



BRIEFING PAPER

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Policing the coronavirus lockdown

By Jennifer Brown

Summary

On Monday 23 March 2020 the Prime Minister addressed the nation to announce extraordinary measures to slow the spread of the coronavirus. The Prime Minister asked the public to stay at home and said that the police would have powers to issue fines to those who leave home without a reasonable excuse. The address effectively put the UK into 'lockdown'.

The law

On Thursday 26 and Saturday 28 March regulations were made across the UK which gave the police (and others if designated) powers to enforce the lockdown. The regulations have three main effects:

- They significantly restrict the free movement of people by making it an offence to be leave home without a "reasonable excuse" and (with some exceptions) to gather in groups of more than two.
- They require all non-essential retail, hospitality and entertainment businesses to close. Restaurants, pubs and cafés are permitted to operate takeaway services.
- They give police officers powers to issue Fixed Penalty Notices (FPNs) to those flouting the lockdown and to forcibly return to their homes those who refuse to comply.

'Modifying' the lockdown in England

On the 10 May the Prime Minister addressed the nation again to announce plans to "modify" the lockdown measures as part of the Government's plan "both to beat the virus and provide the first sketch of a road map for reopening society". This included an immediate "change of emphasis" to the Government's lockdown guidance on exercise and work. This "change of emphasis" would not appear to require a fundamental change in the law governing the lockdown. The Prime Minister promised to provide more details to Parliament on 11 May.

Policing the lockdown

The police have adopted a co-operative approach to policing the lockdown. Those who break the rules are encouraged to return home before officers' resort to enforcement. In the first month of the lockdown police in England issued around 9,000 FPNs for offences under the regulations.

Criticism of Government messaging

Whilst the public health necessity for the lockdown has been largely unchallenged there has been some criticism about how the lockdown is being communicated to the public. This has largely centred on differences between the Government's guidance on 'social distancing' and the law which requires people to stay at home.

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1. The law

The lockdown has been translated to UK law by emergency regulations made in each of the UK's constituent countries: In **England** [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#), in **Scotland** [The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#), in **Wales** [The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); and in **Northern Ireland** [The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#).

There are some differences between the regulations in each of the UK's four countries, but they all have three main effects:

- They significantly restrict the free movement of people by making it an offence to leave home without a 'reasonable excuse' and, with some exceptions, to gather in groups of more than two.
- They require all non-essential retail, hospitality and entertainment businesses to close. Restaurants, pubs and cafés are permitted to operate takeaway services.
- They give police officers powers to forcibly return those who refuse to comply with the lockdown to their homes. The police also have powers to issue Fixed Penalty Notices (FPNs) to those who commit an offence under the regulations.

These regulations have been made using powers in primary legislation designed to allow the governments of the UK to take a public health response to an outbreak of an infectious disease in their countries. This means the restrictions imposed by the regulations

should only be justified for the purpose of responding to the spread of coronavirus and not for another purpose (such as maintaining public order).

1.1 Powers to make regulations

The regulations have been made under different legislation in England and Wales, Scotland and Northern Ireland. This is because public health is a devolved policy issue in the UK and the relevant legislation in England and Wales does not extend to Scotland and Northern Ireland. Provisions in the [Coronavirus Act 2020](#) provided the Scottish Government and Northern Ireland Executive with new powers to make regulations based on those already available to the UK and Welsh governments.¹

England and Wales

In England and Wales the regulations have been made under [sections 45B to 45F](#) of the *Public Health (Control of Disease) Act 1984* (as amended). The 1984 Act allows both the UK and Welsh governments to make regulations in response to the spread of an infectious disease.² It gives the UK and Welsh governments broad powers to include a wide variety of measures in these regulations. For example, regulations can create “restrictions or requirements” on “persons, things or premises” and create offences.^{3,4}

Regulations made under the 1984 Act normally require the formal approval of Parliament or the Welsh Assembly before they can come into force.⁵ However, under [section 45R](#) of the 1984 Act the UK and Welsh governments can make regulations without Parliamentary or Assembly approval when it is “urgent”.⁶ Regulations made using this emergency provision can only have effect for 28 sitting days without Parliamentary or the Assembly approval.⁷ The English and Welsh emergency coronavirus regulations were both made under this emergency provision.⁸ The House of Commons approved the English regulations on Monday 4 May 2020.⁹

Scotland and Northern Ireland

In Scotland the regulations were made under [section 49](#) and [Schedule 19](#) of the *Coronavirus Act 2020*. In Northern Ireland the regulations were made under [section 25B to 25F](#) of the *Public Health Act (Northern Ireland) 1967* (as amended by [section 48](#) and [Schedule 18](#) of the *Coronavirus Act 2020*). The text of both pieces of legislation is largely borrowed from the *Public Health (Control of Disease) Act 1984*.

