

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

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TABLE OF CONTENTS

INTRODUCTION	1
CORONAVIRUS ACT 2020	2
Revocation of the Health Protection (Coronavirus) Regulations 2020	3
Who is “potentially infectious”?	3
When do the Schedule 21 powers apply?	4
What are the powers in Part 2 of Schedule 21?	5
(a) Powers to direct or remove persons to a screening and assessment place	5
(b) Powers exercisable at a screening and assessment place	7
(c) Powers exercisable after assessment	9
Children	11
Appeals	12
Ancillary powers	12
Other noteworthy provisions	13
HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) REGULATIONS 2020	14
Who can exercise powers under the Regulations?	14
Temporal limitation	14
Restrictions imposed by the Regulations	15
(a) Restrictions on business activities and closure of premises	15
<i>Businesses selling food and/ or drink</i>	15
<i>Businesses resulting in members of the public coming into close contact</i>	16
<i>Businesses providing holiday accommodation</i>	17
<i>Places of worship, community centres, crematoria and burial grounds</i>	18
<i>Other businesses</i>	18
(b) Restrictions on freedom of movement	19
<i>Reasonable excuse</i>	20
<i>Exercise</i>	22
(c) Restrictions on gatherings	23
Powers of enforcement	24
No express power of entry	26
Offences and penalties	27
CONCLUSION	28

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

INTRODUCTION

1. The Covid-19 ('coronavirus') pandemic has resulted in the most significant global public health emergency in living memory. In response, the Government has implemented a package of public health measures seeking to limit and delay the spread of the virus.
2. Distinct measures have been adopted for England, Wales, Scotland and Northern Ireland. The [Coronavirus Act 2020](#) applies throughout the United Kingdom, but certain parts distinguish between England, Wales, Scotland and Northern Ireland (see for instance [Schedule 21](#), containing [Part 2](#) for England, [Part 3](#) for Scotland, [Part 4](#) for Wales, and [Part 5](#) for Northern Ireland). Different regulations have also been adopted for each of the four parts of the United Kingdom.¹
3. This guide primarily but not exclusively addresses the measures currently in force in England, in particular:
 - (a) [Part 2](#) of [Schedule 21](#) to the [Coronavirus Act 2020](#); and
 - (b) [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#).
4. These measures will – for a relatively limited period of time it is hoped – impose extraordinary restrictions on many rights and freedoms otherwise enjoyed by members of the public and businesses. It falls on the Secretary of State for Health, police forces, immigration officers, public health officials and local authorities to implement and enforce these new measures.
5. This guide has been prepared by Members of [5 Essex Court](#) to assist in the interpretation and application of the new public health measures set out below. These will place a considerable burden on police forces for the foreseeable future. It will be necessary for frontline officers, police staff and operational team leaders to quickly assimilate the new powers and find the right balance in their application and enforcement.

¹ The regulations currently in force are: the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#); the [Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#); the [Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#); the [Health Protection \(Coronavirus, Restrictions\) \(Northern Ireland\) Regulations 2020](#).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

6. [5 Essex Court](#) has considerable expertise in police law and is considered a leading set of chambers in this field. We are instructed by every police force in England & Wales and Police Scotland, and have been involved in many of the most high-profile cases in recent years. As such, we consider ourselves well placed to provide guidance on the important issues arising from the new public health measures.

CORONAVIRUS ACT 2020

7. The [Coronavirus Act 2020](#) (‘the Act’) came into force on 26 March 2020 and will expire after two years (although this is subject to alteration pursuant to [ss.89](#) and [90](#) of the Act).
8. The Act is designed to operate flexibly with certain provisions coming into force, being suspended, or revived by way of further regulations ([ss.87](#) and [88](#)). It will therefore be necessary for police forces to keep the legislative regime under constant review.
9. The Act is extensive, running to 348 pages, much of which amends pre-existing legislation. It touches upon a wide range of issues, including:
 - (a) the registration of health professionals and social workers ([ss.2-7](#));
 - (b) emergency volunteers ([ss.8-9](#));
 - (c) mental health and mental capacity ([s.10](#));
 - (d) health service indemnification ([ss.11-13](#));
 - (e) the registration of deaths and still-births ([ss.18-21](#));
 - (f) powers to require and restrict the disclosure of information relating to food supply ([ss.25-29](#));
 - (g) the suspension of the requirement to hold a jury inquest under certain conditions ([ss.30-32](#));
 - (h) educational institutions and childcare premises ([s.37](#));
 - (i) sick pay and pensions ([ss.39-47](#)); and
 - (j) residential tenancies and eviction ([s.81](#)).
10. Most relevant to police forces are the provisions which provide for powers in relation to potentially infectious persons ([s.51](#) and [Schedule 21](#)).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

11. Other noteworthy provisions include the procedure for urgent warrants under the [Investigatory Powers Act 2016](#) (s.23), the retention of fingerprints and DNA (s.24), the postponement of elections for Police and Crime Commissioners (s.60) and modifications to the [Police and Criminal Evidence Act 1984](#) ('PACE'). All of these are considered below.

