

POLICY NOTE

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (DIRECTIONS BY LOCAL AUTHORITIES) (SCOTLAND) REGULATIONS 2020

SSI 2020/262

The above instrument was made in exercise of the power conferred by paragraph 1(1) of Schedule 19 of the Coronavirus Act 2020 (“the Act”). The instrument is subject to made affirmative procedure by virtue of paragraph 6 of schedule 19 of the Act.

These Regulations make provision for a local authority to give directions relating to specified premises, events and public outdoor places in its area. A direction may only be given if the local authority considers that the necessity and proportionality conditions set out in the regulations are met. Before making a direction under these Regulations, a local authority must have regard to any guidance issued by the Scottish Ministers.

The local authority must review the direction at least once every 7 days and it must be revoked or revoked and replaced when it is determined on review that the requirements of necessity and proportionality are no longer met. The local authority must publicise the making of a direction given under these Regulations and inform any neighbouring local authority that such a direction has been made.

These Regulations set out that Fixed Penalty Notices (FPNs) issued to a person under regulation 8 of the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 and regulation 9 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 will be taken into account in determining the penalty payable where a FPN is issued under these Regulations. Regulation 14 makes a parallel amendment to the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 in order that FPNs issued under these Regulations will be taken into account in determining the penalty payable in relation to a FPN issued under them.

Legislative background

1. The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government is using powers conferred by that Act to bring forward regulations to give local authorities greater enforcement powers in respect of businesses, premises, events and access to public outdoor places.
2. The need for the regulations must be reviewed at least once every 42 days. As soon as the Scottish Ministers consider that powers conferred by the 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 revoke the regulations.

Policy Objectives

3. Following the review required by 9 July 2020, Scottish Ministers decided to progress to Phase 3 of the route map. Since then, a variety of businesses have reopened and activities have been allowed to resume.

4. We are moving into a phase of the outbreak where outbreak management, rather than the national lockdown, is the principal tool for control and suppression of the virus. With much of the economy reopened or reopening, the importance of enabling action to be taken swiftly at a local level is greater than before.

5. These regulations therefore give local authorities powers to take direct measures where necessary and proportionate in respect of premises, events, and public outdoor spaces, thereby increasing confidence that it is safe for sectors to be open and operate. Local action to control or close the premises or businesses at the centre of an outbreak will in most cases be the most efficient and proportionate response and could avoid Scottish Ministers having to implement more wide-ranging and restrictive measures. Taking action swiftly and at the source of a potential local outbreak will also help manage the risk of a second wave.

6. We have learned from the experience of dealing with the first set of local outbreaks. These Regulations provide the tools that those on the ground dealing with local outbreaks consider that they would have needed in order to have a chance of earlier controlling or preventing these.

7. The Regulations also provide that a fixed penalty notice (FPN) issued under regulation 8 of the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 and regulation 9 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 will be taken into account in determining the penalty payable where a FPN is issued under these Regulations. Regulation 14 makes a parallel amendment to the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 in order that FPNs issued under these Regulations will be taken into account in determining the penalty payable in relation to a FPN issued under them. This ensures that those who repeatedly breach the regulations are deterred from continued non-compliance.

Consultation

8. There has been no public consultation in relation to this instrument. The Scottish Government has informally consulted with public bodies and other relevant stakeholders affected by the Regulations.

Impact Assessments

9. A Business and Regulatory Impact Assessment has been completed and is attached. Other Impact Assessments have not been prepared for this instrument. The provisions of the Regulations are however subject to strict obligations on the Scottish Government to review their necessity.

Scottish Government
Directorate for Constitution and Cabinet
August 2020