¹ See: House of Commons Library, [Coronavirus Bill: health and social care measures](#), 20 March 2020, section 5.2

² [s45C\(1\)](#), *Public Health (Control of Disease) Act 1984*

³ [s45C\(3\)\(c\)](#), *Public Health (Control of Disease) Act 1984*

⁴ [s45F](#), *Public Health (Control of Disease) Act 1984*

⁵ [s45Q](#), *Public Health (Control of Disease) Act 1984*

⁶ [s45R\(2\)](#), *Public Health (Control of Disease) Act 1984*

⁷ [s45R\(4\)](#), *Public Health (Control of Disease) Act 1984*

⁸ [Introductory Text](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*;

[Introductory Text](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*

⁹ HC Deb, [Public Health](#), 4 May 2020, c496

1.2 Restrictions on free movement

Restrictions on leaving home

The regulations in **Scotland, Wales and Northern Ireland** make it an offence to be “leave” home without a “reasonable excuse”¹⁰ In **England** the regulations make it an offence “leave or be outside of” home without a reasonable excuse.¹¹ The wording of the English offence is a result of an amendment to the regulations brought into force on the 21 April.¹²

The regulations do not define “reasonable excuse”, but they do provide a non-exhaustive list of reasons that would give individuals a ‘reasonable excuse’ to be outside.

The regulations do not limit the number of times a person can leave their home per day or the length of time they can spend outside. Individuals are permitted to leave their home as many times as they need, for as long as they need, provided they have a “reasonable excuse”.

There are thirteen listed reasons which provide people with a “reasonable excuse” to leave home. As this list is non-exhaustive, individuals would be permitted to leave their house for a reason not listed provided it could be considered a ‘reasonable excuse’. The listed reasons are:¹³

- To obtain “basic necessities” for your household or a vulnerable person.
- To exercise alone or with people from your household. In **Wales** the regulations specify that it is only reasonable to exercise once a day.
- To seek medical assistance.
- To provide care or assistance to a vulnerable person, including to provide emergency assistance.
- To donate blood.
- To travel to work or to provide voluntary or charitable services. Only when it is not “reasonably possible” to work from home.
- To attend the funeral of a close family member or someone you live with or to attend the funeral of a friend if their family cannot attend.
- To access critical public services (for example social services and benefits).
- To see your child if you do not live with them.
- For ministers or worship leaders to go to their place of worship.
- To move house where it is “reasonably necessary”.
- To avoid “injury, illness or to escape a risk of harm”.

¹⁰ r5, *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; r8(1-4), *The Health Protection (Coronavirus) (Restrictions) (Wales) Regulations 2020*; r5, [The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#)

¹¹ r6, *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* (as amended)

¹² r2(4)(a), *The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020*; see also: House of Commons Library, [Coronavirus: Parliamentary consent for the lockdown in England](#), 4 May 2020

¹³ r6, *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; r5, *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; r8(1-4), *The Health Protection (Coronavirus) (Restrictions) (Wales) Regulations 2020*; r5, *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

Restrictions on gatherings

The regulations make it an offence to gather in groups of more than two.¹⁴ There are four exceptions where larger gatherings are acceptable:¹⁵

- When the gathering involves people from the same household.
- When it is essential for work purposes.
- To attend a funeral.
- When it is “reasonably necessary” to facilitate a house move, provide care to vulnerable people, for emergency assistance or to participate in legal proceedings.

Enforcement powers

The regulations provide police officers, police and community support officers (PCSOs) and others if designated with a range of enforcement powers. The police can now:

- Direct people they “consider” to be outside having left home without a reasonable excuse to return home. The regulations make it an offence to disobey a direction.¹⁶
- Use “reasonable force, if necessary” to take people to their home who they “consider” are outside having left home without a reasonable excuse.¹⁷
- Direct a prohibited gathering to disperse and use “reasonable force, if necessary” to take people from a prohibited gathering to their home. It is also an offence to disobey a direction relating to a gathering.
- Use “any action that is necessary” to enforce the prohibition of gatherings.

The regulations do not appear to require those enforcing them to issue a direction before a penalty.

The level of suspicion required to use these enforcement powers is relatively low. Police officers, PCSOs and others if designated only need to ‘consider’ that people are contravening the regulations to direct them to return home and use necessary and reasonable force to take them home if they refuse. This is a less stringent test than is typical for police powers. For example, police officers are normally required to demonstrate they had “reasonable grounds” for suspecting individuals have a prohibited item before conducting a stop and search.¹⁸

Power of arrest in England and Wales

Police officers in England and Wales have an expanded power of arrest in relation to offences under the regulations. Normally officers in England and Wales can only arrest without a warrant people they suspect have committed an offence when it is necessary to; ascertain their name and address, protect vulnerable people, prevent injury or damage to

¹⁴ [r7](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r6](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r8\(5\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r6](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

¹⁵ Ibid

¹⁶ [r8\(3-4\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r7\(3-4\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r10\(2-3\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r7\(3-4\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

¹⁷ [r8\(9-10\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r7\(9-10\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r10\(7-8\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r7\(9-10\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

¹⁸ See: House of Commons Library, [Police stop and search powers](#), 30 December 2019

property or to support the prompt investigation or prosecution of an offence.¹⁹ In addition to these reasons, officers can arrest those they suspect have committed an offence under the regulations when it is necessary to maintain public health or public order.²⁰

1.3 Closure of non-essential retail, hospitality and entertainment businesses

The regulations require:

- Restaurants, cafes, bars and pubs to close or move to take away only.²¹
- Cinemas, theatres, nightclubs, museums, spas and other entertainment/ recreational businesses to close. Cinemas, theatres etc are still permitted to broadcast performances from their premises.²²
- All non-essential shops to close or move their businesses to online only.²³

Non-essential shops are defined in the regulations as those not specifically listed as essential. The regulations list nineteen 'essential shops' including supermarkets, convenience stores, off-licences, pharmacies, banks and laundrettes.²⁴

An owner, proprietor or manager carrying out a business (or a person responsible for the business premises) who continues to operate their businesses against the regulations commits an offence.²⁵

The UK Government has provided guidance on [closing certain business and venues](#) which sets out in detail which shops are required to close and what exceptions apply.