Revocation of the Health Protection (Coronavirus) Regulations 2020

12. Prior to the introduction of the Act, the [Health Protection \(Coronavirus\) Regulations 2020](#) were made on 10 February 2020 ('the February Regulations') imposing a number of restrictions and screening requirements. The February Regulations have now been revoked by [paragraph 24](#) of Schedule 21 (except in relation to existing requirements and powers imposed under paragraphs [4](#), [5](#), [7](#), [8](#) and [14\(2\)\(b\)](#) or [\(c\)](#) of the February Regulations).²
13. Schedule 21 provides the police with the means to enforce public health restrictions, including by directing or removing "potentially infectious" persons to suitable places for screening and assessment and keeping them there for up to 24 hours (which can be extended to 48 hours with authorisation from a constable of the rank of superintendent or above).

Who is "potentially infectious"?

14. Under [paragraph 2](#) of Schedule 21, a person is "potentially infectious" if, at any time:
 - (a) the person is, or may be, infected or contaminated with coronavirus, and there is a risk that the person might infect or contaminate others with coronavirus; or
 - (b) the person has been in an infected area within the 14 days preceding that time.
15. An "infected area" means any country, territory or other area outside the United Kingdom which the Secretary of State has declared as a country, territory or area:
 - (a) where there is known or thought to be sustained human-to-human transmission of coronavirus; or

² [Paragraph 4](#) of the February Regulations concerns the detention of persons by the Secretary of State or a registered public health consultant; paragraphs [5](#) and [7](#) concern the imposition of restrictions or requirements where it is assessed that a person presents or could present a risk of infecting or contaminating others; [paragraph 8](#) concerns the power to require persons to be kept in isolation; [paragraphs 14\(2\)\(b\)](#) and [\(c\)](#) concern the power of a police constable to remove/transfer persons to a hospital or other suitable place.

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (b) from which there is a high risk that coronavirus will be transmitted to the UK.
16. Declarations of “infected areas” under [paragraph 2](#) of Schedule 21 must be published online and in the *London Gazette*.
 17. The Government previously issued guidance titled *Specified countries and areas with implications for returning travellers and visitors arriving in the UK in the last 14 days*, but this was withdrawn on 13 March 2020. The authors of this guide have been unable to find any current declaration of “infected areas” made under [paragraph 2](#) of Schedule 21 on the internet or in the *London Gazette*. We note that as of 31 March 2020, the World Health Organization has reported [754,948 cases of coronavirus across 203 countries and territories](#). The Foreign and Commonwealth Office has – exceptionally – [advised against all foreign travel](#) unless it is essential and advised all British citizens to return to the UK.

When do the Schedule 21 powers apply?

18. The powers enshrined in Schedule 21 operate **only** during the “transmission control period” which can be activated and deactivated by the Health Secretary by way of a declaration or revocation in accordance with [paragraph 4](#) of Schedule 21.
19. The Health Secretary may make a declaration if he is of the view that:
 - (a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in England; and
 - (b) the powers conferred by Schedule 21 will be an effective means of delaying or preventing significant further transmission of coronavirus in England.
20. The Health Secretary must revoke the declaration if he ceases to be of the view that these conditions are met ([paragraph 4\(2\)](#)).
21. Before making or revoking any such declaration, the Health Secretary must consult the Chief Medical Officer or any of the Deputy Chief Medical Officers of the Department of Health and Social Care ([paragraph 4\(5\)](#)). Any declaration or revocation must be published online and in the *London Gazette* ([paragraph 4\(3\)](#)).
22. On 10 February 2020, the Health Secretary made a declaration under paragraph 3 of the February Regulations that “[the incidence or transmission of novel Coronavirus constitutes](#)

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

a serious and imminent threat to public health, and the measures outlined in these regulations are considered as an effective means of delaying or preventing further transmission of the virus.”

23. By virtue of [paragraph 24\(3\)](#) of Schedule 21, the Health Secretary’s declaration of 10 February 2020 is to be regarded as a declaration made under [paragraph 4](#) of Schedule 21. As such, the “transmission control period” commenced as soon as the Act entered into force.

What are the powers in Part 2 of Schedule 21?

