

# CORONAVIRUS: A GUIDE FOR POLICE FORCES IN WALES

VERSION 1 (9 APRIL 2020)



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## INTRODUCTION

1. The Covid-19 ('coronavirus') pandemic has resulted in the most significant global public health emergency in living memory. In response, the Government has implemented a package of public health measures seeking to limit and delay the spread of the virus.
2. Distinct measures have been adopted for England, Wales, Scotland and Northern Ireland. The [Coronavirus Act 2020](#) applies throughout the United Kingdom, but certain parts distinguish between England, Wales, Scotland and Northern Ireland (see for instance [Schedule 21](#), containing [Part 2](#) for England, [Part 3](#) for Scotland, [Part 4](#) for Wales, and [Part 5](#) for Northern Ireland). Different regulations have also been adopted for each of the four parts of the United Kingdom.<sup>1</sup>
3. This guide addresses the measures currently in force in Wales, in particular:
  - (a) [Part 4](#) of [Schedule 21](#) to the [Coronavirus Act 2020](#); and
  - (b) The [Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#).
4. These measures will – for a relatively limited period of time it is hoped – impose extraordinary restrictions on many rights and freedoms otherwise enjoyed by members of the public and businesses. It falls on the Government, police forces, immigration officers, public health officials and local authorities to implement and enforce these new measures.
5. This guide has been prepared by Members of [5 Essex Court](#) to assist in the interpretation and application of the new public health measures set out below. These will place a considerable burden on police forces for the foreseeable future. It will be necessary for frontline officers, police staff and operational team leaders to quickly assimilate the new powers and find the right balance in their application and enforcement.
6. [5 Essex Court](#) has considerable expertise in police law and is considered a leading set of chambers in this field. We are instructed by every police force in England & Wales and Police Scotland, and have been involved in many of the most high-profile cases in recent years. As such, we consider ourselves well placed to provide guidance on the important issues arising from the new public health measures.

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<sup>1</sup> The regulations currently in force are: the [Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); the [Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); the [Health Protection \(Coronavirus, Restrictions\) \(Northern Ireland\) Regulations 2020](#).

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## CORONAVIRUS ACT 2020

7. The [Coronavirus Act 2020](#) ('the Act') came into force on 26 March 2020 and will expire after two years (although this is subject to alteration pursuant to [ss.89](#) and [90](#) of the Act).
8. The Act is designed to operate flexibly with certain provisions coming into force, being suspended, or revived by way of further regulations ([ss.87](#) and [88](#)). It will therefore be necessary for police forces to keep the legislative regime under constant review.
9. The Act is extensive, running to 348 pages, much of which amends pre-existing legislation. It touches upon a wide range of issues, including:
  - (a) the registration of health professionals and social workers ([ss.2-7](#));
  - (b) emergency volunteers ([ss.8-9](#));
  - (c) mental health and mental capacity ([s.10](#));
  - (d) health service indemnification ([ss.11-13](#));
  - (e) the registration of deaths and still-births ([ss.18-21](#));
  - (f) powers to require and restrict the disclosure of information relating to food supply ([ss.25-29](#));
  - (g) the suspension of the requirement to hold a jury inquest under certain conditions ([ss.30-32](#));
  - (h) educational institutions and childcare premises ([s.37](#));
  - (i) sick pay and pensions ([ss.39-47](#)); and
  - (j) residential tenancies and eviction ([s.81](#)).
10. Most relevant to police forces in Wales are the provisions which provide for powers in relation to potentially infectious persons ([s.51](#) and [Schedule 21](#)).
11. Other noteworthy provisions include the procedure for urgent warrants under the [Investigatory Powers Act 2016](#) ([s.23](#)), the retention of fingerprints and DNA ([s.24](#)), the postponement of elections for Police and Crime Commissioners ([s.60](#)) and modifications to the [Police and Criminal Evidence Act 1984](#) ('PACE'). All of these are considered below.

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## Schedule 21 of the Coronavirus Act 2020

12. Prior to the introduction of the Act, the [Health Protection \(Coronavirus\) \(Wales\) Regulations 2020](#) (‘the first Regulations’) came into force on 18 March 2020 and imposed a number of restrictions and screening requirements. The first Regulations have now been revoked by [paragraph 68](#) of Schedule 21 except in relation to existing requirements and powers imposed under [regulation 4](#) of the first Regulations. Any requirement or restriction which is imposed under [regulations 5, 7 or 8](#) of the first Regulations which, but for the revocation of the first Regulations, would continue to have effect is to be regarded as having been imposed under [paragraph 58](#) of Schedule 21. A person who is being removed or kept under [regulation 13\(2\)\(b\) or \(c\)](#) is to be treated as removed or kept under [paragraph 51\(2\)\(b\) or 57\(2\)](#) (respectively) of Schedule 21.<sup>2</sup>
13. Schedule 21 provides the police with the means to enforce public health restrictions, including by directing or removing “potentially infectious” persons to suitable places for screening and assessment and keeping them there for up to 24 hours (which can be extended to 48 hours with authorisation from a constable of the rank of superintendent or above).

### Who is “potentially infectious”?

14. Under [paragraph 2](#) of Schedule 21, a person is “potentially infectious” if, at any time:
- (a) the person is, or may be, infected or contaminated with coronavirus, and there is a risk that the person might infect or contaminate others with coronavirus; or
  - (b) the person has been in an infected area within the 14 days preceding that time.
15. An “infected area” means any country, territory or other area outside the United Kingdom which the Secretary of State has declared as a country, territory or area:
- (a) where there is known or thought to be sustained human-to-human transmission of coronavirus; or

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<sup>2</sup> [Regulation 4](#) of the first Regulations concerns the detention of persons by the Welsh Ministers or a registered public health consultant; [regulations 5 and 7](#) concern the imposition of restrictions or requirements where it is assessed that a person presents or could present a risk of infecting or contaminating others; [regulation 8](#) concerns the power to require persons to be kept in isolation; [regulations 13\(2\)\(b\) and \(c\)](#) concern the power of a police constable to remove persons to a hospital or other suitable place or, if already at a hospital or suitable place, keep them there.

