

Regulations made by the Scottish Ministers and laid before the Scottish Parliament under paragraph 6(3) of schedule 19 of the Coronavirus Act 2020 for approval by resolution of the Scottish Parliament within 28 days beginning with the day on which the Regulations were made, not taking into account any period of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2020 No. 103

PUBLIC HEALTH

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

Made - - - - *at 7.15 p.m. on 26th*
Laid before the Scottish *March 2020*
Parliament - - - - *27th March 2020*
Coming into force in accordance with regulation 1(1)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020(1) (“the Act”) and all other powers enabling them to do so.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with paragraph 6(2) and (3) of schedule 19 of the Act, the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by, a resolution of the Scottish Parliament.

PART 1

Introduction

Citation, commencement and application

1.—(1) These Regulations may be cited as the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and come into force immediately after they are made.

- (2) These Regulations apply in relation to Scotland only.

The emergency period and review of need for restrictions

- 2.—(1) For the purposes of these Regulations, the “emergency period”—
- (a) starts when these Regulations come into force, and
 - (b) ends in relation to a restriction or requirement imposed by these Regulations on the day and at the time specified in a direction published by the Scottish Ministers terminating the requirement or restriction.
- (2) The Scottish Ministers must review the need for restrictions and requirements imposed by these Regulations at least once every 21 days, with the first review being carried out by 16 April 2020.
- (3) As soon as the Scottish Ministers consider that any restriction or requirement set out in these Regulations are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus, the Scottish Ministers must publish a direction terminating that restriction or requirement.
- (4) A direction published under this regulation may—
- (a) terminate any one or more requirement or restriction,
 - (b) terminate a requirement or restriction in relation to a specified business or service or a specified description of business or service.
- (5) In this regulation, “specified” means specified in a direction published under this regulation.

PART 2

Requirement to close premises and businesses

Requirement to close premises and businesses during the emergency period

- 3.—(1) A person who is responsible for carrying on a business which is listed in Part 1 of schedule 1 must—
- (a) during the emergency period—
 - (i) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises, and
 - (ii) 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 during the emergency period.
- (2) For the purposes of paragraph (1)(a), food or drink sold by a hotel or other accommodation as part of room service is not to be treated as being sold for consumption on its premises.
- (3) For the purposes of paragraph (1)(a)(ii) and (b), an area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.
- (4) A person responsible for carrying on a business or providing a service which is listed in Part 2 of schedule 1 must cease to carry on that business or to provide that service during the emergency period.
- (5) Paragraph (4) does not prevent the use of—

- (a) premises used for the businesses or services listed in paragraphs 5, 6, 8, 9 or 10 of schedule 1 to broadcast a performance to people outside the premises, whether over the internet or as part of a radio or television broadcast,
- (b) any suitable premises used for the businesses or services listed in that schedule to host blood donation sessions.

(6) If a business listed in Part 1 or 2 of schedule 1 (“business A”) forms part of a larger business (“business B”), the person responsible for carrying on business B complies with the requirement in paragraph (1) if it closes down business A.

Further restrictions and closures during the emergency period

4.—(1) A person who is responsible for carrying on a business or providing a service listed in Part 3 of schedule 1 must, during the emergency period—

- (a) take all reasonable measures to ensure that a distance of two metres is maintained between any persons on the premises (except between two members of the same household, or a carer and the person assisted by the carer),
- (b) take all reasonable measures to ensure that it only admits people to its premises in sufficiently small numbers to make it possible to maintain that distance,
- (c) take all reasonable measures to ensure that a distance of two metres is maintained between any person waiting to enter its premises (except between two members of the same household, or a carer and the person assisted by the carer).

(2) A person who is responsible for carrying on a business not listed in Part 3 of schedule 1 and which offers goods for sale or hire in a shop or provides library services 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 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 sub-paragraph (a),
- (c) cease to admit any person to its premises who is not required to carry on its business or provide its services as permitted by sub-paragraph (a).

(3) Paragraph (1) does not apply to any business which provides hot or cold food for consumption off the premises, provided that it observes the requirements set out in paragraph (1)(a) to (c).

(4) Subject to paragraph (5), a person who is responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period.

(5) A person referred to in paragraph (4) may continue to carry on their business and keep any premises used in that business open—

- (a) to provide accommodation for any person, who—
 - (i) is unable to return to their main residence,
 - (ii) uses that accommodation as their main residence,
 - (iii) needs accommodation while moving house,
 - (iv) needs accommodation to attend a funeral,

- (b) to provide accommodation or support services for the homeless,
 - (c) to host blood donation sessions, or
 - (d) for any purpose requested by the Scottish Ministers or a local authority.
- (6) A person who is responsible for a place of worship must ensure that, during the emergency period, the place of worship is closed, except for uses permitted in paragraph (7).
- (7) A place of worship may be used—
- (a) for funerals,
 - (b) to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast, or
 - (c) to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency),
- provided that, in each case, a distance of two metres is maintained between every person on the premises (except between two members of the same household, or a carer and the person being assisted by the carer).
- (8) A person who is responsible for a community centre must ensure that, during the emergency period, the community centre is closed except where—
- (a) it is used to provide essential voluntary activities or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency), and
 - (b) reasonable measures are taken to ensure that a distance of two metres is maintained between every person on the premises while those services are provided (other than between two members of the same household, or a carer and the person being assisted by the carer).
- (9) A person who is responsible for a crematorium or burial ground must ensure that, during the emergency period, the crematorium is closed to members of the public, except for funerals or burials where reasonable measures are taken to ensure that a distance of two metres is maintained between every person on the premises of the crematorium during the funeral or burial (other than between two members of the same household, or a carer and the person assisted by the carer).
- (10) If a business referred to in paragraph (2) or (4) (“business A”) forms part of a larger business (“business B”), the person responsible for carrying on business B complies with the requirement in paragraph (2) or (4) to cease to carry on its business if it ceases to carry on business A.
- (11) In this regulation, a carer includes a person who provides care for the person assisted whether that care is provided—
- (a) by a carer within the meaning of section 1 of the Carers (Scotland) Act 2016(2),
 - (b) on a paid basis, or
 - (c) on a voluntary basis.

