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Statutory guidance

Local authority powers to impose restrictions: Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020

Updated 12 October 2020

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This guidance applies to England

This document supports the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 ('the Regulations') that came into force on 18 July 2020. It provides guidance for local authorities in England on what the new regulations allow them to do and how they should exercise those powers, how those powers should be enforced, and guidance for those impacted by local authority directions.

These powers may be exercised by upper tier local authorities in England. As set out in Regulation 1(4). This includes:

- in 2-tier areas, county councils
- in single tier areas, the unitary county or district council
- London Borough Councils
- the Common Council of the City of London
- the Council of the Isles of Scilly

Introduction

On 18 July 2020, legislation to grant local authorities new powers to respond to a serious and imminent threat to public health and to prevent COVID-19 ("coronavirus") transmission in a local authority's area where this is necessary and proportionate to manage spread of the coronavirus in the local authority's area will take effect. These regulations include powers for local authorities to:

- restrict access to, or close, individual premises
- prohibit certain events (or types of event) from taking place
- restrict access to, or close, public outdoor places (or types of outdoor public places)

following procedural requirements set out in the Regulations and covered below.

This guidance provides clarity to local authorities on how to implement the Regulations and to support those impacted by any intervention made under them.

To make a direction under these Regulations a local authority needs to be satisfied that the following 3 conditions are met:

1. the direction responds to a serious and imminent threat to public health in the local authority's area
2. the direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in the local authority's area of coronavirus
3. the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose

Before making a direction, local authorities will need to gather sufficient evidence to demonstrate that these tests have been met. This evidence may come from a range of sources, including information provided to the local authority from local experts, through the Local Resilience Forum, from NHS Test and Trace (including the Joint Biosecurity Centre (JBC)), from Public Health England (PHE) and from

other sources. A local authority must consult with the director of public health, and assess whether the conditions for taking action have been met. It must have regard to any advice given to it prior to issuing a direction, or to revoke such a direction.

A local authority should also consult the police prior to issuing a direction, and any neighbouring police forces if the direction prohibits, requires or restricts access to a premise, event or public outdoor place that is situated against a Local Resilience Forum boundary. Local authorities should be clear about why they are taking directive action and communicate this clearly to the Secretary of State, the person(s) to whom the direction applies and, where appropriate, those impacted by the direction.

Regulation 3 also allows the Secretary of State to direct a local authority to issue a direction where the Secretary of State considers the conditions above have been met, and can also direct a local authority to revoke an existing direction (with or without a replacement direction) where the above conditions are no longer met.

Any direction issued by a local authority under the Regulations will need to state the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which it will end. This should include the basis on which the three conditions are met and why a specific prohibition, requirement or restriction is necessary.

A local authority must review a direction it has issued under the Regulations at least every seven days and determine whether the three conditions for making the direction continue to be met. If at any stage the threshold for restrictions is no longer met (there is no longer a serious and imminent threat to public health, or the measures are not deemed to be necessary and proportionate to prevent or control the incidence or spread of infection in the local authority's area), the direction should be immediately revoked or replaced with a direction which meets the threshold set out above.

Prior to issuing a direction, local authorities must have due regard to the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 and should consider carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics. Identifying disproportionate impact would not prohibit a local authority from taking action, but this should be balanced against the wider public health risk in a local authority's area, and mitigations should be considered and implemented wherever possible.

Those directly impacted by any direction under these Regulations, including the owner or occupier of premises or event organiser against whom a direction applies, will have the right of appeal to a local magistrate and may make representations to the Secretary of State. The direction issued must include details of the right to appeal to a magistrates' court and the time within which such an appeal may be brought. Guidance on how to do this can be found below.

Local authority powers

Closure of individual premises

Regulation 4 provides a power for local authorities to make directions about individual premises, for the purpose of: closing the premises, restricting entry to the premises, or securing restrictions in relation to the location of persons in the premises. The 3 conditions must still be met for making a direction: the direction responds to a serious and imminent threat to public health relating to coronavirus, and it is necessary and proportionate to provide a public health relating to coronavirus in the local authority's area. A local authority has a duty to have regard to the need to ensure the public has access to essential public services and goods before issuing a direction.