24. [Part 2](#) of Schedule 21 (paragraphs 4 to 24) contains powers relating to potentially infectious persons in England. [Parts 3, 4](#) and [5](#) set out similar (although not completely identical) powers in relation to Scotland, Wales and Northern Ireland.
25. When activated, Schedule 21 provides for three categories of powers:
- (a) the power to direct or remove potentially infectious persons to a suitable place for screening and assessment ([paragraphs 6](#) and [7](#));
 - (b) powers exercisable once a potentially infectious person is at a suitable place for screening and assessment ([paragraphs 8-13](#)); and
 - (c) powers exercisable after screening and assessment ([paragraphs 14-17](#)).

(a) Powers to direct or remove persons to a screening and assessment place

26. Under [paragraphs 6](#) and [7](#), a public health officer (as defined in [paragraph 3](#)), a police constable, or immigration officer (in the course of exercising any of their functions as an immigration officer), who has “reasonable grounds to suspect” that a person in England is potentially infectious, may:
- (a) direct that person to go immediately to a place specified in the direction which is suitable for screening and assessment; or
 - (b) remove the person to a place suitable for screening and assessment.
27. A public health officer exercising this power may also request a constable to remove a person to a place suitable for screening and assessment, and the constable may then do so ([paragraph 6\(2\)\(c\)](#)).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

28. A person who fails, without reasonable excuse, to comply with a direction under [paragraphs 6 and 7](#) is guilty of a criminal offence and liable on summary conviction to fine of up to £1,000 ([paragraph 23](#)).
29. The exercise of these powers by police constables and immigration officers is subject to the following three conditions:
- (a) Constables and immigration officers must – before exercising the power to direct or remove a potentially infectious person – consult a public health officer to the extent that it is practicable to do so ([paragraph 7\(5\)](#));
 - (b) A potentially infectious person can only be directed or removed if the constable or immigration officer considers it necessary and proportionate to do so ([paragraph 7\(3\)](#)):
 - (i) in the interests of the potentially infectious person;
 - (ii) for the protection of other people; or
 - (iii) for the maintenance of public health; and
 - (c) The person exercising a power to direct or remove a potentially infectious person under [paragraphs 6 and 7](#) must inform that person of the reason for directing or removing them and that it is an offence:
 - (i) in a case where a person is directed, to fail without reasonable excuse to comply with the direction; or
 - (ii) in a case where a person is removed, to abscond.
30. The requirement for “reasonable grounds to suspect” that a person is potentially infectious is identical to the wording in [s.24\(2\)](#) of the [PACE](#) by which a constable may arrest without warrant. Officers may therefore wish to consider – by analogy – the reasonable suspicion threshold applicable to the power of arrest under [s.24\(2\)](#) of [PACE](#) when considering whether the powers under [paragraphs 6 and 7](#) of Schedule 21 are lawfully exercisable.
31. When determining whether someone is potentially infectious, particularly when it is not practicable to consult a public health officer, a police constable should have regard to prevailing Government and public health guidance on the symptoms and potential transmission of coronavirus. For instance, it may give rise to reasonable grounds of

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

suspicion if someone is displaying a combination of relevant symptoms (*e.g.* a new continuous cough and a high temperature) or if someone has been in close proximity to a person displaying these symptoms for an extended period of time. It will always be necessary to consider and weigh all relevant circumstances in each and every case.

(b) Powers exercisable at a screening and assessment place

32. Paragraphs 8 to 13 of Schedule 21 provide for powers in relation to persons located at a suitable place for screening and assessment. The powers contained in paragraphs 9 to 11 can only be exercised if a public health officer:

- (a) has reasonable grounds to suspect that a person is potentially infectious; and
- (b) considers that it is necessary and proportionate to exercise the powers set out immediately below:
 - (i) in the interests of the potentially infectious person;
 - (ii) for the protection of other people; or
 - (iii) for the maintenance of public health.

