

The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020

Business Restrictions and Closures Guidance for district council enforcement officers

Environmental Health Northern Ireland (EHNI), a Heads of Service advisory group of the Society of Local Authority Chief Executives in Northern Ireland (SOLACE NI), has developed this guidance in consultation with the Department of Health (DoH).

This guidance is intended to assist Council enforcement officers in the consideration and implementation of requirements and restrictions imposed by The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 ('the Regulations'), in so far as they relate to businesses.

In offering this advice it must be clearly understood that:

- legislation may change over time and the advice given is based on the information available at the time the guidance was produced – it is not necessarily comprehensive and is subject to revision in the light of further information;
- only the courts can interpret statutory legislation with any authority; and
- this guidance is advisory only and councils should seek their own legal advice where appropriate.

Version 6: 20 May 2020

Business Restrictions and Closures Enforcement Guidance

1. Introduction

1.1. This guidance provides advice to Councils on the enforcement of the Regulations and includes information on:

- the designation of Councils to enforce the Regulations;
- how councils will support businesses to comply with their obligations;
- enforcement powers; and
- role of PSNI.

1.2. Councils are designated under the Regulations to enforce the requirements in respect of business closures and those businesses which can remain open subject to certain restrictions.

1.3. Employers duties to protect the health, safety and welfare of their employees and members of the public under existing Health and Safety legislation is outside the scope of this guidance.

2. Business and Venues Closures and Restrictions

2.1. The Regulations support the public health response to the coronavirus disease (COVID-19) pandemic. These require the closure of certain businesses; impose restrictions on the conduct of business; impose restrictions on the movement of individuals, and gatherings of persons.

2.2. The Department of Health (DoH) must review the restrictions contained within the Regulations at least every 21 days. As the measures contained in the Regulations cut across the policy responsibilities of a number of NI Government Departments, any changes to the restrictions and requirements are a matter for the NI Executive. The Regulations cease to have effect after six months of the date of coming into operation.

2.3. While the Regulations are broad - covering not only certain businesses but also restrictions on the movement of individuals, gatherings and non-business premises and venues (including places of worship and crematoria) – the focus of this guidance is the enforcement role of councils.

2.4. Councils will need to:

- Understand the requirements for business closures and restrictions (see section 3 below)

- Consider updating their Scheme of Delegation and authorise appropriate officers to enforce the requirements (see section 4 below)
- Support local businesses to ensure compliance (see section 5 below)
- Understand the role of PSNI (see section 6 below)
- Tackle any business failures to comply with the requirements (see section 7 below)
- Record and manage information on enforcement activities (see section 8 below)

3. The requirements for business closures and restrictions

- 3.1. Specified businesses and venues must close while these restrictions are in place. Some specified businesses may remain open and others can continue to trade but only online, by telephone or by post. The businesses covered by the Regulations fall primarily into the retail and service sectors. Sectors such as manufacturing and construction are not covered by the Regulations.
- 3.2. A list of the businesses and venues that are required to close, and the exceptions to these requirements, can be found here:
<https://www.nidirect.gov.uk/articles/coronavirus-covid-19-restrictions-businesses-and-services>
- 3.3. The Regulations require specified types of businesses, business premises (or parts of business premises) and venues to close, as set out in Regulations 3 and 4 and Schedule 2.

4. Authorising relevant and competent officers to enforce the requirements

- 4.1. Councils will need to ensure their relevant officers are specifically authorised to act under The Regulations.
- 4.2. Councils should ensure that the officers they authorise are competent to exercise the powers provided for in the Regulations and are properly supported to do so.

5. Supporting local businesses to comply

- 5.1. Councils will be using existing communication channels to disseminate information and guidance and may wish to co-ordinate with partner organisations. Councils will also provide advice to businesses on the requirements of the Regulations upon request.
- 5.2. Additional guidance for businesses can be found here:
<https://www.gov.uk/coronavirus/business-support> and includes advice on:
 - business closures;
 - managing businesses during coronavirus;
 - employers' responsibilities; and
 - funding and financial support.
- 5.3. The government guidance is being kept updated and you should use this to answer queries from businesses about what they should do.

5.4. Where queries arise in relation to the interpretation of the Regulations, officers should direct these to the Lead Officer in the Environmental Health team within their Council for resolution. Where such queries cannot be resolved, the matter should be referred to the council's legal advisors. The Health and Safety Liaison Group (HSLG) provides an appropriate forum for councils to share information and consider consistency. The HSLG may also seek and consider the views of the CEHO within the DOH. However, it is recognised that enforcement decisions remain the responsibility of each individual council.