The Regulations prohibit the local authority to make directions in relation to premises which form part of essential infrastructure. This includes a range of infrastructure that provide essential public services and goods. It also includes vehicles, trains or aircraft used for public transport, or the carriage or haulage of goods, and a vessel where the direction would be likely to have the effect of preventing a changeover of crew.

The following list details categories of essential infrastructure which may not be closed using these powers. However, the list is not exhaustive, and local authorities should use their discretion to consider whether premises could be considered essential local or national infrastructure before using the power.

While public transport is included in the list of essential infrastructure, this doesn't include taxis or private hire vehicles (see how public transport is defined in the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020). In deciding whether to shut down transport services, local authorities should be mindful of their duty under the Education Act 1996 to facilitate home to school transport for eligible children.

Examples of premises which would form part of essential infrastructure:

- buildings owned or occupied by central or local government bodies, or part of the building owned or occupied by such bodies, including Parliament, to the extent that they are so occupied
- border infrastructure – including border and inland facilities to support the checking of goods (border control points)
- buildings that are occupied by agencies that are responsible for maintaining national security
- premises from which a health care professional operates, as defined in regulation 8 of the Human Medicines Regulations 2012
- premises of a registered childcare provider (as defined in paragraph 2(9) of Schedule 16 of the Coronavirus Act 2020)
- premises of an educational institution (as defined in paragraph 1(11) of schedule 16 of the Coronavirus Act 2020)
- children's homes within the meaning of section 1 of the Care Standards Act 2000
- premises of a water undertaker, sewerage undertaker, water supply licensee or sewerage licensee, and any other facility, premises or setting which are used in connection with the provision of water supplies or sewerage services, such as for the management, treatment, testing and distribution of water, and management, treatment, testing and disposal of sewage.
- premises owned or occupied by a risk management authority in connection with its flood and coastal erosion risk management functions (as defined in sections 4 to 6 of the Flood and Water Management Act 2010)
- any facility or setting which produces, manufactures, distributes or sells food other than food retailers smaller than 280sqm and individual hospitality settings. Where safe and feasible, delivery takeaway options should be allowed to continue operating. In smaller towns and villages, local authorities should ensure the exercise of this power does not prevent residents from accessing core food supplies
- commercial energy generation, distribution or importation infrastructure, including with respect to electricity, gas, oil, other heat sources (for example, wood), petrol and recharging stations and similar fuel sources, and district and communal heating/electricity
- nuclear sites, which have been granted a nuclear site licence as defined in section 1 of the Nuclear Installations Act 1965

- sites or locations where command and control of a space launch vehicle or spacecraft for nominal operations, collision avoidance or anomalies are conducted, or where space situational awareness activities are conducted
- commercial passenger and freight airports, and airfields used for emergency service operations
- commercial ports or ports used for emergency service operations
- sites or locations that support the safe and secure operation of 'offshore installations' as defined in section 44 of the Petroleum Act 1998, or 'upstream petroleum infrastructure' as defined in section 9H of the Petroleum Act 1998, or 'wells' as defined in section 45A(10) of the Petroleum Act 1998
- premises connected with the provision of emergency services
- waste facilities, including waste collections and management facilities used for the management, sorting, treatment, recovery, transport, storage, or disposal of waste (including energy from waste)
- a facility used for the manufacture, distribution etc of medicine (including veterinary) and surgeries
- a downstream oil facility that has a capacity in excess of 10 tonnes
- a site or location operated by or on behalf of a postal operator, as defined in section 27(3) of the Postal Services Act 2011
- a site or location involved in the continued production, supply, movement, manufacture, storage or preservation of goods, including ports and/or sites associated with the movement of freight
- buildings used for the detention, management or supervision of offenders and the supply of equipment or services to enable such
- data centres, information technology, cybersecurity centres and telecommunications facilities
- all national, regional and local heavy rail – this includes the entire High Speed 1 rail link from the Channel Tunnel to St Pancras station, together with its maintenance facilities and train depots – and light rail networks, heavy rail and light rail stations, heavy rail and light rail maintenance depots and rail freight terminals and interchanges
- the Channel Tunnel infrastructure system, consisting of the tunnel rail link, together with its associated terminal area, service and maintenance area, clearance depot and associated road and rail links with the wider UK transport network
- Dollands Moor Freight Yard

If local authorities are unsure whether a particular premises falls within the scope of the essential infrastructure exemption, they should direct queries to the relevant government department, or to NHS Test and Trace Regional Support and Assurance Teams or to directionnotification@dhsc.gov.uk.