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- (b) from which there is a high risk that coronavirus will be transmitted to the UK.
16. Declarations of “infected areas” under [paragraph 2](#) of Schedule 21 must be published online and in the *London Gazette*.
17. The Government previously issued guidance titled *Specified countries and areas with implications for returning travellers and visitors arriving in the UK in the last 14 days*, but this was withdrawn on 13 March 2020. The authors of this guide have been unable to find any current declaration of “infected areas” made under [paragraph 2](#) of Schedule 21 on the internet or in the *London Gazette*. We note that as of 8 April 2020, the World Health Organization has reported [more than 1.3 million cases of coronavirus across 212 countries and territories](#). The Foreign and Commonwealth Office has – exceptionally – [advised against all foreign travel](#) unless it is essential and advised all British citizens to return to the UK.

### When do the Schedule 21 powers apply?

18. The powers enshrined in Schedule 21 operate **only** during the “transmission control period” which can be activated and deactivated by Welsh Ministers by way of a declaration or revocation in accordance with [paragraph 48](#) of Schedule 21.
19. The Welsh Ministers may make a declaration if they are of the view that:
- (a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in Wales; and
  - (b) the powers conferred by [Part 4](#) of Schedule 21 will be an effective means of delaying or preventing significant further transmission of coronavirus in Wales.
20. The Welsh Ministers must revoke the declaration if they cease to be of the view that these conditions are met ([paragraph 48\(2\)](#)).
21. Before making or revoking any such declaration, the Welsh Ministers must consult the Chief Medical Officer or any of the Deputy Chief Medical Officers of the Health and Social Services Directorate in Wales ([paragraph 48\(5\)](#)). Any declaration or revocation must be published online and in a newspaper circulating in Wales ([paragraph 48\(3\)](#)).
22. On 17 March 2020, the Welsh Ministers made a “serious and imminent threat” declaration under [regulation 3](#) of the [first Regulations](#). By virtue of [paragraph 68\(2\)](#) of Schedule 21,

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that declaration is to be regarded as one made under [paragraph 48](#) of Schedule 21. As such, the “transmission control period” required by Schedule 21 commenced as soon as the Act entered into force.

### What are the powers in Part 4 of Schedule 21?

23. [Part 4](#) of Schedule 21 (paragraphs [48](#) to [68](#)) contains powers relating to potentially infectious persons in Wales. Parts [2](#), [3](#) and [5](#) set out similar (although not completely identical) powers in relation to England, Scotland and Northern Ireland.
24. When activated, Schedule 21 provides for three categories of powers:
  - (a) the power to direct or remove potentially infectious persons to a suitable place for screening and assessment (paragraphs [50](#) and [51](#));
  - (b) powers exercisable once a potentially infectious person is at a suitable place for screening and assessment (paragraphs [52-57](#)); and
  - (c) powers exercisable after screening and assessment ([paragraphs 58-61](#)).

#### *(a) Powers to direct or remove persons to a screening and assessment place*

25. Under paragraphs [50](#) and [51](#), a public health officer (as defined in [paragraph 3\(2\)\(c\)](#)), a police constable, or an immigration officer (in the course of exercising any of their functions as an immigration officer), who has “reasonable grounds to suspect” that a person in Wales is potentially infectious, may:
  - (a) direct that person to go immediately to a place specified in the direction which is suitable for screening and assessment; or
  - (b) remove the person to a place suitable for screening and assessment.
26. A public health officer exercising this power may also request a constable to remove a person to a place suitable for screening and assessment, and the constable may then do so ([paragraph 50\(2\)\(c\)](#)).
27. Pursuant to [paragraph 67](#), a person is guilty of a criminal offence and liable on summary conviction to fine of up to £1,000 if they:

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- (a) Fail, without reasonable excuse, to comply with any direction, reasonable instruction, requirement or restriction given to or imposed on them under [Part 4](#) of Schedule 21 or any duty under [paragraph 62\(1\) or \(2\)](#);
  - (b) Abscond or attempt to abscond while being removed to, or kept in, a place under [Part 4](#) of Schedule 21;
  - (c) Knowingly provide false or misleading information in response to a requirement to provide information under [Part 4](#) of Schedule 21 or otherwise in connection with the exercise of any power under that Part;
  - (d) Obstruct a person who is exercising or attempting to exercise a power conferred on them by [Part 4](#) of Schedule 21.
28. The exercise of these powers by public health officers, police constables and immigration officers is subject to the following three conditions:
- (a) A potentially infectious person can only be directed or removed if the public health officer, constable or immigration officer considers it necessary and proportionate to do so ([paragraphs 50\(3\) and 51\(3\)](#)):
    - (i) in the interests of the potentially infectious person;
    - (ii) for the protection of other people; or
    - (iii) for the maintenance of public health.
  - (b) Pursuant to [paragraphs 50\(4\) and 51\(4\)](#), the person exercising a power to direct or remove a potentially infectious person under [paragraphs 50 and 51](#) must inform that person of the reason for directing or removing them and that it is an offence:
    - (i) in a case where a person is directed, to fail without reasonable excuse to comply with the direction; or
    - (ii) in a case where a person is removed, to abscond.
  - (c) In addition, constables and immigration officers must – before exercising the power to direct or remove a potentially infectious person – consult a public health officer to the extent that it is practicable to do so ([paragraph 51\(5\)](#)).
29. The requirement for “reasonable grounds to suspect” that a person is potentially infectious is identical to the wording in [s.24\(2\)](#) of the [PACE](#) by which a constable may

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arrest without warrant. Officers may therefore wish to consider – by analogy – the reasonable suspicion threshold applicable to the power of arrest under s.24(2) of PACE when considering whether the powers under paragraphs 50 and 51 of Schedule 21 are lawfully exercisable.