The regulations do not place any rules on what 'essential shops' can sell. Therefore, supermarkets and other 'essential shops' are permitted to sell anything. They are not limited to goods that might be considered 'essential'. However, shopping for 'basic necessities' is one the thirteen listed reasons listed as 'reasonable' to leave your home for. This suggests that someone who leaves home to buy something other than a 'basic

¹⁹ [s24\(5\), Police and Criminal Evidence Act 1984](#); see also: House of Commons Library, [Introduction to police powers](#), 11 March 2020, section 2.1

²⁰ [r9\(7\), The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); [r9\(1\), The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); [r12\(5\), The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); [r9\(1\), The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#)

²¹ [r4\(1-3\), The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); [r3\(1-3\), The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); [r4\(1-3\), The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); [r3\(1-3\), The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#)

²² [r5, The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); [r4, The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); [r5, The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); [r4, The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#)

²³ [r4\(4\), The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); [r3\(4\), The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); [r4\(4\), The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); [r3\(4\), The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#)

²⁴ [Schedule 2, Part 3, The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); [Schedule 1, Part 3, The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); [Schedule 1, Part 4, The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); [Schedule 2, Part 3, The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#)

²⁵ [r9\(1\), The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); [r8\(1\), The Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); [r12\(1\), The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); [r9\(1\), The Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#)

necessity' would be committing an offence. It does not seem to make it an offence to buy something other than a 'basic necessity' whilst shopping for goods that are.

Social distancing in Scotland and Wales

In Scotland and Wales essential shops must take 'reasonable steps' to put in place some social distancing measures. The regulations in Scotland and Wales require the essential shops to take reasonable steps to ensure:²⁶

- people stay two metres apart inside the shop,
- that their shop does not get too crowded; and,
- people stay two metres apart whilst waiting to enter the shop.

The Welsh regulations were amended on 21 April to expand the requirement for businesses to implement social distancing measures. [The Health Protection \(Coronavirus Restrictions\) \(Wales\) \(Amendment\) Regulations 2020](#) inserted regulation 6A and 7A into *The Health Protection (Coronavirus Restrictions) (Wales) 2020*. Regulation 6A requires employers to take "reasonable steps" to ensure their staff stay two metres apart whilst at work. Regulation 7A allows the Welsh Government to issue guidance on staying 2 metres apart. Employers and business owners must have regard to this guidance.²⁷

Enforcement of closures

The regulations give the police and persons designated by local authorities or the relevant government the power to issue 'prohibition notices' to businesses that disobey the regulations. They make it an offence to breach a prohibition notice.²⁸ The regulations do not appear to require those enforcing shop closures to issue prohibition notices before issuing a penalty for breaching the regulations. Therefore, those enforcing the regulations appear to be able to choose whether to issue a penalty or prohibition notice to businesses failing to comply.

The Government's guidance on [closing certain businesses and venues](#) states that Environmental Health and Trading Standards officers will monitor compliance with the requirement for certain shops to close with "police support provided if appropriate".

Other businesses

The regulations do not place any restrictions on other types of business. Businesses not covered by the regulations are permitted to carry on operating. However, they may find it difficult within other coronavirus restrictions. It is now an offence for individuals to leave their home for work that is "reasonably possible" to conduct from home. The Government has issued advice on [going to work](#) as part of their guidance on [staying at home and away from others \(social distancing\)](#). It says it is "important for business to carry on". It encourages employers to "take every possible step to facilitate their employees working from home" but acknowledges that "not everyone can work from home".²⁹

²⁶ [r4\(1\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r6\(1\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*

²⁷ Office of the Legislative Counsel in the Welsh Government, [The Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020, as amended](#), undated

²⁸ [r9\(3\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r8\(3\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r12\(3\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r9\(3\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

²⁹ Cabinet Office, [Guidance: Staying at home and away from others \(social distancing\)](#), updated 29 March 2020

1.4 Penalties

The police, and others if designated, have the power to issue Fixed Penalty Notices (FPNs) to adults they “reasonably believe” have committed an offence under the regulations. In **England, Wales and Northern Ireland** these FPNs can be issued to those aged 18 and over; in **Scotland** they can be issued to those aged 16 and over.³⁰

The FPN procedure offers those accused of committing an offence under the regulations a chance to avoid criminal proceedings by paying a fine.³¹ Those issued with an FPN under the regulations have 28 days to pay their fine or face proceedings linked to the alleged offence.³²

In **England and Wales** the fines are payable to local authority in which the offence is alleged to have been committed.³³ In **Northern Ireland and Scotland** the fines are paid to the Northern Ireland Executive and the Scottish Government respectively.³⁴

The fine is currently set at £60 for the first offence (reduced to £30 if paid within 14 days). The amount individuals are fined doubles for each subsequent offence with the maximum fine applicable set at £960.