Notification of directions concerning premises

A local authority must take reasonable steps to give advance notice of the direction to both:

1. a person carrying on a business from the premises to which the direction relates
2. any person who owns or occupies the premises, if different from 1.

Notice of the direction should be issued by a local authority in the form of a written letter and/or email communication to the owner or occupier of the premises, clearly stating the powers under which the direction is being made, the reason for invoking, or revoking, the direction, the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which it will end. Where the direction is made on the direction of the Secretary of State, that should be also be stated.

The owner or occupier of premises specified in a direction under this regulation may appeal against the direction to a magistrates' court by way of complaint, and/or make representations to the Secretary of State concerning the direction. The notification must also give details of the right of appeal to a magistrates' court, and the time limit for appealing (see below). Where a direction is made, the owner or occupier of a premises must fulfil the requirement of the direction until the appeal is resolved.

Restrictions on events

Regulation 5 provides a power for local authorities to prohibit certain events (or types of event) from taking place, where it responds to a serious and imminent threat to public health relating to coronavirus and is necessary and proportionate to prevent or provide a public health response to the incidence or spread of infection in their area.

Before making a direction, the local authority must be satisfied that a serious and imminent threat to health exists relating to coronavirus transmission and that the direction responds to that threat. This could, for example, be where a local authority is aware of a planned event at which the numbers of people expected to seek to use a space, or the nature of a particular event, would make it unsafe due to coronavirus transmission.

The local authority must decide that the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area and the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose. Any equality impacts and its Public Sector Equality Duty obligations should also be considered during the decision-making process. In such instances, local authorities would be expected, at a minimum, to:

- gather the relevant evidence, such as the location of the event, disease prevalence and transmission rates in the area, and the risks associated with the event, including for example, the anticipated level of attendance and the activities that are due to take place
- consult neighbouring authorities of both tiers where relevant, (and the other tier in 2-tier authorities), concerning use of the power
- engage with partners through the local Safety Advisory Group and Local Resilience Forum to ensure emergency services are aware of proposals and manage risk, including the risk that people may travel to other local spaces

A direction under this regulation may only have the effect of imposing prohibitions, requirements or restrictions on:

- the owner or occupier of premises for an event to which the direction relates
- the organiser of such an event
- any other person involved in holding such an event. This does not include people planning to attend the event, with no involvement in its organisation – these individuals could not commit an offence as a result of such a direction being made

A local authority must take reasonable steps to give advance notice of any direction it issues to both:

1. the organiser of the event
2. any person who owns or occupies the premises for the event, if different from 1.

Notification of directions concerning events

Notice of the direction should be issued by a local authority in the form of a written letter and/or email communication to the organiser of the event and/ or the owner or occupier of the premises where the event is being held, or any other person involved in holding such an event, clearly stating the powers under which the direction is being made, the reason for invoking, or revoking, the direction, the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which they will end.

Where the direction is made on the direction of the Secretary of State, that should be also be stated. The notification must also give details of the right of appeal to a magistrates' court, provide an address for service of any summons (including the Secretary of State where it is based on his direction) and the time limit for appealing (see below).

The organiser of an event and/ or the owner or occupier of the premises specified in a direction under Regulation 5 may appeal against the direction to a magistrates' court by way of complaint, and/ or make representations to the Secretary of State about the direction. Where a direction is made, the event organiser and/ or owner or occupier of a premises must fulfil the requirement of the direction until the appeal is resolved.