5.5. Further information on business restrictions including examples of businesses that can and cannot operate can be found here:

<https://www.nibusinessinfo.co.uk/content/coronavirus-business-closures-and-restrictions>

6. Role of PSNI

6.1. Councils will deal with enforcement in relation to requirements placed on businesses only (Regulations 3 and 4) and PSNI will continue to deal with enforcement in relation to certain types of premises, individuals, gatherings and non-business premises and venues. It is expected that DoH, PSNI and Councils will work closely to develop an MOU to clarify enforcement roles, mechanisms to support each other, including data sharing arrangements, so as to ensure the effective enforcement of these Regulations.

7. Tackling failures to comply

7.1. The Northern Ireland Executive anticipates that the vast majority of businesses will understand why the restrictions have been brought into place and will follow the requirements. Councils are expected to take a reasonable and proportionate approach, consistent with their existing enforcement policies, encouraging and persuading businesses to comply with the requirements.

7.2. However, where businesses do not act responsibly and fail to comply, Councils will be able to use the following enforcement powers:

Taking such action as is necessary (see Regulation 7(1))

A 'relevant person' may '*take such action as is necessary to enforce any requirement*' imposed by Regulation 3 or Regulation 4 of the Regulations. This is a widely drawn power but it must be exercised in a proportionate and reasonable manner. It is recommended that specific legal advice is sought before taking formal action.

Prohibition notices (Regulation 7(2))

A 'relevant person' may issue a prohibition notice, where this is necessary and proportionate, to prevent a person responsible for carrying on a business or providing a service from continuing to contravene Regulation 3 or Regulation 4.

- As with the Regulation 7(1) power, a ‘relevant person’ is a district council, or an officer authorised by a district council.
 - **Annex A** includes a template **prohibition notice** that may be adapted and used by Councils.

Fixed penalty notices (Regulation 9(1))

An ‘authorised person’ may issue a fixed penalty notice in relation to an offence of contravening, without reasonable excuse, a requirement of Regulation 3 or Regulation 4 of The Regulations.

- As with Regulation 7 powers, an ‘authorised person’ is an officer duly appointed by a district council.
- A fixed penalty notice is intended for use in relation to an individual and the individual must be aged 18 or over.
- A fixed penalty notice may only be issued to a person responsible for carrying on a business or providing a service as defined in The Regulations. This includes the owner, proprietor or manager of the business.
- The amount of the fixed penalty is £60, reduced to £30 if paid within 14 days. If a person has already received a fixed penalty notice, the amount of the fixed penalty is £120 doubling on each further repeat offence up to a maximum of £960, and there will be no discount for repeat offenders paying within 14 days.
- **Annex B** includes a template **fixed penalty notice** that may be adapted and used by councils. Legal advice should be sought if you intend to adapt the template as the Regulations require specific information to be provided within the notice.

Criminal proceedings

Prosecution should usually only be taken where a business operator has failed to comply with advice and warnings provided by officers.

The Regulations set out a number of offences:

- Contravening, without reasonable excuse, a requirement or restriction of Regulation 3 or Regulation 4 (see Regulation 8(1));
- Failure to comply, without reasonable excuse, with a prohibition notice (see Regulation 8(3));
- Obstructing, without reasonable excuse, any persons carrying out a function under the Regulations (see Regulation 8(2)).

Service of Notices

Normal provisions regarding service on an individual require documents to be physically served on the person.

In the case of a limited company, the notice must be served upon a director of the company at its registered address.

However, in light of COVID-19 social distancing requirements, officers should place the document at a reasonable distance from the individual and use pragmatic steps to record how this has been done.

Officers must carry out sufficient enquiries so as to satisfy themselves as to the identity of the person upon whom the notice has been served.

If personal service cannot be effected then legal advice should be sought as other methods of service may be permissible depending upon the individual circumstances.

8. Record and manage information on enforcement activity

- 8.1. Councils should maintain accurate and up to date records of queries and complaints received and enforcement action taken in relation to business closures and restrictions. The Department of Health may request information in relation to such records and any such requests should be processed in accordance with data protection legislation.