The Prime Minister announced on the 10 May that the Government would “increase the fines” in **England**.³⁵ The Prime Minister is expected to give further details in a statement to the House of Commons on the 11 May. The Government would need to bring forward further regulations under the *Public Health Act 1984* to change the level of the fine. The Scottish, Welsh and Northern Irish governments have not announced changes to the level of their fines.

2. Reviewing the lockdown

The relevant government must review the need for the restrictions every 21 days.³⁶ In all four countries the regulations must be ‘terminated’ as soon as the restrictions and requirements set out in the regulations are “no longer necessary”.³⁷

³⁰ [r10\(1\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r9\(1\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r13\(1\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r9\(1\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

³¹ [r10\(2\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r9\(2\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r13\(2\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r9\(2\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

³² [r10\(4\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r9\(4\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r13\(4\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r9\(4\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

³³ [r10\(2-3\)](#) of *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r13\(2-3\)](#) of *The Health Protection (Coronavirus, Restrictions) (Wales) Regulations 2020*.

³⁴ [r9](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r9\(2\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

³⁵ Prime Minister’s Office, 10 Downing Street, [PM address to the nation on coronavirus](#), 10 May 2020

³⁶ [r3\(2\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r2\(2\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r3\(2\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r2\(2\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

³⁷ [r3\(3\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*; [r2\(3\)](#), *The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020*; [r3\(3\)](#), *The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*; [r2\(3\)](#), *The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020*

2.1 First review (15-16 April)

The first review of the regulations review was carried out on the 15 April in Northern Ireland and on the 16 April in England, Wales and Scotland. All four countries extended the lockdown for three more weeks.³⁸

2.2 Second review (6- 11 May)

The second review of the regulations was due to take place on the 7 May in **England, Scotland and Wales** and 6 May in **Northern Ireland**. The second review process eventually took place over five days (between 7 and 11 May). The UK's constituent countries announced slightly different changes to their lockdowns following the second review.

England

The UK Government took advice from the Scientific Advisory Group for Emergencies on the 7 May but did not make an immediate announcement on the status of the lockdown. Instead it was announced that the Prime Minister would make a statement setting out England's "roadmap for the next phase" of the lockdown on 10 May.³⁹

The Prime Minister made a televised statement on 10 May in which he announced a "change in emphasis" to the UK Government's guidance on work and exercise during the lockdown. He announced that the Government was now⁴⁰:

- **'actively encouraging' those who can't work from home to go to work.** The Prime Minister said that the Government would publish "new guidance for employers to make workplaces COVID- secure."
- **encouraging "people to take more and even unlimited amounts of outdoor exercise"**. The Prime Minister said would be OK from Wednesday 13 May to "sit in the sun in your local park", "drive to other destinations" and to 'play sports with members of your own household'.
- **"increase the fines"** associated with FPNs issued under the regulations.

Following the announcement, Secretary of State for the Foreign and Commonwealth Office told *BBC News* that guidelines would be changed to allow **two people from different households to meet outside staying two meters apart**.⁴¹

The details of these changes are not yet clear. The Prime Minister is expected to provide further information in a statement to the House of Commons on the 11 May. However, it appears that, apart from the increase in fines, these are "changes in emphasis" to government guidance rather a fundamental change to the current law in England.

Actively encouraging those who can't work from home to go to work

The regulations have always permitted those who can't work from home to go to work.⁴² Government guidance already advised that

³⁸ Foreign & Commonwealth Office, [Foreign Secretary's statement on coronavirus \(COVID-19\)](#), 16 April 2020; Scottish Government, [First Minister COVID-19 update - 16 April 2020](#), 16 April 2020; Welsh Government, [First Minister of Wales' statement on coronavirus lockdown extension](#), 16 April 2020; Northern Ireland Executive, [Covid-19 press conference - 15 April 2020](#), 15 April 2020

³⁹ Foreign & Commonwealth Office, [Foreign Secretary's statement on coronavirus \(COVID-19\)](#), 7 May 2020

⁴⁰ Prime Minister's Office, 10 Downing Street, [PM address to the nation on coronavirus](#), 10 May 2020

⁴¹ *BBC News*, [Coronavirus: Use common sense to see loved ones outdoors – Dominic Raab](#), 11 May 2020

⁴² [r6\(2\)\(f\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*

certain jobs require people to travel to, from and for their work – for instance if they operate machinery, work in construction or manufacturing, or are delivering front line services.

If you cannot work from home then you are allowed to travel for work purposes, but you should not do so if you are showing coronavirus symptoms, or if you or any of your household are self-isolating.⁴³

Encouraging “people to take more and even unlimited amounts of outdoor exercise”

The regulations in England do not restrict the number of times people can leave their homes for exercise, where they can go to exercise or how long they can exercise for.⁴⁴ However, current Government guidance advises people to only leave home for exercise once a day (unless they have a medical need to exercise outdoors more often) and to “stay local” when doing so.⁴⁵

The Prime Minister’s statement seemed to imply that ‘sitting in the sun in the park’ would now be permissible as part of people’s daily exercise. It is not yet clear how allowing people to sit in parks will be translated into law.

Meeting a person outside your household

Meeting one other person from a different household is not an offence under the current prohibition of gatherings.⁴⁶ However, it might be an offence given that it might not meet the definition of a “reasonable excuse” to be outside.⁴⁷ Current Government guidance says that “you should not be meeting friends unless you live in the same household”.⁴⁸ It is not yet clear whether the Government will amend the non-exhaustive list of “reasonably excuses to be outside” to explicitly include meeting a person outside your home.