30. When determining whether someone is potentially infectious, particularly when it is not practicable to consult a public health officer, a police constable should have regard to prevailing Government and public health guidance on the symptoms and potential transmission of coronavirus. For instance, it may give rise to reasonable grounds of suspicion if someone is displaying a combination of relevant symptoms (*e.g.* a new continuous cough and a high temperature) or if someone has been in close proximity to a person displaying these symptoms for an extended period of time. It will always be necessary to consider and weigh all relevant circumstances in each and every case.

### *(b) Powers exercisable at a screening and assessment place*

31. Paragraphs 52 to 57 of Schedule 21 provide for powers in relation to persons located at a place in Wales which is suitable for screening and assessment. The powers contained in paragraphs 53 to 55 can only be exercised if a public health officer:

- (a) has reasonable grounds to suspect that a person is potentially infectious; and
- (b) considers that it is necessary and proportionate to exercise the powers set out immediately below:
  - (i) in the interests of the potentially infectious person;
  - (ii) for the protection of other people; or
  - (iii) for the maintenance of public health.

32. If these two conditions are met, a public health officer may:

- (a) Require the potentially infectious person to remain at the place for screening and assessment for a period not exceeding 48 hours (paragraph 53);
  - (i) the public health officer must inform the person of the reason for imposing the requirement, the maximum period of time the person may be required to remain there and that it is an offence to fail to comply with the requirement; and



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- (ii) this requirement to keep a potentially infectious person in a suitable place may be enforced by a public health officer or a constable ([paragraph 53\(3\)](#)).
  - (b) Require the potentially infectious person to be screened and assessed (which may include the taking of a biological sample) and impose other requirements in connection with their screening and assessment, including the production of documents or the provision of contact details ([paragraph 54](#)).
  - (c) Under [paragraph 55](#), if it is considered appropriate for the purposes of screening or assessing the person, the officer may:
    - (i) direct the potentially infectious person to go immediately to another place suitable for screening and assessment;
    - (ii) remove the potentially infectious person to another place suitable for these purposes; or
    - (iii) request a constable to remove the person to another place which is suitable for these purposes (and the constable may then do so).<sup>3</sup>
33. By virtue of [paragraph 57](#) of Schedule 21, where a person is at a place in Wales which is suitable for screening and assessment, and a constable or immigration officer has reasonable grounds to suspect that the person is potentially infectious, they may keep that person at that place until such time as a public health officer can exercise the functions under paragraphs [53](#) to [55](#) in relation to that person. However, a potentially infectious person may not be kept at that place:
- (a) by a police constable for a period exceeding 24 hours; or
  - (b) by an immigration officer for a period exceeding 3 hours.
34. These time limits may be extended if the constable or immigration officer considers it necessary to do so because it is not reasonably practicable for a public health officer to exercise their functions under paragraphs [53](#) to [55](#) before the end of the period. The time limit may be extended:
- (a) for a further 24 hours in the case of keeping by a police constable, subject to the consent of a constable of the rank of superintendent or above; or

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<sup>3</sup> In each of the circumstances (i), (ii) and (iii), the public health officer must inform the potentially infectious person of the matters set out in paragraph 28(b) above.

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- (b) for a further 9 hours in the case of keeping by an immigration officer, subject to the consent of an immigration officer not below the rank of chief immigration officer.
- 35. A constable or immigration officer may keep a potentially infectious person at a screening and assessment place under [paragraph 57](#) **only** if they consider that it is necessary and proportionate to do so:
  - (a) in the interests of the potentially infectious person;
  - (b) for the protection of other people; or
  - (c) for the maintenance of public health.
- 36. They must – before exercising these powers – consult a public health officer to the extent that it is practicable to do so and inform the potentially infectious person of the reason for keeping them and:
  - (a) the maximum period for which they may be kept; and
  - (b) that it is an offence to abscond ([paragraphs 57\(7\)-\(8\)](#)).

### *(c) Powers exercisable after assessment*

- 37. Paragraphs [58](#) to [61](#) of Schedule 21 contain powers exercisable after a person has been subject to screening and assessment.
- 38. Under [paragraph 58](#), a public health officer may impose requirements and restrictions in circumstances where:
  - (a) a person has been screened and assessed by a public health officer and either:
    - (i) the screening confirmed that the person is infected or contaminated with coronavirus, or
    - (ii) the screening was inconclusive; or
  - (b) a person has been assessed by a public health officer and the officer has reasonable grounds to suspect that the person is potentially infectious.
- 39. If these circumstances apply, a public health officer may impose such requirements and restrictions on the person as they consider necessary and proportionate:

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- (a) in the interests of the potentially infectious person;
  - (b) for the protection of other people; or
  - (c) for the maintenance of public health.
- 40. Paragraph 58(3) sets out the following **non-exhaustive** list of potential requirements:
  - (a) to provide information to the public health officer or any specified person;
  - (b) to provide details by which the person may be contacted during a specified period;
  - (c) to go for the purposes of further screening and assessment to a specified place suitable for those purposes and do anything that may be required under paragraph 54(1);
  - (d) to remain at a specified place (which may be a place suitable for screening and assessment) for a specified period;
  - (e) to remain at a specified place in isolation from others for a specified period.
- 41. When deciding whether to impose a requirement to remain under paragraph 58(3)(d) or (e), whether or not in isolation from others, the public health officer must have regard to the person's wellbeing and personal circumstances (paragraph 58(6)).
- 42. There is also a **non-exhaustive** list in paragraph 58(4) of potential restrictions on:
  - (a) the person's movements or travel (within or outside the United Kingdom);
  - (b) the person's activities (including their work or business activities);
  - (c) the person's contact with other persons or with other specified persons.
- 43. Where a public health officer imposes a requirement or restriction, they must inform the person of the reason for doing so and that it is an offence not to comply with the requirement or restriction (paragraph 58(5)).
- 44. A requirement to remain under paragraph 58(3)(d) or (e), or any restriction imposed under paragraph 58(4), may not exceed 14 days (paragraph 59). After imposing a requirement to remain or any restriction, a public health officer must:
  - (a) assess the person within 48 hours;