33. If these two conditions are met, a public health officer may:

- (a) Require the potentially infectious person to remain at the place for screening and assessment for a period not exceeding 48 hours (paragraph 9);
 - (i) The public health officer must inform the person of the reason for imposing the requirement, the maximum period of time the person may be required to remain there and that it is an offence to fail to comply with the requirement;
 - (ii) This requirement to keep a potentially infectious person in a suitable place may be enforced by a public health officer or a constable (paragraph 9(3)).
- (b) Require the potentially infectious person to be screened and assessed (which includes the taking of a biological sample or providing information) and impose other requirements in connection with their screening and assessment, including the production of documents and providing contact details (paragraph 10).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (c) Under [paragraph 11](#), if it is considered appropriate for the purposes of screening and assessment:
- (i) direct the potentially infectious person to go immediately to another place suitable for screening and assessment;
 - (ii) remove the potentially infectious person to another place suitable for these purposes; or
 - (iii) request a constable to remove the person to another place which is suitable for these purposes (and the constable may then do so).³
34. By virtue of [paragraph 13](#) of Schedule 21, where a person is at a place for screening and assessment, and a constable or immigration officer has reasonable grounds to suspect that the person is potentially infectious, they may keep that person at that place until such time as a public health officer can exercise the functions under [paragraphs 9 to 11](#) in relation to that person. However, a potentially infectious person may not be kept at that place:
- (a) by a police constable for a period exceeding 24 hours; or
 - (b) by an immigration officer for a period exceeding 3 hours.
35. These time limits may be extended if the constable or immigration officer considers it necessary to do so because it is not reasonably practicable for a public health officer to exercise their functions under [paragraphs 9 to 11](#) before the end of the period. The time limit may be extended:
- (a) for a further 24 hours in the case of keeping by a police constable, subject to the consent of a constable of the rank of superintendent or above; or
 - (b) for a further 9 hours in the case of keeping by an immigration officer, subject to the consent of an immigration officer not below the rank of chief immigration officer.
36. A constable or immigration officer may keep a potentially infectious person at a screening and assessment place under [paragraph 13](#) **only** if they consider that it is necessary and proportionate to do so:

³ In each of the circumstances (i), (ii) and (iii), the public health officer must inform the potentially infectious person of the matters set out in [paragraph 29\(c\)](#) above.

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (a) in the interests of the potentially infectious person;
 - (b) for the protection of other people; or
 - (c) for the maintenance of public health.
37. They must – before exercising these powers – consult a public health officer to the extent that it is practicable to do so, and must inform the potentially infectious person of the reason for keeping them and:
- (a) the maximum period for which they may be kept; and
 - (b) that it is an offence to abscond (paragraphs 13(7)-(8)).

(c) Powers exercisable after assessment

38. Paragraphs 14 to 17 of Schedule 21 contain powers exercisable after a person has been subject to screening and assessment.
39. Under paragraph 14, a public health officer may impose requirements and restrictions in circumstances where:
- (a) a person has been screened and assessed by a public health officer and either: (i) the screening confirmed that the person is infected or contaminated with coronavirus, or (ii) the screening was inconclusive; or
 - (b) a person has been assessed by a public health officer and the officer has reasonable grounds to suspect that the person is potentially infectious.
40. If these circumstances apply, a public health officer may impose such requirements and restrictions on the person as they consider necessary and proportionate:
- (a) in the interests of the potentially infectious person;
 - (b) for the protection of other people; or
 - (c) for the maintenance of public health.
41. Paragraph 14(3) sets out the following **non-exhaustive** list of potential requirements:
- (a) to provide information to the public health officer or any specified person;

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (b) to provide details by which the person may be contacted during a specified period;
 - (c) to go for the purposes of further screening and assessment to a specified place suitable for those purposes and do anything that may be required under [paragraph 10\(1\)](#);
 - (d) to remain at a specified place (which may be a place suitable for screening and assessment) for a specified period;
 - (e) to remain at a specified place in isolation from others for a specified period.
42. When deciding whether to impose a requirement to remain under [paragraph 14\(3\)\(d\)](#) or [\(e\)](#), whether or not in isolation from others, the public health officer must have regard to the person's wellbeing and personal circumstances ([paragraph 14\(6\)](#)).
43. There is also a **non-exhaustive** list in [paragraph 14\(4\)](#) of potential restrictions on:
- (a) the person's movements or travel (within or outside the United Kingdom);
 - (b) the person's activities (including their work or business activities);
 - (c) the person's contact with other persons or with other specified persons.
44. Where a public health officer imposes a requirement or restriction, they must inform the person of the reason for doing so and that it is an offence to comply with the requirement or restriction ([paragraph 14\(5\)](#)).
45. A requirement to remain under [paragraph 14\(3\)\(d\)](#) or [\(e\)](#), or any restriction imposed under [paragraph 14\(4\)](#), may not exceed 14 days ([paragraph 15](#)). After imposing a requirement to remain or any restriction, a public health officer must:
- (a) assess the person within 48 hours;
 - (b) reconsider whether it is necessary and proportionate to continue to impose the requirement or restriction.
46. [Paragraph 15\(3\)](#) further provides that, following reconsideration, a public health officer may revoke a requirement to remain, or substitute a different specified period (which again, may not exceed 14 days).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

47. Under [paragraph 16](#), a requirement to remain that has been imposed under [paragraph 14\(3\)\(d\)](#) or [\(e\)](#) may be enforced:
- (a) by a constable or public health officer removing the person to the place;
 - (b) by a constable or public health officer keeping the person at the place; or
 - (c) if the person absconds, by a constable taking the person into custody and returning them to that place or another place a public health officer may specify.