Increasing the fines associated with FPNs issued under the regulations

The level of the fine is set by the regulations, currently at £60 for the first offence (reduced to £30 if paid within 14 days).⁴⁹ In order to change the level of the fine the Government would need to amend the regulations.

Scotland

The Scottish Government extended its lockdown on the 7 May.⁵⁰ During her announcement on the 7 May, First Minister Nicola Sturgeon said she was considering changing the guidance on outdoor exercise.⁵¹ She confirmed on the 10 May that the Scottish guidance on exercise would be amended to say that it is OK to leave home for exercise more than once a day.⁵² The law in Scotland never restricted exercise to once a day.

⁴³ Cabinet Office, [Staying at home and away from others \(social distancing\)](#), updated 1 May 2020, section 4

⁴⁴ [r6\(2\)\(b\)](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*

⁴⁵ Cabinet Office, [Coronavirus outbreak FAQs: what you can and can't do](#), updated 1 May 2020, section 1 & 17

⁴⁶ [r7](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*

⁴⁷ [r6](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*

⁴⁸ Cabinet Office, [Coronavirus outbreak FAQs: what you can and can't do](#), updated 1 May 2020, section 7

⁴⁹ [r10](#), *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*

⁵⁰ Scottish Government, [Coronavirus \(COVID-19\) update: First Minister's speech](#), 7 May 2020

⁵¹ *Ibid*

⁵² Scottish Government, [Coronavirus \(COVID-19\) update: First Minister's speech](#), 10 May 2020

Wales

The Welsh Government announced it was extending the lockdown with some changes for a further three weeks on 8 May. The Welsh Government announced three changes that would require a change in the law. They announced that from Monday (11 May 2020)⁵³:

- **People would be allowed to exercise more than once a day.** The regulations in Wales currently specify that it is 'reasonable' to exercise outside once a day. In order to make exercising outside more than once a day legal in Wales the Welsh Government would need to amend the regulations.
- **Allowing garden centres to reopen.** Garden centres are not included in the list of 'essential shops' permitted to operate under the Welsh regulations. In order to make operating a garden centre legal the Welsh Government would need to amend the regulations.
- **Enabling local authorities to plan for the reopening of libraries and recycling centres.** Whilst no change in the law would be required to allow local authorities to 'plan' to reopen libraries and recycling centres, the Welsh regulations would need amending for them to actually reopen.

At the time of writing the regulations in Wales have yet to be amended to give effect to the changes announced by the Welsh Government on 8 May.

Northern Ireland

The Northern Ireland Executive said it would "consider its plan for a phased, strategic approach to recovery" at a meeting on 11 May.⁵⁴ At the time of writing, the Executive has yet to make a statement on the status of the lockdown in Northern Ireland.

3. Police approach to enforcement

The Government has said the police will "act with discretion and common sense in applying these measures".⁵⁵ The College of Policing (the body responsible for professional standards in English and Welsh policing) and the National Police Chiefs Council (the coordinating body for UK police forces) have published a '[briefing for police on the regulations](#)' which provides guidance to officers in England and Wales on how to enforce the regulations.

3.1 College of Policing and NPCC briefing for police on the regulations

The College of Policing and the National Police Chiefs Council [briefing for police on the regulations](#) encourages them to adopt a 'four-phase approach' in which 'enforcement is the last resort'. This four-phase approach is based on 'four Es':⁵⁶

Engage – we police by consent. Officers will initially encourage voluntary compliance.

Explain – officers will stress the risks to public health and to the NHS. Educate people about the risks and the wider social factors.

⁵³ Welsh Government, [Wales extends coronavirus lockdown](#), 8 May 2020

⁵⁴ The Northern Ireland Executive, [Executive to consider recovery plan](#), 10 May 2020

⁵⁵ Cabinet Office, [Guidance: Staying at home and away from others \(social distancing\)](#), updated 29 March 2020

⁵⁶ College of Policing, [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) [last accessed 3 April 2020]

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Encourage – officers will encourage compliance and emphasise the benefits to the NHS by staying at home, how this can save lives and reduce risk for more vulnerable people in society.

Enforce – if faced with non-compliance, officers will, if necessary and proportionate:

- direct those without a reasonable excuse to go home, using reasonable force if needed.
- issue a penalty notice for disorder (PND) of £60, to discourage further non-compliance.
- use prohibition notices to stop public gatherings.
- use existing licencing powers where businesses and organisations fail to comply.