Annex A. Template Prohibition Notice



[Name of Local Authority]
[Address of Local Authority]

[Reference Number]

Notice

Prohibition Notice

The Health Protection (Coronavirus, Restrictions) Regulations
(Northern Ireland) 2020
Public Health Act (Northern Ireland) 1967

Part A: Recipient

Name
[Full Name of Recipient. NB If limited company insert name of company not an individual]

Trading as
[Trading name(s)]

Address
[Full Address and Postcode of Recipient NB if limited company must be registered address]

Part B: Relating to

[Address of premises subject to the prohibition]

Part C: Basis for service

This Prohibition Notice is served under Regulation 7(2) of The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (the Regulations) and has immediate effect.

The Regulations impose certain restrictions to protect against the risks to public health arising from coronavirus. Failure to comply with the requirements of the Regulations, without reasonable excuse, is a criminal offence.

I, [insert name of designated council officer], being duly authorised to enforce the Regulations pursuant to [insert name of local authority] being designated by the Department of Health as an authorised person under the Regulations, have reasonable grounds for believing that you are contravening a requirement in the Regulations as set out in Part D below and that it is necessary and proportionate to issue this Prohibition Notice to prevent continued contravention of the requirement.

Part D: Contravention of the restrictions

[Detail the regulation that has been breached (Regulation 3 or 4) and outline the grounds for the reasonable belief that there has been a contravention and why it is considered necessary and proportionate to issue the notice]

Part E: Action required

This Prohibition Notice requires that you immediately cease the activities giving rise to contravention of the Regulations. The activities must not resume before the end of the emergency period. The measures specified below must be taken to prevent continued contravention of the Regulations:

[Detail the action(s) that need to be taken to prevent continued contravention of the requirement. Sample text is provided overleaf that summarises the requirements that may be breached by businesses and the associated actions that would be required. The action should be no more than what is required to comply with the Regulations. The action

required is not to be confused with any obligations under the Health & Safety at Work (NI) Order 1978 or guidance in relation to the health and safety of employees.]

Part F: Consequences of non-compliance

Failure to comply with this Prohibition Notice, without reasonable excuse, is an offence punishable by a fine on summary conviction in a Magistrates Court.

Part G: Challenging this Prohibition Notice

This Notice remains in force even if you have raised a challenge.

Should the local authority's review of your challenge determine that the Notice should be revoked, you will be notified in writing that the Notice has been revoked.

If you consider that the Notice should not have been issued, you can make representations to [\[insert name of local authority\]](#) in writing outlining your reasons for challenging the Notice, within [\[insert number of days\]](#) of the date on this Notice.
Contact: [\[insert contact details\]](#)

You also have the right to be tried in relation to the alleged offence. That request must be made within 28 days of the date of this notice by contacting the authorised officer whose details are set out below.

If you notify the Council that you wish to be tried in respect of the alleged offence the council may issue proceedings against you in the Magistrates Court.

**This Notice remains in force even if you have raised a challenge.
Should the local authority's review of your challenge determine that the Notice should be revoked, you will be notified in writing that the Notice has been revoked and any payment made will be refunded.**

Part H: Officer

Signature:
[\[Signature of Authorised Officer\]](#)

Name:
[\[Name of Authorised Officer\]](#)

Title:
[\[Title of Authorised Officer\]](#)

Date:
[\[Date of Signature\]](#)

Contact address:
[\[Full address and postcode of Office\]](#)

Email:
[\[Email address of Office\]](#)

Telephone:
[\[Telephone Number of Office\]](#)

Notes

Failure to comply with the requirements of the requirements of The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 is an offence and on prosecution can attract a fine.
An authorised officer may issue a fixed penalty notice for a breach of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020.
Any officer of a company in breach of the Regulations shall also be liable for the offence if the offence was committed through the consent, connivance or default of any such officer.

Advice

If you do not understand the contents of this notice or would like to know more about it please contact the local authority. You may also wish to seek independent legal advice.