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- (b) reconsider whether it is necessary and proportionate to continue to impose the requirement or restriction for the purposes referred to in [paragraph 58\(2\)](#).
- 45. [Paragraph 59\(3\)](#) further provides that, following reconsideration, a public health officer may revoke a requirement to remain, or substitute a different specified period (which again, may not exceed 14 days).
- 46. Under [paragraph 59\(5\)](#), if before the end of the period specified in relation to a restriction or requirement to remain a public health officer reasonably suspects that the person will be potentially infectious at the end of that period and considers that the requirement or restriction is still necessary and proportionate for the purposes referred to in [paragraph 58\(2\)](#) they may extend the period for a further specified period.
- 47. Where the period relating to a requirement to remain, or a restriction, is extended pursuant to [paragraph 59\(5\)](#), a public health officer must review the requirement or restriction at least once in every period of 24 hours and revoke the requirement or restriction if they consider that the person is no longer potentially infectious ([paragraphs 59\(7\)-\(8\)](#)).
- 48. Under [paragraph 60](#), a requirement to remain imposed under [paragraph 58\(3\)\(d\) or \(e\)](#) may be enforced:
  - (a) by a constable or public health officer removing the person to the place;
  - (b) by a constable or public health officer keeping the person at the place; or
  - (c) if the person absconds, by a constable taking the person into custody and returning them to that place or another place a public health officer may specify.

### Children

- 49. [Paragraph 62](#) of Schedule 21 sets out the position in relation to children (*i.e.* persons under the age of 18). It is provided that:
  - (a) An individual who has responsibility for a child must:
    - (i) so far as reasonably practicable, secure that the child complies with any direction, instruction, requirement or restriction given to, or imposed on, the child ([paragraph 62\(1\)](#));

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- (ii) provide to the person exercising a power under Schedule 21 such information and assistance in relation to the child as is reasonably necessary and practicable in the circumstances ([paragraph 62\(2\)](#)).
- (b) A power to direct or require a child to go to a place may instead be exercised by directing or requiring an individual who has responsibility for the child to take the child to that place ([paragraph 62\(3\)](#)).
- (c) The powers under [paragraph 54](#) (requirements in relation to screening and assessment) or [paragraph 58](#) (imposing requirements and restrictions) can only be exercised in the presence of an individual who has responsibility for a child,<sup>4</sup> or in the absence of such a person, an adult that is considered to be appropriate, having regard to the views of the child ([paragraph 62\(4\)](#)).
- (d) Where a power is exercisable in relation to a child, but the child is not accompanied by an adult with responsibility for the child, the person by whom the power is exercisable must:
  - (i) if practicable, contact an individual who has responsibility for the child before the power is exercised ([paragraph 62\(5\)\(a\)](#)), or
  - (ii) if that is not practicable, take reasonable steps after the power is exercised to contact such an individual and inform them of any exercise of the power in relation to the child ([paragraph 62\(5\)\(b\)](#)).

### Appeals

- 50. [Paragraph 61\(1\)](#) provides that a person in relation to whom a requirement or restriction is imposed under [paragraph 58](#) may appeal against it (or against any variation of it or any extension of the period to which it relates) to a Magistrates' Court.
- 51. As of 30 March 2020, Magistrates' Courts in England and Wales have been consolidated and are only hearing a limited category of cases. This presently includes "civil applications relating to public health legislation". It is assumed that this includes appeals under [paragraph 58\(1\)](#) of Schedule 21.

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<sup>4</sup> This is defined in [paragraph 62\(7\)](#) as an individual with custody or charge of the child for the time being or parental responsibility for a child within the meaning of the [Children Act 1989](#).

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### Ancillary powers

52. Paragraph 64 of Schedule 21 sets out four important ancillary powers:

- (a) A public health officer, police constable or immigration officer may give **reasonable instructions** to a person in connection with:
  - (i) a direction given under Part 4 of Schedule 21; or
  - (ii) removing a person or keeping a person at a place under a power conferred under Part 4 of Schedule 21.

The public health officer, police constable or immigration officer who gives a reasonable instruction must inform the person:

- (i) of the reason for the instruction; and
  - (ii) that it is a criminal offence not to comply with it.
- (b) A power conferred under Part 4 of Schedule 21 to remove a person to a place includes a power to **keep the person** for a reasonable period pending their removal.
- (c) A police constable or immigration officer may use **reasonable force**, if necessary, in the exercise of a power conferred by Part 4 of Schedule 21.
- (d) A police constable may **enter any place** for the purpose of exercising a power conferred by Part 4 of Schedule 21.

53. These are significant and potentially wide-ranging coercive measures. Police constables will need scrupulously to comply with all the applicable safeguards set out above and have regard to the purpose for which Schedule 21 powers have been conferred: to delay and prevent significant further transmission of coronavirus. We recommend that constables keep as detailed a record as is practicable of the reasons for decisions made, and actions taken, pursuant to the powers contained in Part 4 of Schedule 21.

### HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (WALES) REGULATIONS 2020

54. The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 ('the Regulations') came into force at 4pm on 26 March 2020. These revoked the Health Protection (Coronavirus, Business Closure) (Wales) Regulations 2020, which came into

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force at 2pm on 21 March 2020 and the [Health Protection \(Coronavirus: Closure of Leisure Businesses, Footpaths and Access Land\) \(Wales\) Regulations 2020](#) which had only been in force since 12pm on 24 March 2020. However, both those Regulations remain in force in relation to any offences committed under them during the period between the time and date at which each came into force and 4pm on 26 March 2020 ([r. 2\(2\)](#)).