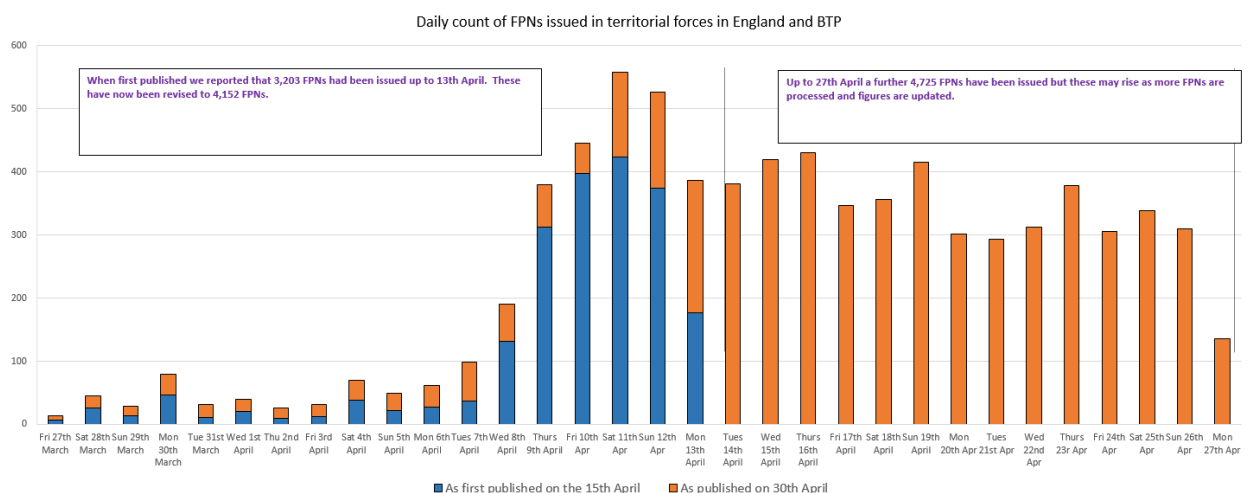
The briefing encourages officers to have an “inquisitive mindset” and consider whether “it might not be safe for everyone to be at home”.⁵⁷

Key concept: Policing by consent

[Policing by consent](#) is a core characteristic of British policing. It is embedded into the operation of all UK police forces. The police regularly rely on the consent of the public to carry out their duty. For example, they sometimes search property for evidence with the consent of the owner or gain information about crime from witnesses who willingly provide statements. Police operations should always aim to maintain the rule of law through the cooperation of the public. The police gain the public’s consent by using their discretion appropriately and by ensuring that they are transparent, fair and impartial.

3.2 Number of FPNs issued

8,877 FPNs were issued under the coronavirus emergency regulations between 27 March and the 27 April in England. Thames Valley Police issued the most fines (649) and Warwickshire Police issued the least (22) in the period.⁵⁸



3.3 Issues with enforcement

Lack of stop and account powers

Police officers sometimes conduct a ‘stop and account’ where they stop a member of the public and ask them to account for what they are doing. There is no police power to

⁵⁷ Ibid

⁵⁸ NPCC, [Police chiefs welcome positive start to recruitment drive](#), 30 April 2020

conduct a 'stop and account'.⁵⁹ Members of the public are under no obligation to answer questions during a 'stop and account' and can remain silent if they do not wish to cooperate.

The regulations do not provide police officers with a 'stop and account' power they can use to require people to answer questions about why they are outside. Therefore, the police must rely on the cooperation of individuals they question whilst enforcing the regulations.

The lack of stop and account powers was one of the issues present in the case of Marie Dinou (also discussed in [section 3.1](#) below). Ms Dinou was wrongly prosecuted with 'failing to provide identity or reasons for travel to police and failing to comply with the requirements under the *Coronavirus Act 2020*' after she refused to tell British Transport Police (BTP) officers why she was in Newcastle Central Station. Kirsty Brimelow QC (a human rights lawyer) commenting on the case in *The Times* said:

Powers under the Coronavirus Act [do not] relate to a direction to provide identity or reason for a journey. So it seems that she [Ms Dinou] has been prosecuted and convicted for an offence which does not exist under this act.⁶⁰

The BTP and the Crown Prosecution Service later reviewed the case and established that Ms Dinou was "charged under the incorrect section of new coronavirus legislation". They have asked North Tyneside Magistrates' court to set aside her conviction.⁶¹

Maintaining public support

Some police leaders have expressed concern about how enforcing the restrictions could affect the relationship between the police and public.⁶² People may lose trust in the police if they feel they are being unnecessarily surveyed or assumed to be disobeying the rules.

Former Supreme Court Justice Lord Sumption was critical of early police enforcement of the regulations. He said that "most police forces have behaved in a thoroughly sensible and moderate fashion" but the use of drones to monitor people out in the peak district by Derbyshire police was "excessive".⁶³

Chair of the NPCC Martin Hewitt writing in *The Times* on the 4 April 2020 accepted that there were

...some well-publicised instances, as we were adjusting to the new regulations, where some of the actions and information shared by forces were felt to be overzealous.

I believe that the majority of the public will recognise that these examples were no more than well-meant attempts to encourage responsible behaviour as we were all trying to adjust.⁶⁴

The Home Affairs Select Committee published a report on the police response to coronavirus on 17 April 2020. They concluded that the early response from the police has overall been proportionate and effective but called on regular monitoring of enforcement where there is "significant divergence" between forces on the use of enforcement measures.⁶⁵

⁵⁹ College of Policing, Stop and Search APP, last accessed 3 April 2020, [subsection: stop and account](#)

⁶⁰ *The Times*, [Woman fined £660 for crime that 'doesn't exist'](#), 2 April 2020

⁶¹ BTP, [Coronavirus Act prosecution update – Newcastle](#), 2 April 2020

⁶² *The Guardian*, [England: police to get power to use force to impose coronavirus lockdown](#), 25 March 2020

⁶³ *BBC News*, [Coronavirus: Lord Sumption brands Derbyshire Police 'disgraceful'](#), 30 March 2020