Guidance on the closure of a public outdoor place

Regulation 6 provides a power for local authorities to direct the closure of, or restrict access to, a public outdoor place (or public outdoor places of a specified description), where it responds to a serious and imminent threat to public health relating to coronavirus and is necessary and proportionate to prevent or provide a public health response to the incidence or spread of infection in their area.

The regulations will require the local authority to consider that a serious and imminent threat to health exists relating to COVID-19 transmission. This could be where they are aware of a planned event, or where past experience indicates a high risk that the numbers of people expected to seek to use a space would make it unsafe, including for example a popular beach or an enclosed square in a metropolis.

In such instances, local authorities would be expected, at a minimum, to:

- gather the relevant evidence, such as geographical boundary of the space, disease prevalence and transmission rates, and evidence relating to the risk attached
- consult neighbouring authorities of both tiers where relevant (and the other tier in two tier authorities), and about proposals to exercise the power
- engage with partners through the Local Resilience Forum to ensure emergency services are aware of proposals and manage risk, including the risk that people may travel to other local spaces

Where a local authority is considering making a direction under Regulation 6 that would close, or otherwise impact upon, any part of the Strategic Road Network (SRN) or the Transport for London Road Network (TLRN), the local authority should consult with Highways England (with respect to the SRN) or Transport for London (with respect to the TRLN) and should have regard to any advice

received, regarding impacts on the SRN or TRLN, before making its direction. The local authority should use best endeavours to consult as early possible, and no later than 24 hours, before a direction under Regulation 6 is made.

Where a restriction, prohibition or requirement relates to Crown land under Regulation 8(1), the local authority is required to have an agreement with an appropriate authority before a direction can be made. The 'appropriate authority', will usually be someone with authority to give consent on behalf of the owner for example the Crown Estate Commissioners – the full list is given in Regulation 8(2).

The local authority may not make a direction in relation to Crown land unless this agreement has been made. However, NHS Test and Trace will aim to support the local authority in putting in place an agreement quickly. Local authorities should liaise with the relevant NHS Test and Trace Local Support and Assurance Team in the first instance. If this is not possible they should email directionnotification@dhsc.gov.uk with the relevant details.

Before giving a direction under this regulation, the local authority must take reasonable steps to give advance notice of the direction to a person carrying on a business from premises within the public outdoor place to which the direction relates. It must also take reasonable steps to ensure that the direction is brought to the attention of anyone who owns, occupies or is responsible for any land or premises in a public outdoor place to which the direction relates.

Notification of directions concerning public outdoor places

Notice of the direction should be issued by a local authority in the form of a written letter and/or email communication, clearly stating: the powers under which the direction is being made; the reason for invoking or revoking the direction; the date and time on which the prohibition, requirement or restriction comes into effect; and the date and time on which it will end.

Where the direction is made on the direction of the Secretary of State, that should be also be stated. The notification must also give details of the right of appeal to a magistrates' court, provide an address for service of any summons (including the Secretary of State where it is based on his direction) and the time limit for appealing (see below).

A local authority which has given a direction under regulation 6(1) must take reasonable steps to prevent or restrict public access to the public outdoor place or places to which the direction relates in accordance with the direction.

People (other than the local authority) who own, occupy or are responsible for part of the public outdoor place must also take reasonable steps to prevent or restrict public access to the area in accordance with the direction.

It will be important for the local authority to describe the area in sufficient detail when issuing a notice. A local authority must publish details of any restrictions on its website (see further details below), and should consider other measures to draw this to the attention of anyone who may be affected, including through notices at or near the area being closed, social media posts, press notices and notices on arterial roads where this seems appropriate.

Once a direction is made, people will not be allowed to enter or remain in the area, subject to the terms of the direction, without a reasonable excuse. The regulations provide a non-exhaustive list of reasonable excuses, which include that people may enter the land where it is reasonably necessary for work purposes. For the avoidance of doubt, we intend that this would include providers of freight and haulage services. Access also needs to be provided for utility companies carrying out essential maintenance and repair works and highway authorities carrying out road works.