55. As noted above, the [Health Protection \(Coronavirus\) \(Wales\) Regulations 2020](#) which had come into force on 18 March 2020, were largely, though not entirely, revoked by [paragraph 68](#) of Schedule 21 of the Act (see paragraph 12 above for more discussion of this).
56. The Regulations apply only in Wales. There are similar (although not identical) statutory instruments in that apply to England, Scotland and Northern Ireland.<sup>5</sup>

### **Who can exercise powers under the Regulations?**

57. A key difference between Schedule 21 to the Act (outlined above) and the Regulations is that whereas the former bestows coercive powers on public health officers, police constables and immigration officers, the Regulations grant powers to:
- (a) police constables;
  - (b) police community support officers ('PCSOs');
  - (c) persons designated by
    - (i) the Welsh Ministers;
    - (ii) a local authority (only for the purposes of a requirement in [regulation 4](#), [6](#), [7](#) or [9\(4\)](#));
    - (iii) a National Park authority in Wales or Natural Resources Wales (only in relation to the requirement in [regulation 9\(4\)](#)).

### **Temporal limitation**

58. The Regulations were made under the powers conferred by [ss.45C\(1\), \(3\)\(c\), 45F\(2\) and 45P](#) of the [Public Health \(Control of Disease\) Act 1984](#). They apply only during the

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<sup>5</sup> These are the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); the [Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); and the [Health Protection \(Coronavirus, Restrictions\) \(Northern Ireland\) Regulations 2020](#).

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“emergency period” which commenced when the Regulations came into force (4pm on 26 March 2020) and will expire:

- (a) in relation to each restriction or requirement, on the day and at the time specified in a direction published by the Secretary of State (r.3(1)(b)); and
  - (b) in relation to the Regulations as a whole; after 6 months (r.15(1)).
59. The Welsh Ministers must review the need for restrictions and requirements imposed under the Regulations at least every 21 days with the first review being carried out by 15 April 2020 (r.3(2)) and must publish a direction terminating a restriction or requirement as soon as they consider that it is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Wales with the coronavirus (r.3(3)).

### **Restrictions imposed by the Regulations**

60. The Regulations impose significant and wide-ranging powers relating to:
- (a) Restrictions on business activities and closure of premises (r.4, r.5, r.6, and r.7);
  - (b) Restrictions on the freedom of movement (r.8);
  - (c) Restrictions on gatherings of more than two people (r.8); and
  - (d) Restrictions on access to certain public paths and land (r.9).

#### **(a) Restrictions on business activities and closure of premises**

61. Restrictions on businesses fall into the following five categories:
- (a) Businesses that sell food and/or drink: subject to partial closure (r.4(1) and Part 1 of Schedule 1);
  - (b) Businesses likely to result in members of the public coming into close contact: subject to outright closure (r.4(4) and Part 2 of Schedule 1);
  - (c) Businesses providing holiday accommodation (r.5 and Part 3);
  - (d) Places of worship, community centres and crematoria (r.7); and
  - (e) Other businesses (r.6 and Part 4).



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### *Businesses selling food and/ or drink*

62. [Regulation 4\(1\)](#) provides that, during the emergency period, a person responsible for carrying on a business listed in [Part 1](#) of Schedule 1 must:
- (a) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises and 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.
63. The businesses listed in [Part 1](#) of Schedule 2 are:
- (a) Restaurants, including restaurants and dining rooms in hotels or members' clubs;
  - (b) Cafes (including workplace canteens where there is no practical alternative for staff at that workplace to obtain food and all reasonable measures are taken to ensure that a distance of 2 metres is maintained between any person using the canteen) but not including:
    - (i) cafes or canteens at a hospital, care home or school;
    - (ii) 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;
    - (iii) services providing food or drink to the homeless;
  - (c) Bars, including bars in hotels or members' clubs; and
  - (d) Public houses.

### *Businesses resulting in members of the public coming into close contact*

64. Under [regulation 4\(4\)](#), all businesses listed in [Part 2](#) of Schedule 1 must cease to carry on that business for the duration of the emergency period. These businesses are:
- (a) Cinemas;
  - (b) Theatres;
  - (c) Nightclubs;
  - (d) Bingo halls;

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- (e) Concert halls;
  - (f) Museums, galleries, libraries and archive services;
  - (g) Casinos;
  - (h) Betting shops;
  - (i) Nail, beauty, hair salons and barbers;
  - (j) Massage parlours;
  - (k) Establishments providing tanning services, body piercings, tattooing, electrolysis or acupuncture;
  - (l) Skating rinks;
  - (m) Indoor fitness studios, gyms, spas or other indoor leisure centres or facilities;
  - (n) Bowling alleys, amusement arcades and indoor play areas;
  - (o) Funfairs (whether outdoors or indoors);
  - (p) Playgrounds, sports courts and outdoor gyms;
  - (q) Outdoor markets (except for stalls selling food);
  - (r) Car showrooms; and
  - (s) Auction Houses.
65. Cinemas, theatres, bingo halls, concert halls, museums, galleries, libraries, archives, and indoor fitness studios (including gyms, spas and other indoor leisure centres or facilities) are permitted to broadcast performances (without an audience) to people outside the premises ([r.4\(5\)\(a\)](#)). Premises used as a museum, gallery, library or to provide an archiving service, may be used to provide information or other services online, by telephone (including by text message, or by post ([r.4\(5\)\(c\)](#))). All of the premises listed in [Part 2](#) of Schedule 1 may also continue to be used for the limited purpose of hosting blood donation sessions ([r.4\(5\)\(b\)](#)).

### *Businesses providing holiday accommodation*

66. As a general rule, a person responsible for carrying on a business providing holiday accommodation as listed in [Part 3](#) of Schedule 1 (including holiday sites, camping sites, hotels, bed & breakfast accommodation and other holiday accommodation including holiday apartments, hostels and boarding houses) must cease to carry on that business during the emergency period under [regulation 4\(4\)](#).