Children

48. [Paragraph 18](#) of Schedule 21 sets out the position in relation to children (*i.e.* persons under the age of 18). It is provided that:
- (a) An individual who has responsibility for a child must:
 - (i) so far as reasonably practicable, secure that the child complies with any direction, instruction, requirement or restriction given to, or imposed on, the child ([paragraph 18\(1\)](#));
 - (ii) provide to the person exercising a power under Schedule 21 such information and assistance in relation to the child as is reasonably necessary and practicable in the circumstances ([paragraph 18\(2\)](#)).
 - (b) A power to direct or require a child to go to a place may instead be exercised by directing or requiring an individual who has responsibility for the child to take the child to that place ([paragraph 18\(3\)](#)).
 - (c) The powers under [paragraph 10](#) (requirements in relation to screening and assessment) or [paragraph 14](#) (imposing requirements and restrictions) can only be exercised in the presence of an individual who has responsibility for a child,⁴ or in the absence of such a person, an adult that is considered to be appropriate, having regard to the views of the child ([paragraph 18\(4\)](#)).
 - (d) Where a power is exercisable in relation to a child, but the child is not accompanied by an adult with responsibility for the child, the person by whom the power is exercisable must:

⁴ This is defined as an individual with custody or charge of the child for the time being or parental responsibility for a child within the meaning of the [Children Act 1989](#).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (i) if practicable, contact an individual who has responsibility for the child before the power is exercised (paragraph 18(5)(a)), or
- (ii) if that is not practicable, take reasonable steps after the power is exercised to contact such an individual and inform them of any exercise of the power in relation to the child (paragraph 18(5)(b)).

Appeals

49. Paragraph 17(1) provides that a person in relation to whom a requirement or restriction is imposed under paragraph 14 may appeal against it (or against any variation of it or any extension of the period to which it relates) to a Magistrates' Court.
50. As of 30 March 2020, Magistrates' Courts in England have been consolidated and are only hearing a limited category of cases. This presently includes "civil applications relating to public health legislation".⁵ It is assumed that this includes appeals under paragraph 17(1) of Schedule 21.

Ancillary powers

51. Paragraph 20 of Schedule 21 sets out four important ancillary powers:
- (a) A public health officer, police constable or immigration officer may give **reasonable instructions** to a person in connection with:
 - (i) A direction given under Part 2 of Schedule 21; or
 - (ii) Removing a person or keeping a person at a place under a power conferred under Part 2 of Schedule 21.

The public health officer, police constable or immigration officer who gives a reasonable instruction must inform the person:

- (i) of the reason for the instruction; and
- (ii) that it is a criminal offence not to comply with it.

⁵ See: <https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (b) A power conferred under [Part 2](#) of Schedule 21 to remove a person to a place includes a power to **keep the person** for a reasonable period pending their removal.
 - (c) A police constable or immigration officer may use **reasonable force**, if necessary, in the exercise of a power conferred by [Part 2](#) of Schedule 21.
 - (d) A police constable may **enter any place** for the purpose of exercising of a power conferred by [Part 2](#) of Schedule 21.
52. These are significant and potentially wide-ranging coercive measures. Police constables will need scrupulously to comply with all the applicable safeguards set out above and have regard to the purpose for which Schedule 21 powers have been conferred: to delay and prevent significant further transmission of coronavirus. We recommend that constables keep as detailed a record as is practicable of the reasons for decisions made, and actions taken, pursuant to the powers contained in [Part 2](#) of Schedule 21.

Other noteworthy provisions

53. In addition to Schedule 21, the Act contains four further provisions of particular relevance to the police:
- (a) [Section 23](#) allows for regulations to be made to extend the relevant period under the [Investigatory Powers Act 2016](#) in relation to urgent warrants.
 - (b) [Section 24](#) enables the Secretary of State to make regulations extending the period, for up to six months at a time (and for an absolute maximum of twelve months), during which certain categories of fingerprints and DNA profiles may be retained. The Secretary of State may only exercise this power if he considers that:
 - (i) coronavirus is having, or is likely to have, an adverse effect on the capacity of persons responsible for making national security determinations to consider whether to make, or renew, national security determinations; and
 - (ii) it is in the interests of national security to retain the fingerprints or DNA profiles.
 - (c) [Section 60\(12\)](#) provides that the elections for Police and Crime Commissioners due to be held on 7 May 2020 will be delayed until 6 May 2021; and

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (d) [Paragraph 11](#) of Schedule 24 modifies [PACE](#) in relation to the granting of bail by live link and the power to arrest for failure to answer police bail.

HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) REGULATIONS 2020

54. The [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) (‘the Regulations’) came into force at 1pm on 26 March 2020. These revoked the [Health Protection \(Coronavirus, Business Closure\) \(England\) Regulations 2020](#) (‘the Business Closure Regulations’), which had only been in force since 2pm on 21 March 2020. However, the Business Closure Regulations remain in force in relation to any offences committed during the period between 2pm on 21 March and 1pm on 26 March 2020 ([r.2\(2\)](#)).
55. The Regulations apply only in England. There are similar (although not identical) statutory instruments in that apply to Wales, Scotland and Northern Ireland.

Who can exercise powers under the Regulations?

56. A key difference between Schedule 21 to the Act (outlined above) and the Regulations is that whereas the former bestows coercive powers on public health officers, police constables and immigration officers, the Regulations grant powers to:
- (a) police constables;
 - (b) police community support officers (‘PCSOs’);
 - (c) persons designated by a local authority (only for the purposes of a requirement relating to restrictions on business activities and closure of premises under [regulations 4 or 5](#)); and
 - (d) persons designated by the Secretary of State ([r.8\(12\)](#)).

Temporal limitation

57. The Regulations were made under the powers conferred by [ss.45C\(1\), \(3\)\(c\), \(4\)\(d\), 45F\(2\)](#) and [45P](#) of the [Public Health \(Control of Disease\) Act 1984](#). They apply only during the “emergency period” which commenced when the Regulations came into force (1pm on 26 March 2020) and will expire:

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (a) in relation to each restriction or requirement, on the day and at the time specified in a direction published by the Secretary of State (r.3(1)(b)); and
 - (b) in relation to the Regulations as a whole; after 6 months (r.12(1)).
58. The Secretary of State must review the need for restrictions and requirements imposed under the Regulations at least every 21 days (r.3(2)) and must publish a direction terminating a restriction or requirement as soon as he considers that it is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England with the coronavirus (r.3(3)).

Restrictions imposed by the Regulations

59. The Regulations impose significant and wide-ranging powers relating to:

- (a) Restrictions on business activities and closure of premises;
- (b) Restrictions on the freedom of movement; and
- (c) Restrictions on gatherings of more than two people.

(a) Restrictions on business activities and closure of premises

60. Restrictions on businesses fall into the following five categories:

- (a) Businesses that sell food and/or drink: subject to partial closure (r.4(1) and Part 1 of Schedule 2);
- (b) Businesses likely to result in members of the public coming into close contact: subject to outright closure (r.4(4) and Part 2 of Schedule 2);
- (c) Businesses providing holiday accommodation (r.5(3)-(4));
- (d) Places of worship, community centres, crematoria and burial grounds (r.5(6)-(8)); and
- (e) Other businesses (r.5(1)).

Businesses selling food and/or drink

61. Regulation 4(1) provides that, during the emergency period, a person responsible for carrying on a business listed in Part 1 of Schedule 2 must:

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (a) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises and cease selling food or drink for consumption on its premises; or
 - (b) if the business sells food or drink for consumption off the premises, cease selling food or drink for consumption on its premises.
62. The businesses listed in [Part 1](#) of Schedule 2 are:
- (a) Restaurants, including restaurants and dining rooms in hotels or members' clubs;
 - (b) Cafes (including workplace canteens where there is no practical alternative for staff at that workplace to obtain food) but not including:
 - (i) cafes or canteens at a hospital, care home or school;
 - (ii) canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;
 - (iii) services providing food or drink to the homeless;
 - (c) Bars, including bars in hotels or members' clubs; and
 - (d) Public houses.

Businesses resulting in members of the public coming into close contact

63. Under [regulation 4\(4\)](#), all businesses listed in [Part 2](#) of Schedule 2 must cease to carry on that business for the duration of the emergency period. These businesses are:
- (a) Cinemas;
 - (b) Theatres;
 - (c) Nightclubs;
 - (d) Bingo halls;
 - (e) Concert halls;
 - (f) Museums and galleries;
 - (g) Casinos;
 - (h) Betting shops;
 - (i) Spas;

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (j) Nail, beauty, hair salons and barbers;
 - (k) Massage parlours;
 - (l) Tattoo and piercing parlours;
 - (m) Skating rinks;
 - (n) Indoor fitness studios, gyms, swimming pools, bowling alleys, amusement arcades or soft play areas or other indoor leisure centres or facilities;
 - (o) Funfairs (whether outdoors or indoors);
 - (p) Playgrounds, sports courts and outdoor gyms;
 - (q) Outdoor markets (except for stalls selling food);
 - (r) Car showrooms; and
 - (s) Auction Houses.
64. Cinemas, theatres, bingo halls, concert halls, museums and galleries are permitted to broadcast performances to people outside the premises (r.4(5)(a)). All of the premises listed in Part 2 of Schedule 2 may also continue to be used for the limited purpose of hosting blood donation sessions (r.4(5)(b)).