Although all possible uses of the power cannot be known at present, we would usually expect that the power would not be exercised so as to restrict social interaction between people living in the area and outside. We would usually expect directions to be drawn in such a way that visitors from outside the area, such as friends and family, would be able to visit people living within the area, unless the movement of people has been restricted within other regulations. We would not usually expect directions to prevent people from travelling within an area if the start and end of their journeys are outside it, for example long distance motorway journeys that pass through the area.

A direction relating to a public outdoor place should not be used as a means to indirectly control premises, should the closure of a public outdoor place restrict access to premises in the vicinity. If the closure of a public outdoor place is deemed to be a necessary and proportionate measure, consideration should also be given to restriction of access to premises that may be an indirect consequence of such action. Any closure of premises will need to be considered separately in accordance with Regulation 4, and should not be the indirect consequence of restricting access to a public outdoor place.

The owner, occupier or person responsible for land or premises in a public outdoor place to which a direction relates may appeal against the direction to a magistrates' court by way of complaint, and/ or make representations to the Secretary of State about the direction. Where direction is made, the owner, occupier or person responsible for land or premises must fulfil the term of the direction until the appeal is resolved.

Requirements for local authority directions

Public notice of directions

When a local authority issues a direction under the Regulations to a person specified by name, or revokes such a direction, notification should be provided to that person in writing and the local authority should take reasonable steps to give advance notice of the direction. Notification of the direction should be issued by a local authority in the form of a written letter and/or email communication, clearly stating the reason for invoking, or revoking, the direction, the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which they will end.

Where the direction is made on the direction of the Secretary of State, that should be also be stated. The notification must also give details of the right of appeal to a magistrates' court, provide an address for service of any summons (including the Secretary of State where it is based on his direction) and the time limit for appealing (see below). Where the direction is made on the direction of the Secretary of State, that should be also be stated.

Where a restriction, prohibition or requirement will also impact upon other persons, the local authority should also publish in such a manner it considers appropriate, to bring it to the attention of those who may be affected by it.

In any other case, where a direction is given by a local authority under the Regulations it must be published on the local authority's website, and may be published in such other manner as the local authority considers appropriate to bring it to the attention of those who may be affected by the direction or the revocation. The format of such publication will no doubt vary, depending on the scale and impact of any prohibition, requirement or restriction, but may take the form of an email, social media post(s), press notice or notices on arterial roads where this seems reasonable and proportionate.

Any direction given by a local authority under these Regulations must specify the power under which the direction is given.

Notification of directions to Secretary of State and other authorities

When a local authority issues a direction, they should notify the Secretary of State as soon as possible after making a direction, and it is advised this should be no longer than 24 hours after issuing. This should be done via NHS Test and Trace, with notifications emailed to directionnotification@dhsc.gov.uk, marked for the attention of the appropriate regional team.

This should include a copy of the direction, the reason for issuing the direction, the location or area the direction relates to, the organisations and groups of people expected to be directly and indirectly affected by the direction, the stakeholders consulted on the decision on the direction (including NHS Test and Trace Regional Support and Assurance Teams, government departments and PHE), the date and time on which the restriction comes into effect, and the date and time on which it will end.

Local authorities are encouraged to seek advice in advance of exercising powers under these Regulations, should they require any practical support, and may contact NHS Test and Trace at directionnotification@dhsc.gov.uk.

If a direction is issued by a local authority, it must notify any neighbouring authorities (i.e. any local authority whose area is adjacent to the initiating authority's area) that may be impacted as a result of the direction. This should be proportionate to the direction taken, and may take the form of an email to neighbouring authorities summarising the direction and rationale if it relates to the closure of a small single premise, but may require much greater detail and coordination across local authorities if the direction applies to a large public outdoor place.

To avoid an unnecessary ripple effect of direction, there is no obligation on the part of the local authority in receipt of the notification to in turn notify neighbouring authorities, unless there is a large outbreak across multiple areas, where this may be necessary and proportionate. However where a local authority has been notified it must consider, as soon as may be reasonably practicable, whether to exercise its own powers under these Regulations and must notify the initiating local authority of what it has decided to do. If a county council has been notified in respect of an area for which there is also a district council, it must notify the district council of the matter notified to it and of its own decision.