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67. [Regulation 5\(1\)](#) further requires that any person responsible for a holiday site (as defined in [r.5\(4\)](#) and (5)) or camping site must use best endeavours to require any person staying at the site when business ceases to vacate the premises (except for any person using a mobile home on a holiday site for human habitation under an agreement to which [Part 4](#) of the [Mobile Homes \(Wales\) Act 2013](#) applies ([r.5\(2\)](#))).
68. [Regulation 5\(3\)](#) provides that the obligation to cease carrying on any of the businesses listed in [Part 3](#) of Schedule 1 is also subject to the need:
- (a) to provide accommodation for any person, who is staying in that accommodation when the Regulations come into force and—
    - (i) is unable to return to their main residence; or
    - (ii) uses that accommodation as their main residence.
  - (b) to provide accommodation or support services for the homeless;
  - (c) to host blood donation sessions; or
  - (d) for any purpose requested by the Welsh Ministers, or a local authority.

### *Places of worship, community centres and crematoria*

69. Places of worship must be closed during the emergency period except for specified purposes. The specified purposes are funerals, to broadcast acts of worship (without a congregation), or to provide essential voluntary services or (upon the request of the Welsh Ministers) urgent public services, including the provision of food banks or other support for homeless or vulnerable people, blood donation sessions or support in an emergency ([r.7\(1\)-\(2\)](#)).
70. Likewise, community centres must be closed during the emergency period except where they are 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 homeless or vulnerable people, blood donation sessions or support in an emergency ([r.7\(5\)](#)).
71. Crematoria must be closed to members of the public during the emergency period, except for funerals or burials (or to broadcast a funeral or burial whether over the internet or otherwise) ([r.7\(3\)-\(4\)](#)).

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72. The above premises **may only** be used for the approved purposes if all reasonable measures are taken to ensure a distance of 2 metres is maintained between every person in the premises.

### *Other businesses*

73. Under [regulation 6\(1\)](#), the businesses listed in [Part 4](#) of Schedule 1 may continue to operate but must take all reasonable measures to ensure that:
- (a) A distance of 2 metres is maintained between any person on the premises or waiting to enter the premises (except in relation to members of the same household or a person being assisted by their carer);
  - (b) Persons are only admitted in small numbers so as to maintain that distance.
74. The businesses listed in [Part 4](#) of Schedule 1 are:
- (a) Food retailers, including food markets, supermarkets, convenience stores, corner shops and establishments selling food or drink in accordance with [regulation 4\(1\)](#);
  - (b) Off licenses and licensed shops selling alcohol (including breweries);
  - (c) Pharmacies (including non-dispensing pharmacies) and chemists;
  - (d) Newsagents;
  - (e) Homeware, building supplies and hardware stores;
  - (f) Petrol stations;
  - (g) Car repair and MOT services;
  - (h) Bicycle shops;
  - (i) Taxi or vehicle hire businesses;
  - (j) Banks, building societies, credit unions, short term loan providers and cash points;
  - (k) Post offices;
  - (l) Funeral directors;
  - (m) Laundrettes and dry cleaners;
  - (n) Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health;

- (o) Veterinary surgeons and pet shops;
  - (p) Agricultural supplies shop;
  - (q) Storage and distribution facilities, including delivery drop off points;
  - (r) Car parks; and
  - (s) Public toilets.
75. [Regulation 6\(2\)](#) provides that a person responsible for carrying on a business not listed in [Part 4](#) of Schedule 1 of 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 or enquires 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 paragraph (a) above; and
  - (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 paragraph (a) above.

### (b) Restrictions on freedom of movement

76. [Regulation 8](#) imposes wide-ranging restrictions on freedom of movement and is the provision most likely to give rise to difficulties for the police. The extraordinary and unprecedented nature of movement restrictions across the UK have – and will continue – to attract widespread media attention and public scrutiny. For instance, *The Guardian* newspaper was critical of drone footage published by a police force on Twitter showing members of the public walking a dog in a national park which noted that this activity is “not essential.”<sup>6</sup> Another video circulating online shows officers using a megaphone to call

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<sup>6</sup> See: <https://www.theguardian.com/world/video/2020/mar/26/police-drone-video-shames-people-using-national-park-during-uk-lockdown-video>

on sunbathers in a city park to “go home.”<sup>7</sup> It is therefore crucial that officers and PCSOs have a firm and comprehensive understanding of the scope of the restriction imposed by [regulation 8](#).

### *Reasonable excuse*

77. [Regulation 8\(1\)](#) provides that:

“During the emergency period, no person may leave the place where they are living **without reasonable excuse**.”

78. For the purposes of [regulation 8\(1\)](#), 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 ([r.8\(3\)](#)).

79. [Regulation 8\(1\)](#) does not apply to any person who is homeless ([r.8\(4\)](#)). A number of local authorities have taken steps to provide accommodation to homeless people for the duration of the coronavirus outbreak.

80. [Regulation 8\(2\)](#) provides the following **non-exhaustive** list of potential reasonable excuses:

- (a) to obtain (from any business listed in [Part 4](#) of Schedule 1) basic necessities, including food and medical supplies for those in the same household (including animals in the household) or for vulnerable persons and supplies (including money) for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person;
- (b) to take exercise, no more than once a day, 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 42](#) of [Schedule 1](#) or accessing veterinary services;
- (d) to provide 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](#), to a vulnerable person, or to provide emergency assistance;

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<sup>7</sup> See: <https://www.theguardian.com/world/video/2020/mar/24/its-not-a-holiday-police-clear-sunbathers-from-london-park-during-coronavirus-lockdown-video>

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- (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—
  - (i) of a member of the person's household;
  - (ii) of a close family member (including a partner, child, step-child or foster child or parent);
  - (iii) if no-one within sub-paragraphs (i) or (ii) are attending, of a friend; or
  - (iv) as the carer of a person who is attending as a person mentioned in (i), (ii) or (iii);
- (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 person's child);
  - (ii) social services;
  - (iii) services provided by the Department of Work and Pensions;
  - (iv) services provided to victims (such as victims of crime or domestic violence);
- (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 or illness or to escape a risk of harm.

