

# Hampshire County Council Public Health Legal Powers



Hampshire  
Services

LEGAL

# Legislative Framework

- Public Health (Control of Disease) Act 1984
- NHS Act 2006/Health and Social Care Act 2012
- Coronavirus Act 2020
- Guidance and Regulations under 1984 and 2006 Acts

# Legislative Framework

## Public Health (Control of Disease) Act 1984

- District Councils have long standing and continuing powers under this Act in respect of control of disease
- Regulations in respect of relaxation of lockdown are under this Act
- Recent Regulations give additional powers to County Councils and Unitary Authorities

# NHS Act 2006

- NHS Act 2006 amended to include public health responsibility of upper tier authorities which must take appropriate steps for improving the health of the people in their area.
- The Local Authorities (Public Health Functions and Entry to Premises by local Healthwatch Representatives) Regulations 2013 are key to the role of the County Council.  
<http://www.legislation.gov.uk/uksi/2013/351/contents/made>
- Provision of public health advice to other organisations including CCGs, police, fire and rescue, district councils and social care providers.
- This information and advice includes arrangements to deal with infectious diseases; testing; co-ordination of roles and responsibilities; arrangements with other local authorities and arrangements for stockpiling medicines and medical supplies.

# Coronavirus Act 2020

- Schedule 21 includes powers for ‘public health officers’ to direct or remove potentially infectious persons to a place suitable for screening and assessment and powers to require certain actions while there.

<http://www.legislation.gov.uk/ukpga/2020/7/schedule/21/enacted>

# 'No 3' Regulations

- The Health Protection (Coronavirus, Restrictions)(England) (No3) Regulations 2020
- <https://www.legislation.gov.uk/uksi/2020/750/contents/made>
- In force 18 July 2020; Expire 17 January 2021
- Upper tier authorities given power to make directions in respect of premises, events and public outdoor places. (Chief Executive is decision maker for Hampshire County Council)
- A direction may impose a prohibition, requirement or restriction
- District Councils can be required to exercise their functions in a specified way
- The Secretary of State may direct a county council/unitary authority to give a direction

# 'No. 3' Regulations - conditions

- Direction must meet 3 conditions
- Giving the direction responds to a serious and imminent threat to public health
- 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 area
- That the prohibition, requirement or restriction imposed by the direction are a proportionate means of achieving that purpose

# The County Council must

In making a direction the County Council must

- have regard to advice of the DPH
- have regard to the public sector equality duty
- take reasonable steps to give advance notice of the direction
- obtain agreement of appropriate authority if public outdoor place forms part of Crown land
- notify the district council and adjacent authorities
- notify the Secretary of State
- review within seven days



# Directions relating to specified premises

May impose a prohibition, requirement or restriction in relation to

- entry into
- departure from
- or location of persons in premises
- Must have regard to public needing to have access to essential public services and goods
- Does not relate to premises that form part of infrastructure, vehicles, trains, vessels or aircraft used for public transport or carriage/haulage of goods and not where direction would prevent a change off crew of a vessel

# Purposes of direction (premises)

- Closing the premises
- Restricting entry to the premises or
- Securing restrictions in relation to the location of persons in the premises

# Direction (premises)

May be by reference to

- Number of persons in the premises
- Purpose for which a person is in premises and
- The facilities in the premises

Direction can be given to

- Owner or occupier of the premises and
- Any other person involved in managing entry into, departure from or location of persons in premises

# Directions relating to holding events

- may be a specified event or events of a specified description
- description may be by number of people attending, requirement for medical/emergency services or in any other way

may only be imposed on

- the owner or occupier of premises for an event to which the direction relates
- the organiser of such an event and
- any other person involved in holding the event (not someone just attending)
- may impose requirement about informing people who may be planning to attend

# Direction relating to public outdoor places

- In relation to access to a specified public outdoor space or public outdoor spaces of a specified description
- May in particular prohibit access at specified times
- No one without reasonable excuse may enter or remain in contravention of the direction (Reasonable excuse includes access to where a person lives, for work purposes, to provide care to a vulnerable person, to continue contact between parents and children)
- Local authority must take reasonable steps to give advance notice of the direction to anyone carrying on a business from premises within the public outdoor place, bring the direction to attention of other responsible for land or premises in the public outdoor place and prevent or restrict public access to the place
- If impacts on road network should use best endeavours to consult as early possible, and no later than 24 hours before a direction is made

# Public Notice

- Direction (or revocation) must be given to person in writing (letter or e-mail) if relates to named person and
- May be published in manner as County Council considers appropriate to bring to attention of other person who may be affected
- In other cases direction (or revocation) must be published on website and
- May be published in other manner as County Council considers appropriate to bring to attention of people who may be affected

# Contents of Direction

Direction must specify

- power in the Regulations that is being used
- state date and time direction comes into effect and when will end
- details of right of appeal to magistrates' court, relevant timescale and address for service of summons
- if relevant the public outdoor place in sufficient detail to enable boundaries to be determined

and should include the basis on which the three conditions are met and why a specific prohibition, requirement or restriction is necessary

If made on direction by Secretary of State that should be stated

# Guidance

Guidance includes

- what the new regulations allow upper tier authorities to do, how they should exercise those powers, how those powers should be enforced, and guidance for those impacted by directions
- categories of premises which would form part of essential infrastructure and therefore excluded (some discretion)
- range of sources from which to gather evidence to demonstrate conditions are met and consult with, including police
- Must have due regard to the Public Sector Equality Duty

<https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>



# Offences

A person commits an offence and can be fined if without reasonable excuse they

- contravene a direction in relation to premises or events
- if they as owner or occupier do not take reasonable steps to prevent or restrict public access to land in accordance with a direction
- Obstruct a person carrying out a function under the Regulations
- Contravene for example a prohibition notice
- If they enter or remain in a public outdoor place to which a direction applies in contravention of a prohibition, requirement or restriction

# Enforcement

- Police have more direct enforcement powers than the local authority designated officer (for HCC this is the Director of Public Health). Either may take such action as is necessary to enforce a direction. Local authorities should ensure a multi-agency approach, to limit the need to enforce under policing powers alone.
- designated officer may give a prohibition notice if they believe a person is contravening a direction in relation to premises or events and it is necessary and proportionate to give the notice to prevent continuation.
- Fixed Penalty Notices where authorized person (for HCC is the Head of Law and Governance) believes an adult has committed an offence under these Regulations (£100 if first such notice, reduced to £50 if paid within 14 days and on increasing scale up to £3,200 if sixth such notice).
- Offence can lead to prosecution including by the County Council in certain circumstances (for HCC Head of Law & Governance is the authorized person).