The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 can be found here: <https://www.health-ni.gov.uk/publications/health-protection-coronavirus-restrictions-northern-ireland-regulations-2020>

Guidance on the regulations can be found here:
<https://www.nibusinessinfo.co.uk/content/coronavirus-business-closures-and-restrictions>

Privacy Notice

The Council Privacy Notice can be found here: [\[insert link to Privacy Notice on Council website\]](#)

Suggested text that can be used to complete Part D of the Prohibition Notice

In relation to a breach of Regulation 3(1) (Business listed in Schedule 2 Part 1):

Actions required:

- Close the premises, or part(s) of the premises, in which food or drink are sold for consumption on the premises; and
- Cease selling food or drink for consumption on the premises

In relation to a breach of Regulation 3(4) (Business or service listed in Schedule 2 Part 2)

Actions required:

- Cease to carry on the business or provide the service listed in Part 2 of Schedule 2

In relation to a breach of Regulation 4(1) (Business or service, not listed in Schedule 2 Part 3, of offering goods for sale or for hire in a shop, or providing library services):

Actions required:

- Cease to carry on the business or provide the service except as permitted by Regulation 5(1)(a) which permits the business to make deliveries or otherwise provide services in response to orders received through a website, or otherwise by online communication; by telephone, including orders by text message; or by post;
- Close any premises which are not required to carry out its business or provide its service in a manner permitted by Regulation 5(1)(a);
- Cease to admit any person to its premises who is not required to carry on the business or provide the service in a manner permitted by Regulation 5(1)(a).

In relation to a breach of Regulation 4(3) (Business consisting of the provision of holiday accommodation):

Actions required:

- Cease to carry on the business except as permitted by Regulation 5(4) which permits the business to provide accommodation in specified circumstances; to host blood donation sessions; or for any purpose requested by the Secretary of State or a local authority.

Annex B. Template Fixed Penalty Notice



[Name of Local Authority]
[Address of Local Authority]

[Reference Number]

Notice

Fixed Penalty Notice

The Health Protection (Coronavirus, Restrictions) Regulations
(Northern Ireland) 2020
Public Health Act (Northern Ireland) 1967

Part A Offender

Name

[Full Name of Alleged Offender NB If limited company insert name of company]

Address

[Full Address and Postcode of Alleged Offender NB use registered address if limited company]

Part B Location of offence [Description of the location of the offence]

Part C Offence

This Fixed Penalty Notice is served under Regulation 9 of The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (the Regulations). The Regulations impose certain restrictions to protect against the risks to public health arising from coronavirus. Failure to comply with the requirements of the Regulations, without reasonable excuse, is a criminal offence.

I, [insert name of authorised officer] being duly authorised to enforce the Regulations pursuant to [insert name of Local Authority] being designated by the Department of Health as an authorised person under the Regulations have reason to believe that on [insert date of offence] you committed the following offence :.

On [insert date] you, being the owner/manager/ proprietor of [insert name and address of business] failed to comply with [[Regulation 3] [Regulation 4] of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020, which is an offence contrary to Regulation 8(1) of the said Regulations, in that you [describe details of the offence]]

On [insert date] you, being the owner/manager/ proprietor of [insert name and address of business] failed to comply with [Regulation 8(2) of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 in that you obstructed an authorised officer, without reasonable excuse, while that officer was carrying out a function under the said Regulations.]

Part D Fixed Penalty

This notice offers you the opportunity to discharge any liability to conviction for the above offence by payment of a fixed penalty. If you pay the penalty of £[60][££] within twenty eight days no further proceedings will be taken. [The amount of this fixed penalty notice is higher than the standard amount as this is not the first time that you have been issued with a notice.]

[You may pay the lesser amount of £30 if you do so within fourteen days of receiving this notice.]

Payment must be made to [Insert name and address of officer to whom payment should be sent]

The permissible methods of payment are [payment methods allowed]

If you do not pay the fixed penalty within that time, the council may ask the court to register the fixed penalty as an enhanced sum equating to one and a half times the fixed penalty. Payment of that enhanced sum will be enforced as if it were a fine issued by the Magistrates Court.

Alternatively you may be prosecuted for the offence described above and, if convicted, could receive a much larger fine; up to £5,000.

Part E Challenging this Fixed Penalty Notice

If you consider that the Notice should not have been issued, you can make representations to [insert name of local authority] in writing outlining your reasons for challenging the Notice, within [insert number of days] of the date on this Notice.
Contact: [insert contact details]

You also have the right to be tried in relation to the alleged offence. That request must be made within 28 days of the date of this notice by contacting the authorised officer whose details are set out below.

If you notify the Council that you wish to be tried in respect of the alleged offence the council may issue proceedings against you in the Magistrates Court.

This Notice remains in force even if you have raised a challenge. Should the local authority's review of your challenge determine that the Notice should be revoked, you will be notified in writing that the Notice has been revoked and any payment made will be refunded.