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81. Specifically in relation to [regulation 8\(2\)\(m\)](#) (“to avoid injury or illness or to escape a risk of harm”), the College of Policing issued guidance on 31 March 2020 recommending that officers consider whether there are any safeguarding issues in play. The College of Policing recommend that, if home is not a safe place for a person to return to, officers should revert to the normal process for dealing with vulnerable people.<sup>8</sup>
82. The term “vulnerable person” is defined in [regulation 1\(3\)\(e\)](#) and [Schedule 2](#) as including any person who is pregnant, any person who is aged 70 or older, and any person with any of the following (non-exhaustive) underlying medical conditions:
- (a) Chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease, emphysema or bronchitis;
  - (b) Chronic heart disease, such as heart failure;
  - (c) Chronic kidney disease;
  - (d) Chronic liver disease, such as hepatitis;
  - (e) Chronic neurological conditions, such as Parkinson’s disease, motor neurone disease, multiple sclerosis, a learning disability or cerebral palsy;
  - (f) Diabetes;
  - (g) Problems with the spleen, such as sickle cell disease or removal of the spleen;
  - (h) A weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy; and
  - (i) Being seriously overweight, with a body mass index of 40 or above.

### *Exercise*

83. In contrast to the Regulations in force in England, persons in Wales are restricted to taking only one form of exercise a day ([regulation 8\(2\)\(b\)](#)). However, it should be noted that this regulation does not impose any express limitation on the distance that an individual can travel away from home. So, for example, there is no requirement that the physical exercise must be carried out in the immediate vicinity of the home. The only relevant consideration is whether the person engaged in physical exercise has a “reasonable excuse” for leaving the place where they are living.

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<sup>8</sup> <https://www.college.police.uk/News/College-news/Pages/Health-Protection-Guidelines.aspx>



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### (c) Restrictions on gatherings

84. [Regulation 8\(5\)](#) prohibits all gatherings in a public place of more than two people except:
- (a) where all the persons in the gathering are members of the same household;
  - (b) where the gathering is essential for work purposes;
  - (c) to attend a funeral;
  - (d) where necessary—
    - (i) to facilitate a house move;
    - (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](#),
    - (iii) to provide emergency assistance, or
    - (iv) to participate in legal proceedings or fulfil a legal obligation.

### (d) Restrictions on access to certain public paths and access land

85. [Regulation 9](#) applies to public paths and access land (as defined in [regulation 9\(7\)](#)) which the relevant authority (defined in [regulation 9\(7\)](#) as a local authority, a National Park authority in Wales, Natural Resources Wales, or the National Trust) for an area considers:
- (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 coronavirus.
86. In relation to such areas (including also any public paths closed under [regulation 4](#) of the [Health Protection \(Coronavirus: Closure or Leisure Businesses, Footpaths and Access Land\) \(Wales\) Regulations 2020](#)):
- (a) the relevant authority **must** close the public path or access land and keep it closed until the earlier of the end of the emergency period or 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 coronavirus ([r.9\(1\)](#));

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- (b) no person may use the area unless authorised by the relevant authority ([r.9\(4\)](#));
- (c) the relevant authority must—
  - (i) publish a list of public paths or access land closed in its area on a website; and
  - (ii) erect and maintain notices in prominent public places informing the public of the closure of a public path or access land ([r.9\(5\)](#)).

### **Powers of enforcement**

87. Powers of enforcement are set out in regulations [10](#) and [11](#). These extend to a “**relevant person**”, which is defined in regulation [10\(11\)](#) as:

- (a) a police constable;
- (b) a PCSO;
- (c) persons designated by
  - (i) the Welsh Ministers;
  - (ii) a local authority (only for the purposes of a requirement in regulation [4](#), [6](#), [7](#), or [9\(4\)](#));
  - (iii) a National Park authority in Wales or Natural Resources Wales (only in relation to the requirement in [regulation 9\(4\)](#)).

88. Specific powers of enforcement under the Regulations fall into four categories:

- (a) In relation to **restrictions on business activities and closure of premises**, a relevant person may give a prohibition notice to a person if they reasonably believe that:
  - (i) the person is contravening a requirement in regulation [4](#), [6](#) or [7](#); and
  - (ii) it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to contravene the requirement ([r.10\(1\)](#)).
- (b) In relation to the **restriction on freedom of movement** ([r.8\(1\)](#)), provided that the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the requirement:

- (i) A relevant person may, if they consider that a person has left the place where they are living without reasonable excuse, direct (or give such instructions as they consider necessary to) that person to return to the place where they are living or remove that person to the place where they are living and may use reasonable force to do so ([regulations 10\(2\) and \(3\)](#)).
  - (ii) Where the person who has left the place where they are living without reasonable excuse is a child accompanied by an individual who has responsibility for that child,<sup>9</sup> the relevant person may direct that individual to take the child to the place where the child is living and, so far as reasonably practicable, ensure that the child complies with any direction or instruction given to them by the relevant person ([r.10\(4\)](#)).
- (c) In relation to **restrictions on gatherings of more than two people in a public place**, where a relevant person considers that there is a contravention of [regulation 8\(5\)](#):
  - (i) A relevant person may direct the gathering to disperse ([r.10\(7\)\(a\)](#)), direct any person in the gathering to return to the place where they are living ([r.10\(7\)\(b\)](#)), or remove any person in the gathering to the place where they are living ([r.10\(7\)\(c\)](#)). In support of these steps, the relevant person may direct a person to follow any instructions considered necessary and use reasonable force in the exercise of these powers ([regulations 10\(3\), \(7\) and \(8\)](#)).
  - (ii) Where a person gathering in contravention of [regulation 8\(5\)](#) is a child accompanied by an individual who has responsibility for that child,<sup>10</sup> the relevant person may direct that individual to take the child to the place where the child is living and, so far as reasonably practicable, ensure that the child complies with any direction or instruction given to them by the relevant person ([regulations 10\(3\), \(7\) and \(8\)](#)).