PART 3

Restrictions on movement and gatherings

Restrictions on movement

5.—(1) Except to the extent that a defence would be available under regulation 8(4), during the emergency period, no person may leave the place where they are living.

(2) For the purposes of paragraph (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.

(3) Paragraph (1) does not apply to any person who is homeless.

Restrictions on gatherings

6. During the emergency period, no person may participate in a gathering 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, or
- (d) where reasonably necessary—
 - (i) to facilitate a house move,
 - (ii) to provide care or assistance to a vulnerable person,
 - (iii) to provide emergency assistance, or
 - (iv) to participate in legal proceedings or to fulfil a legal obligation.

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(3), 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).

PART 5

Interpretation and expiry

Interpretation

10. In these Regulations—

“child” means a person who is under 16 years of age,

“constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012(4),

“a person who is responsible for carrying on a business” includes the owner, proprietor, and manager of that business,

“vulnerable person” includes—

- (a) any person aged 70 or older,
- (b) any person under 70 who has an underlying health condition, including but not limited to, the conditions listed in schedule 2,
- (c) any person who is pregnant.

Expiry

11.—(1) These Regulations expire at the end of the period of six months beginning with the day on which they come into force.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.

St Andrew’s House,
Edinburgh
At 7.15 p.m. on 26th March 2020

JEANE FREEMAN
A member of the Scottish Government

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Regulations 3 and 4

Businesses subject to restrictions or closure

PART 1

1. Restaurants, including restaurants and dining rooms in hotels or members' clubs.
- 2.—(1) Cafes, including workplace canteens (subject to sub-paragraph (2)), but not including—
 - (a) cafes or canteens at a hospital, care home or school,
 - (b) 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,
 - (c) services providing food or drink to the homeless.(2) Workplace canteens may remain open where—
 - (a) there is no practical alternative for staff at that workplace to obtain food, and
 - (b) so far as reasonably possible, a distance of two metres can be maintained between any person using the canteen.
3. Bars, including bars in hotels or members' clubs.
4. Public houses.

PART 2

5. Cinemas.
6. Theatres.
7. Nightclubs.
8. Bingo halls.
9. Concert halls.
10. Museums and galleries.
11. Casinos.
12. Betting shops.
13. Spas.
14. Nail, beauty, hair salons and barbers.
15. Massage parlours.
16. Tattoo and piercing parlours.
17. Skating rinks.
18. Indoor fitness studios, gyms, swimming pools, bowling alleys, amusement arcades or soft play areas or other indoor leisure centres or facilities.
19. Funfairs (whether outdoors or indoors).
20. Playgrounds, sports courts and outdoor gyms.

21. Outdoor markets (except for stalls selling food).
22. Car showrooms.
23. Auction houses.

PART 3

24. Food retailers, including food markets, supermarkets, convenience stores and corner shops.
25. Off licenses and licensed shops selling alcohol (including breweries).
26. Pharmacies (including non-dispensing pharmacies) and chemists.
27. Newsagents.
28. Homeware, building supplies and hardware stores.
29. Petrol stations.
30. Car repair and MOT services.
31. Bicycle shops.
32. Taxi or vehicle hire businesses.
33. Banks, building societies, credit unions, short-term loan providers and cash points.
34. Post offices.
35. Funeral directors.
36. Laundrettes and dry cleaners.
37. Dental services, opticians, audiology services, chiropody services, chiropractors, osteopaths and other medical or health services, including services relating to mental health.
38. Veterinary surgeons and pet shops.
39. Agricultural supplies shops.
40. Storage and distribution facilities, including delivery drop off or collection points, where the facilities are in the premises of a business included in this Part.
41. Car parks.
42. Public toilets.

SCHEDULE 2

Regulation 10

Underlying Medical Conditions

1. Chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease, emphysema or bronchitis.
2. Chronic heart disease, such as heart failure.
3. Chronic kidney disease.
4. Chronic liver disease, such as hepatitis.

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5. Chronic neurological conditions, such as Parkinson’s disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy.
6. Diabetes.
7. Problems with the spleen, such as sickle cell disease or if removal of the spleen has occurred.
8. A weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy.
9. Being seriously overweight, with a body mass index of 40 or above.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require the closure of businesses selling food or drink for consumption on the premises, and businesses listed in Part 2 of schedule 1, to protect against the risks to public health arising from coronavirus, except in some cases. The closure lasts until a direction is given by the Scottish Ministers or the expiry of these Regulations in accordance with regulation 11. The Scottish Ministers are required to keep the need for these restrictions under review.

The Regulations also prohibit anyone leaving the place where they live without reasonable excuse, and ban public gatherings of more than two people.

The need for the restrictions in these Regulations must be reviewed by the Scottish Ministers every 21 days, with the first review being required to take place by 16 April 2020.

No impact assessment has been prepared for these Regulations.