Businesses providing holiday accommodation

65. As a general rule, a person responsible for carrying on a business providing holiday accommodation (including hotels, hostels, bed & breakfast accommodation, holiday properties, campsites, caravan parks and boarding houses) must cease to carry on that business during the emergency period (r.5(3)). However, regulation 5(4) provides an exception by which holiday accommodation businesses may remain open:
- (a) to provide accommodation for any person, who—
 - (i) is unable to return to their main residence;
 - (ii) uses that accommodation as their main residence;
 - (iii) needs accommodation while moving house;
 - (iv) needs accommodation to attend a funeral;
 - (b) to provide accommodation or support services for the homeless;
 - (c) to host blood donation sessions; or

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (d) for any purpose requested by the Secretary of State, or a local authority.

Places of worship, community centres, crematoria and burial grounds

66. Places of worship must be closed during the emergency period except for the purposes of funerals, to broadcast acts of worship, or to provide essential voluntary services or urgent support services, including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency (r.5(5)-(6)).
67. Likewise, community centres must be closed during the emergency period except where they are used to provide essential voluntary activities or urgent public support services including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency (r.5(7)).
68. Crematoria and burial grounds must be closed to members of the public during the emergency period, except for funerals and burials (r.5(8)).

Other businesses

69. In relation to other businesses, [regulation 5\(1\)](#) provides that a person responsible for carrying on a business of offering goods for sale or for hire in a shop, or providing a library service, must, during the emergency period:
- (a) cease to carry on that business or provide that service except by making deliveries or otherwise providing services in response to orders received—
 - (i) through a website, or otherwise by on-line communication;
 - (ii) by telephone, including orders by text message; or
 - (iii) by post;
 - (b) close any premises which are not required to carry out its business or provide its services as permitted by paragraph (a) above; and
 - (c) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by paragraph (a) above.
70. [Part 3](#) of Schedule 2 sets out a list of businesses which are exempt from the trade restrictions set out in [regulation 5\(1\)](#) above. Those businesses are:

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (a) Food retailers, including food markets, supermarkets, convenience stores and corner shops;
- (b) Off licenses and licensed shops selling alcohol (including breweries);
- (c) Pharmacies (including non-dispensing pharmacies) and chemists;
- (d) Newsagents;
- (e) Homeware, building supplies and hardware stores;
- (f) Petrol stations;
- (g) Car repair and MOT services;
- (h) Bicycle shops;
- (i) Taxi or vehicle hire businesses;
- (j) Banks, building societies, credit unions, short term loan providers and cash points;
- (k) Post offices;
- (l) Funeral directors;
- (m) Laundrettes and dry cleaners;
- (n) Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health;
- (o) Veterinary surgeons and pet shops;
- (p) Agricultural supplies shop;
- (q) Storage and distribution facilities, including delivery drop off or collection points, where the facilities are in the premises of a business included in [Part 3](#);
- (r) Car parks; and
- (s) Public toilets.

(b) Restrictions on freedom of movement

71. [Regulation 6](#) imposes wide-ranging restrictions on freedom of movement and is the provision most likely to give rise to difficulties for the police. The extraordinary and unprecedented nature of this restriction, affecting everyone in England, means that measures taken by the police to enforce [regulation 6](#) have – and will continue – to attract widespread media attention and public scrutiny. For instance, *The Guardian* newspaper was critical of drone footage published by a police force on Twitter showing members of the public

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

walking a dog in a national park, noting that this activity is “not essential.”⁶ Another video circulating online shows officers using a megaphone to call on sunbathers in a city park to “go home.”⁷ It is therefore crucial that officers and PCSOs have a firm and comprehensive understanding of the scope of the restriction imposed by [regulation 6](#).

Reasonable excuse

72. [Regulation 6\(1\)](#) provides that:

“During the emergency period, no person may leave the place where they are living **without reasonable excuse.**”

73. For the purposes of [regulation 6\(1\)](#), the “place where a person is living” includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises ([r.6\(3\)](#)).

74. [Regulation 6\(1\)](#) does not apply to persons who are homeless ([r.6\(4\)](#)). A number of local authorities have taken steps to provide accommodation to homeless people for the duration of the coronavirus outbreak.