⁶⁴ *The Times*, [Police need your help in the fight against coronavirus](#), 4 April 2020

⁶⁵ Home Affairs Select Committee, [Home Office preparedness for COVID-19 \(Coronavirus\): Policing report published](#), 17 April 2020

The Joint Committee on Human Rights raised concerns that some forces have set up online systems members of the public can use to report those they think are flouting the regulations. The JCHR said that encouraging citizens to report on one another “will almost certainly engender an atmosphere of mutual distrust and intrusive behaviour which arguably the state should not be encouraging”.⁶⁶ The JCHR recommended that the Government “review how it intends to ensure good police-community relations” in the enforcement of the regulations.⁶⁷

Resourcing the operation

Senior police officers expect “police forces across the UK” to “come under increasing strain” during the coronavirus campaign. The NPCC has therefore asked volunteer police officers, known as ‘police specials’, to volunteer more time during the pandemic.⁶⁸

There are around 10,000 police specials in England and Wales. Police specials are warranted police officers with all the same powers as regular constables.⁶⁹

The Government has not announced any specific support which would help police specials volunteer more time during the pandemic. Police specials may receive paid leave to volunteer through the [Employer Supported Policing Scheme](#) (ESP). This is a voluntary scheme in which employers agree to provide staff with paid leave so they can volunteer with the police. The NPCC have asked employers to sign up or extend their existing commitment with the ESP scheme during the coronavirus pandemic. It is hoped this will allow more police specials to volunteer more time during the coronavirus pandemic.⁷⁰

4. Controversy

4.1 Confusion

The regulations represent a significant shift in the powers available to police officers. A change that has happened at an unprecedented pace. There has been, understandably, some confusion about how these new powers should be used. Senior police officers who gave evidence to the Home Affairs Select Committee on 6 April 2020 were positive that this confusion was dissipating and a more consistent approach to the enforcement of the regulations was emerging across the country.⁷¹ That being said, there are some key points of confusion which have been controversial:

- **The difference between the law and government guidance.** This issue could be exasperated by confusion over how the lockdown measures are being relaxed as the UK Government changes its approach to tackling the virus.
- **The misuse of powers in the Coronavirus Act 2020.** The *Coronavirus Act 2020* allows public health officials to require those ‘potentially infectious’ with coronavirus to self-isolate. However, these powers cannot be used to enforce the lockdown.
- **The delay in the law coming into force.** There was a gap of three days between the Prime Minister instructed people to stay at home and the relevant law coming

⁶⁶ Joint Committee of Human Rights, Chair’s briefing paper: *The Health Protection (Coronavirus, restrictions) (England) Regulations 2020*, 8 April 2020, para 32 [accessible via the [Joint Committee on Human Rights’ website](#)]

⁶⁷ *Ibid*, para 33

⁶⁸ NPCC, [Forces ask for the help of police volunteers to bolster officer numbers](#), 20 March 2020

⁶⁹ See: House of Commons Library, [Police Service Strength](#), 4 March 2020

⁷⁰ NPCC, [Forces ask for the help of police volunteers to bolster officer numbers](#), 20 March 2020

⁷¹ Home Affairs Committee, [Oral evidence: Home Office Preparedness for Covid-19, HC 232](#), 6 April 2020

into force to allow the police to enforce the lockdown. This gap caused confusion about how the rules should be policed.

Difference between law and government guidance

There are several differences between UK Government guidance on [Staying at home and away from others \(social distancing\)](#) and the emergency regulations which provide powers to enforce the instruction to stay at home. The government guidance advises people to travel less than is legally permitted under the regulations. For example, the guidance states that people should only leave their home for four specified reasons: shopping for basic necessities, one form of exercise a day, any medical need and to travel to work that cannot be done from home.⁷² The guidance states that “even when doing these activities, you should be minimising time spent outside.”⁷³ Under the regulations people are permitted to leave their house when they have a ‘reasonable excuse’ and there are no limits on the number of times they can do so per day or the time they can spend outside.

The College of Policing and the National Police Chiefs Council revised their ‘briefing to police’ on the regulations on the 31 March. Whilst some of these revisions were cosmetic others distinguished more clearly the difference between the regulations and government guidance.⁷⁴

On the 10 May the Prime Minister announced ‘modifications’ to the Government’s lockdown guidance as part of the Government’s ‘roadmap to recovery’. It is not yet clear how the law will be amended to reflect these modifications. This has added to confusion about what is permissible during the lockdown. The Chair of the Police Federation John Apter criticised the “mixed messages” given by the Government. He said that it was “putting extreme pressure on [those] on the frontline trying to enforce legislation in these most challenging of times.”⁷⁵

The public can expect the Government to issue firm and clear instructions to the public during times of national crisis. Despite referencing the regulations throughout, the [Staying at home and away from others \(social distancing\)](#) guidance is not official statutory guidance on the emergency regulations. The guidance may be interpreted as general advice to the public during a national emergency rather than specific guidance on the emergency regulations. It is not clear how the guidance would be used to interpret the regulations if they were challenged in court.

Ultimately, the police only have the powers given to them in law. It is for the individual officer exercising the powers in the regulations to demonstrate they have done so lawfully.

