant under this regulation continues in force until the purpose for which it is issued is fulfilled.

Fixed penalty notices

7.—(1) A relevant person may issue a fixed penalty notice to a person the relevant person believes—

- (a) has committed an offence under these Regulations, and
- (b) is 18 years of age 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 paragraphs (4) and (5), 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 purpose of paragraph (5), a fixed penalty notice issued under the following provisions is to be treated as if it were issued under these Regulations—

- (a) regulation 16 of the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020(2),
- (b) regulation 9 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020(3),
- (c) regulation 8 of the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020(4),
- (d) regulation 13 of the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020(5), and
- (e) regulation 27 of the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020(6).

(7) For the purpose 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,

(2) [S.S.I. 2020/279](#).

(3) [S.S.I. 2020/103](#), revoked by [S.S.I. 2020/279](#).

(4) [S.S.I. 2020/234](#), amended by [S.S.I. 2020/253](#).

(5) [S.S.I. 2020/262](#).

(6) [S.S.I. 2020/318](#).

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⁽⁷⁾, as provided for in sections 129 to 134 of that Act and sections 226B and 226I of the Criminal Procedure (Scotland) Act 1995⁽⁸⁾, subject to the modifications in paragraph (8).

- (8) 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) in section 131(5)—
 - (i) the reference to “in accordance with this Part” is to be construed as a reference to these Regulations, and
 - (ii) the reference to “a sum equal to one and a half times” is to be disregarded,
 - (g) the references to “constable” in section 133(1) are to be construed as references to the relevant person within the meaning of this regulation,
 - (h) 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), and
 - (i) in section 226B(5)(a)(ii) of the Criminal Procedure (Scotland) Act 1995—
 - (i) the reference to “by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004” is to be construed as a reference to that section as modified by this paragraph, and
 - (ii) the reference to “a fixed penalty notice given under section 129 (fixed penalty notices) of that Act” is to be construed as a reference to section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 as modified by this paragraph.
- (9) For the purpose of this regulation, “relevant person” has the meaning given in regulation 4(11).
- (10) Where the relevant person issuing a notice under paragraph (1) is a relevant person within the meaning of regulation 4(11)(b), the relevant person may require the person believed to have committed an offence (“A”) to give A’s name and address.
- (11) When making that requirement, the relevant person must inform A that—
- (a) the relevant person believes A has committed an offence under these Regulations, and
 - (b) failure to comply with the requirement may be an offence.
- (12) If A has been required under this section to give A’s name and address and, without reasonable excuse, fails to do so, A will be guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum.

(7) 2004 asp 8.

(8) 1995 c.46. Sections 226B and 226I were inserted by section 55 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6). Sections 226B and 226I have been amended but none of the amendments are relevant to these Regulations.