Where this is the case, it may be necessary to coordinate action across a regional level and you should engage with neighbouring authorities through your Local Resilience Forum, or through other channels as appropriate.

The Regulations also provide that if a county council has made a direction for an area for which there is also a district council, it must also notify the district council and if a London borough council has made the direction it must notify every other London borough council.

Where the initiating authority's area is adjacent to the area of a council in Scotland constituted under section 2 of the Local Government etc (Scotland) Act 1994 or a county or county borough council in Wales, it should notify that council.

Following a direction being issued, local authorities should ensure a multi-agency approach, to limit the need to enforce under policing powers alone.

Crown authorities

Crown Authorities should be consulted in advance of any local authority powers being exercised to restrict access to Crown land in respect of Regulation 6.

Members of the public

Under the Regulations, the recipient of a local authority direction has two methods of recourse.

Appeal

The recipient of a direction has the right of appeal through the magistrates' courts. Should they wish to appeal a direction, it should be lodged as soon as possible and, where possible, submitted within the 7-day review period.

An appellant would need to be able to satisfy the court on the balance of probabilities that the decision made by the local authority was wrong – in that it did not satisfy the three conditions listed in the introduction section above – and bring forward any supplementary evidence to support the appeal. This may include reasons as to why the appellant deems the direction should not have been made, and why the local authority's reasons for taking action do not meet the conditions as they are set out in Regulation 2(1).

Where the direction was made on the direction of the Secretary of State, the appeal must be heard against both the Secretary of State and the local authority and the magistrates' court must issue summonses against both of them.

Making representations to the Secretary of State

The recipient of a direction may make representations to the Secretary of State about the direction. This should be done via NHS Test and Trace, with representations emailed to directionnotification@dhsc.gov.uk. This should include:

- details about the recipient of the direction and how they have been impacted
- demonstration of why the direction should not have been made and was not appropriate, based on the conditions set out in Regulation 2(1)
- any supporting evidence
- what action they would like to be taken as a result

NHS Test and Trace will expedite the matter to the Secretary of State, before considering the evidence provided and respond as soon as is reasonably practicable. The Secretary of State will provide written reasons for his decisions to the person who made the representations and the local authority which gave the direction. If the Secretary of State decides that the conditions for issuing a direction were not (or are no longer) met, they may direct the local authority to revoke the direction, or to replace it with a further direction that would satisfy the conditions.

Enforcement of requirements

Where a local authority designated officer or a police officer or PCSO reasonably believes that a person is in contravention of a prohibition, requirement or restriction as set out in the regulations, they may take such action as is necessary and proportionate to enforce a direction.

A local authority designated officer may issue a prohibition notice to a person who contravenes a direction, for example by failing to close a premise that has had a direction placed upon it to restrict or prohibit access.

Where the police consider that an event is being held in contravention of a direction, they may direct the event to stop, direct a person to leave the event, or remove a person from the event.

Where the police consider that a person is, without reasonable excuse, in a public outdoor place that has been closed or where access has been restricted under a direction, they may direct that person to leave the place immediately and/ or remove the person from the place.

Offences

Where it is reasonably believed that a person aged 18 or over has committed an offence under these regulations, an authorised person – a local authority designated officer (in respect of breach of a direction relating to premises under regulation 4(1) or events under regulations 5(1), failure of an owner or occupier of land in a public outdoor space to which a direction under regulation 6 applies to take reasonable steps to restrict access to that land, or obstruction of a local authority officer) or a police officer or PCSO (in respect of obstruction of an officer, or failure to comply with a direction or reasonable instruction given by a police officer or with a prohibition notice) – may issue a Fixed Penalty Notice (FPN). If paid within 28 days beginning from the day after the date of the notice no proceedings may be taken in respect of the offence.

The amount of the FPN will be £100 for a first offence (reduced to £50 if paid within 14 days), doubling upon further offences up to a maximum of £3,200. When calculating the amount of the FPN, previous offences under these requirements, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020, and the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020 will be taken into account.