

Criminal Powers in response to COVID-19—stay indoors instructions

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Corporate Crime analysis: John Oliver, barrister at Five St Andrew's Hill, provides a summary of measures relating to the instruction to remain indoors which the Government issued in response to the Coronavirus (COVID-19) crisis in the UK. This includes powers under the Coronavirus Act 2020 and the Health Protection (Coronavirus, Restrictions (England) Regulations 2020.

On 23 March 2020, the Prime Minister instructed everyone to remain in their homes in order to limit the spread of COVID-19. The overwhelming majority of individuals and businesses have taken steps to comply with that instruction. However, concerns remained about the large number of people continuing to use London Underground, groups of people congregating in public places and a small number of people steadfastly refusing to comply. From the off, law enforcement officials were asking to be furnished with powers to enforce compliance.

On 25 March 2020, the Coronavirus Act 2020 (CA 2020) received Royal Assent. At 1pm On 26 March 2020, the Health Protection (Coronavirus, Restrictions (England) Regulations 2020, SI 2020/350 (the Health Protection Regs) came into force. Similar Regulations apply to Wales. Together, these provisions contain wide-ranging powers designed to restrict the movement of people with the aim of limiting the spread of COVID-19 in the UK. Arguably, the powers are the most restrictive in terms of individual liberty this country has ever seen; certainly during peacetime.

Section 52 of the CA 2020 and Schedule 22 of the CA 2020 empower the Secretary of State to issue directions prohibiting or restricting events and gatherings and to close or impose restrictions on people entering or remaining in premises. A direction must be given in writing if it imposes prohibitions, requirements or restrictions on a person specified by name. In any other case, a direction must be published in such a manner as to bring it to the attention of persons who may be affected by it.

The Secretary of State may prohibit or restrict specific, named events and gatherings or those of a specific description. Such directions may only be made to the owner or occupier of premises at which an event or gathering is planned to take place, on the organiser of an event or on anyone else involved in the holding of an event or gathering.

The prohibitions or restrictions regarding the entry into premises may similarly be made in relation to specified premises or premises of a specific description.

The Act creates offences of failing without reasonable excuse to comply with any prohibition, requirement or restriction imposed on a person. The maximum penalty is a level 3 fine on the standard scale (currently £1,000).

Since the Prime Minister's instruction on 23 March 2020, many businesses in the UK have closed their doors at the request of the government; not because they were legally compelled to do so. The same is true of events such as Glastonbury, all football and rugby matches and the Grand National.

For those businesses and organisations that refuse to close their doors, while proceedings may be commenced against anyone contravening a direction, it may be that those proceedings will not begin any time soon: the current guidance is that the magistrates court will hear first appearances for those in custody; proceedings for those on bail are being adjourned. However, there are now new powers at the police's disposal.

Regulation 6 of the Health Protection Regs prohibits a person from leaving the place in which they are living (including any garden, yard or outhouse, etc) without reasonable excuse. Homeless people are exempt. A 'reasonable excuse' includes:

- obtaining basic necessities including food and medical supplies for those in the same household or for vulnerable persons
- taking exercise alone or with members of their household

- seeking medical assistance
- proving care or assistance to a vulnerable person or to provide emergency assistance
- donating blood
- traveling for the purposes of work or to provide voluntary or charitable services but *only* where it is not reasonably possible for that person to work or to provide those services from the place where they are living
- attending a funeral (with limitations)
- fulfilling a legal obligation, including attending court or satisfying bail conditions
- accessing certain critical public services
- children visiting parents who do not live together

Regulation 7 of the Health Protection Regs prohibits the gathering of more than two people not of the same household in any public place, subject to certain exceptions, including where such gatherings are essential for work purposes.

Police constables and PCSOs have the power (Regulation 8 of the Health Protection Regs) to direct a person or to remove a person to return to the place in which they are living and reasonable force may be used. Similarly, they may direct the dispersal of a gathering and direct or remove people to the place in which they are living.

The Regulations create summary offences of contravening the requirements in Regulations 6, 7 or 8 of the Health Protection Regs. The maximum penalty on conviction is a fine.

Police constables and PCSOs may also issue fixed penalty notices (FPN) to anyone over the age of 18 believed to have committed an offence under the Regulations. A first FPN will be for £60 (reduced to £30 if paid within 14 days). A second FPN would be £120 and no reduction for early payment would apply. Third and subsequent breaches of the Regulations resulting in a FPN render a person liable to pay double the previous FPN up to a maximum of £960.

The measures must be reviewed by the Secretary of State every 21 days and will remain in force until such time as the Government considers that they are no longer necessary 'to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England [and Wales] with coronavirus'. We can only hope that the restrictions on people's liberty quickly bring the spread of coronavirus under control.

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John Oliver is a barrister specialising in criminal and extradition law. He has particular experience in cases involving drugs, sexual offences (including historic allegations), serious violence and dishonesty. John has an interest in cases involving vulnerable defendants and witnesses and has been instructed in cases involving the use of intermediaries to assist defendants with Autistic Spectrum Disorder and those with mental health conditions.

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