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<sup>9</sup> This is defined as an individual with custody or charge of the child for the time being or parental responsibility for a child within the meaning of the [Children Act 1989](#).

<sup>10</sup> *Ibid.*

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- (d) In relation to **restrictions on access to certain public paths and land** (r.9), a relevant person may remove an individual from an area which is closed (or is being closed) by virtue of **regulation 9(1)** and may use reasonable force to do so (r.10(9)).
89. There are two more general powers to accompany powers of enforcement:
- (a) **Regulation 11** provides that a relevant person may enter premises, using reasonable force if necessary, and take such other persons, equipment and materials onto the premises as appears to them to be appropriate, if the relevant person:
    - (i) has reasonable grounds for suspecting that a requirement imposed by the Regulations is being, has been, or is about to be contravened on the premises; and
    - (ii) considers it necessary to enter the premises for the purposes of ascertaining whether the requirement is being, has been, or is about to be contravened.
  - (b) **Regulation 10(10)** provides that a relevant person may take such other action as the relevant person considers necessary and proportionate to facilitate the exercise of any power conferred upon them by regulations 10 or 11.
90. Pursuant to **regulation 10(3)**, a relevant person entering premises under point (a) immediately above must:
- (a) if asked by a person on the premises, show evidence of their identity and outline the purpose of the power being exercised; and
  - (b) if the premises are unoccupied or the occupier is temporarily absent, must leave the premises as effectively secured against unauthorised entry as when the relevant person found them.

### **Offences and penalties**

91. **Regulation 12** makes it an offence, punishable on summary conviction by a fine,<sup>11</sup> for a person to:

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<sup>11</sup> The Regulations are silent as to the level of fine which may be imposed. **Section 37** of the **Criminal Justice Act 1982** states that the maximum fine on the standard scale for summary offences is £5,000.

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- (a) contravene a requirement in regulation 4, 6, 7, 8(5) or (9)(4) without reasonable excuse;
  - (b) contravene a requirement in regulation 8(1);
  - (c) obstruct, without reasonable excuse, any person carrying out a function under the Regulations; or
  - (d) contravene a direction or fail to comply with an instruction or a prohibition notice (given by a relevant person under regulation 10), without reasonable excuse.
- 92. In relation to the power of arrest without warrant, regulation 12(5) provides that s.24 of PACE applies to an offence under the Regulations as if the reasons for arrest listed in s.24(5) of PACE included:
  - (a) to maintain public health; and
  - (b) to maintain public order.
- 93. It follows that if all the other requirements of s.24 of PACE are met, it is lawful to arrest a person if the officer has reasonable grounds for believing that the arrest is necessary for one, or both, of the two reasons set out immediately above.
- 94. Under regulation 13, a relevant person may issue a fixed penalty notice to anyone that the relevant person reasonably believes has committed an offence under the Regulations and is over the age of 18.
- 95. Payment of the fixed penalty notice to the local authority in whose area the offence is alleged to have been committed discharges a person's liability in relation to the offence (r.13(2)).
- 96. If a fixed penalty notice has been issued under regulation 13, no court proceedings may be commenced until 28 days after the notice was issued and the person cannot be convicted if they pay the fixed penalty notice before the end of that period (r.13(4)).
- 97. Pursuant to regulation 10(5), a fixed penalty notice must:
  - (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;

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- (b) state the period during which proceedings will not be commenced (pursuant to [regulation 13\(4\)](#));
  - (c) specify the amount of the fixed penalty;
  - (d) state the name and address of the person to whom the fixed penalty may be paid; and
  - (e) specify permissible methods of payment.
98. Under [regulation 13\(6\)-\(8\)](#), the amount to be paid is:
- (a) £60 for the first fixed penalty notice (reduced to £30 if paid within 14 days);
  - (b) £120 if the person has already received a fixed penalty notice.

### CONCLUSION

99. The speed and scale of the coronavirus pandemic requires swift and robust measures to delay and limit the spread of the disease. The Act and the Regulations impose very significant restrictions on the rights and freedoms of all persons in Wales. These public health measures have been imposed because the Government and Welsh Ministers believe that they are necessary to successfully combat the coronavirus. Police forces are at the frontline of enforcing these extraordinary new measures.
100. Police forces will need to strike the right balance: securing widespread compliance with the new measures and avoiding the potential for disorder and unrest at a time when public services are already very stretched. Ministerial statements and guidance documents do not, of themselves, grant powers to the police. Frontline officers and police staff should, above all, pay close attention to the wording of the Act and the Regulations.
101. The legislative landscape is likely to change frequently over the coming weeks and months. It will be the responsibility of all police forces to stay on top of legal developments and ensure that enforcement action is strictly limited to what is provided for by statute and secondary legislation.

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102. Police forces may also wish to keep in mind that, above all, the Act and the Regulations were adopted to protect public health. Enforcement action taken should, therefore, be taken with a view to securing this ultimate aim.

9 APRIL 2020

5 ESSEX COURT

This guide was prepared by members of the Police Practice Group at [5 Essex Court](#). We are particularly grateful to Remi Reichhold and Jennifer Wright for their significant contribution.

Members of chambers are available to offer legal advice and support to police forces in interpreting these new powers. If you would like to consult with a barrister then please telephone the clerks on 0207 410 2000 (or email: [clerks@5essexcourt.co.uk](mailto:clerks@5essexcourt.co.uk)) and ask about the advice line.