Officer

Signature:
[Signature of Authorised Officer]

Name:
[Name of Authorised Officer]

Title:
[Title of Authorised Officer]

Date:
[Date of Signature]

Contact address:
[Full address and postcode of Office]

Email:
[Email address of Office]

Telephone:
[Telephone Number of Office]

Advice

If you do not understand the contents of this notice or would like to know more about it please contact the local authority. If you would like to receive independent advice about the contents of this notice, your rights and obligations then please contact The Citizens Advice Bureau (or other similar type advice service). Alternatively you may wish to speak to a solicitor.

The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 can be found here: <https://www.health-ni.gov.uk/publications/health-protection-coronavirus-restrictions-northern-ireland-regulations-2020>

Guidance on the regulations can be found here:
<https://www.nibusinessinfo.co.uk/content/coronavirus-business-closures-and-restrictions>

Privacy Notice

The Council's Privacy Notice can be found here: [\[insert link to Privacy Notice on Council website\]](#)

Reference number: [Insert]

This slip must accompany your payment.

To: [Insert name and address of officer to whom payment should be sent]

I enclose with this letter the amount of £[Insert amount of penalty paid]

Signature:	
Date:	
Name (CAPITAL LETTERS):	
Address (CAPITAL LETTERS):	

Please make cheques payable to [insert name of local authority].

[*Alternatively, you can pay by credit or debit card:

Credit Card/ Debit Card

Card number: _____

Start date (if applicable): _____

Expiry date: _____

Issue number (debit card only): _____

Signature of cardholder: _____]

*Delete if not applicable

The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020

FIXED PENALTY NOTICE (REVERSE)

NOTES on Part D. Amount of Penalty and period to pay

The Regulations specify the amount of the Fixed Penalty as follows:

- £60, where the person has not previously received a fixed penalty notice under the Regulations;
- £120, where the person has previously received one fixed penalty notice under the Regulations;
- £240, where the person has previously received two fixed penalty notices under the Regulations;
- £480, where the person has previously received three fixed penalty notices under the Regulations; or
- £960, where the person has previously received four fixed penalty notices under the Regulations

NOTES on Part C. Grounds for imposing the Penalty

In relation to a breach of Regulation 3(1) (Business listed in Schedule 2 Part 1):

- Failed, without reasonable excuse, to close the premises, or part(s) of the premises, in which food or drink are sold for consumption on the premises during the emergency period; and/ or
- Sold, without reasonable excuse, food or drink for consumption on the premises

In relation to a breach of Regulation 3(4) (Business or service listed in Schedule 2 Part 2):

- Carried on a business or providing a service which is prohibited by virtue of Part 2 of Schedule 2, namely [insert detail of business/service] during the emergency period without reasonable excuse.

In relation to a breach of Regulation 4(1) (Business or service, not listed in Schedule 2 Part 3, of offering goods for sale or for hire in a shop, or providing library services):

- Carried on a business of offering goods for sale or hire in a shop (or providing a library service) other than through a website, on-line communication, by telephone, or by post, namely [insert detail]; during the emergency period without reasonable excuse: and/or
- Failed to close premises, namely [insert details] which are not required to carry on a business or provide a service through a website, on-line communication, by telephone, or by post, during the emergency period without reasonable excuse; and/or
- Admitted a person to premises who is not required to carry on the business or provide the service through a website, on-line communication, by telephone, or by post, during the emergency period without reasonable excuse.

In relation to a breach of Regulation 4(3) (Business consisting of the provision of holiday accommodation):

- Carried on a business consisting of the provision of holiday accommodation except as permitted by Regulation 4(4) during the emergency period without reasonable excuse.

In relation to a breach of Regulation 4(5), 4(7) or 4(8) (Places of worship, community premises or crematorium):

- Failed, without reasonable excuse, to operate a place of worship in accordance with the requirements of Regulation 4(6), namely that you did [insert details] during the emergency period;
- Failed, without reasonable excuse, to operate a community premises in accordance with the requirements of Regulation 4(7), during the emergency period;
- Failed, without reasonable excuse, to operate a crematorium in accordance with the requirements of Regulation 4(8), namely that you did [insert details] during the emergency period.

In relation to a breach of Regulation 8(2) (Obstruction of an authorised officer):

- Obstructed, without reasonable excuse, any person carrying out a function under these Regulations in that you did [insert details].