Misuse of self-isolation powers in the *Coronavirus Act 2020*

Powers in [section 51](#) and [Schedule 21](#) of the *Coronavirus Act 2020* have been invoked to allow police officers and immigration officials to take those they suspect have coronavirus to a suitable place for testing/ assessment.⁷⁶ They do not provide officers with powers to enforce the instruction for people to stay at home.⁷⁷ There has been some confusion

⁷² Cabinet Office, [Staying at home and away from others \(social distancing\)](#), [last accessed 6 April 2020]

⁷³ Ibid

⁷⁴ College of Policing, [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) (COVID-19 Police brief: version differences), [last accessed 6 April 2020]

⁷⁵ Police Federation, [PFEW position on lockdown guidance](#), 10 May 2020

⁷⁶ Schedule 21, [paragraph 24\(4\)](#) and [paragraph 68\(4\)](#), *Coronavirus Act 2020*; *The Gazette*, [Text for declaration under Schedule 21, Part 3, paragraph 25\(1\)](#), 27 March 2020; see also: House of Commons Library, [Coronavirus Bill: Emergency powers and national security](#), 25 March 2020, section 4

⁷⁷ College of Policing, [Coronavirus Act 2020: Support public health- exceptional powers for exceptional circumstances only](#), 3 April 2020

about whether the powers in the Act could be used as part of the enforcement of the instruction. This might be because similar powers in the 2020 Act, that have not been invoked, could provide some powers similar to the regulations (see [section 3.3](#) below).

In a well-publicised case, Marie Dinou was wrongly prosecuted under the 2020 Act for what appears to be a suspected offence under the regulations. British Transport Police officers stopped Ms Dinou in Newcastle Central Station and attempted to question her on why she was outside of her home. Deputy Chief Constable of the BTP Adrian Hanstock said that the officers “were rightfully challenging [Ms Dinou’s] unnecessary travel” and that his officers will “continue to engage with people and seek to understand their reasons for their journey’s”.⁷⁸ The British Transport Police and the Crown Prosecution Service have committed to conduct a detailed review of the case.⁷⁹

The delay before regulations came into force

There was a gap of two and half days between the Prime Minister addressing the nation to instruct them to stay at home (Monday 23 March 2020) and the relevant regulations coming into force in England, Wales and Scotland (Thursday 26 March 2020). The delay caused uncertainty about how the instruction to stay at home would be enforced. This was compounded by government statements which implied the police had powers to enforce the instruction when they did not.

On Tuesday 24 March the Government sent a text to people across the UK which said, “new rules in force now: you must stay at home”.⁸⁰ The Bingham Centre for the Rule of Law (a think tank) were critical of how the text was worded. They said it was inaccurate to say the rules were “in force”. They called on the government to ensure

...it does not compound the legal uncertainty caused by the emergency by making ambiguous statements about what rules apply, when they apply, and the consequences for people if they are breached.⁸¹

Former Supreme Court Justice Lord Sumption made a similar point. He said the Prime Minister’s orders will “probably have strong public support” but questioned “what kind of society we have become when an official can give orders and expect to be obeyed without any apparent legal basis”.⁸²

4.2 Similar powers in the *Coronavirus Act 2020*

The [Coronavirus Act 2020](#) can be used to enforce similar measures as the emergency regulations but these powers have not been invoked.

[Section 52](#) and [Schedule 22](#) of the *Coronavirus Act 2020* could be used to restrict gatherings and access to premises.⁸³ These powers are more limited than the regulations. The powers in the 2020 Act *cannot* be used to require people to have a specified reason to leave their home and the restrictions they could provide on gatherings would be more limited than regulations. Under [Schedule 22](#) of the 2020 Act any of the UK governments can issue a direction which would make it an offence to *organise* a prohibited gathering, a more limited offence than what is provided for by the regulations.⁸⁴ It is an offence in the

⁷⁸ BTP, [Coronavirus Act prosecution update – Newcastle](#), 3 April 2020

⁷⁹ BTP, [Coronavirus Act prosecution update – Newcastle](#), 3 April 2020

⁸⁰ Prime Minister’s Office, 10 Downing Street, [Coronavirus: SMS messages](#), 24 March 2020

⁸¹ Bingham Centre for the Rule of Law, [Coronavirus Bill: A Rule of Law Analysis \(Supplementary Report- House of Lords\)](#), 25 March 2020

⁸² *The Times*, [There is a difference between the law and official instructions](#), 26 March 2020

⁸³ See: House of Commons Library, [Coronavirus Bill: Emergency powers and national security](#), 25 March 2020, section 3

⁸⁴ *Ibid*

regulations to *participate* in a gathering of more than two people (with exceptions). The offence under the Act would be punishable by fine, but only on conviction. Therefore, the Act cannot give the police powers to issue fines 'on the spot' like the regulations do.

The fact that the Government has used delegated powers in the [Public Health \(Control of Disease\) Act 1984](#) to restrict the movement of citizens raises questions as to why similar emergency powers were incorporated into the *Coronavirus Act 2020*. During the Second Reading debate on the Bill Secretary of State for Health and Social Care, Matt Hancock said the provisions gave the Government "stronger powers to restrict or prohibit events and public gatherings and, where necessary, to shut down premises".⁸⁵ The 2020 Act does not appear to give the Government stronger powers than they had already through their delegated 1984 Act powers.

⁸⁵ HC Deb, [Coronavirus Bill](#), 23 March 2020, c45

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