75. We note that some public statements made soon after the adoption of the Regulations suggested that members of the public could only leave their homes if it is “essential” to do so. However, this is not the test set out in the Regulations and there is no legal basis for a requirement in those terms to be imposed. The applicable threshold is that of “reasonable excuse”. Provided a member of the public has a reasonable excuse to leave their home, there is no violation of [regulation 6](#).

76. Likewise, the Prime Minister’s address to the nation on the evening of 23 March 2020 referred to only four “[reasons you should leave your home.](#)” However, there is no limit on the number of “reasonable excuses”. [Regulation 6\(2\)](#) provides the following **non-exhaustive** list of potential reasonable excuses:

⁶ See: <https://www.theguardian.com/world/video/2020/mar/26/police-drone-video-shames-people-using-national-park-during-uk-lockdown-video>

⁷ See: <https://www.theguardian.com/world/video/2020/mar/24/its-not-a-holiday-police-clear-sunbathers-from-london-park-during-coronavirus-lockdown-video>

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (a) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household) or for vulnerable persons and supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person, or to obtain money, including from any business listed in [Part 3](#) of Schedule 2;
- (b) to take exercise either alone or with other members of their household;
- (c) to seek medical assistance, including to access any of the services referred to in [paragraph 37](#) or [38](#) of Schedule 2;
- (d) to provide care or assistance, including relevant personal care within the meaning of [paragraph 7\(3B\)](#) of Schedule 4 to the [Safeguarding of Vulnerable Groups Act 2006](#) to a vulnerable person, or to provide emergency assistance;
- (e) to donate blood;
- (f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living;
- (g) to attend a funeral of—
 - (i) a member of the person’s household;
 - (ii) a close family member; or
 - (iii) if no-one within sub-paragraphs (i) or (ii) are attending, a friend;
- (h) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (i) to access critical public services, including—
 - (i) childcare or educational facilities (where these are still available to a child in relation to whom that person is the parent, or has parental responsibility for, or care of the child);
 - (ii) social services;
 - (iii) services provided by the Department of Work and Pensions;
 - (iv) services provided to victims (such as victims of crime);

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

- (j) in relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
 - (k) in the case of a minister of religion or worship leader, to go to their place of worship;
 - (l) to move house where reasonably necessary;
 - (m) to avoid injury or illness or to escape a risk of harm.
77. Specifically in relation to [regulation 6\(2\)\(m\)](#) (“to avoid injury or illness or to escape a risk of harm”) the College of Policing issued [guidance](#) on 26 March 2020 recommending that:
- (a) officers should bear in mind that it may not be safe for a person to be at home; and
 - (b) consideration should always be given to whether there are safeguarding issues.
78. The term “vulnerable person” is defined in [Schedule 1](#) as those with any of the following underlying medical conditions:
- (a) Chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease, emphysema or bronchitis;
 - (b) Chronic heart disease, such as heart failure;
 - (c) Chronic kidney disease;
 - (d) Chronic liver disease, such as hepatitis;
 - (e) Chronic neurological conditions, such as Parkinson’s disease, motor neurone disease, multiple sclerosis, a learning disability or cerebral palsy;
 - (f) Diabetes;
 - (g) Problems with the spleen, such as sickle cell disease or removal of the spleen;
 - (h) A weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy; and
 - (i) Being seriously overweight, with a body mass index of 40 or above.

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

Exercise

79. The Prime Minister’s address to the nation on the evening of 23 March 2020 also referred to only “one form of exercise a day”. A restriction on taking exercise “no more than once a day” has found its way into the Regulations applicable in Wales (see [regulation 8\(2\)\(b\)](#) of the [Health Protection \(Coronavirus, Restrictions\) \(Wales\) Regulations 2020](#)). However, there is no such restriction in the Regulations applicable in England. It follows that police forces in England do not have the power under [regulation 6](#) to restrict people from exercising more than once per day – the only relevant consideration is whether repeated exercise on the same day can be considered a “reasonable excuse” for leaving home.
80. Moreover, [regulation 6](#) does not impose any express limitation on the distance that an individual can travel away from home. So, for example, there is no requirement that physical exercise must be carried out in the immediate vicinity of the home. Again, the only relevant consideration is whether the person engaged in physical exercise has a “reasonable excuse” for leaving the place where they are living.

(c) Restrictions on gatherings

81. [Regulation 7](#) prohibits all gatherings of more than two people except:
- (a) where all the persons in the gathering are members of the same household;
 - (b) where the gathering is essential for work purposes;
 - (c) to attend a funeral;
 - (d) where reasonably necessary–
 - (i) to facilitate a house move;
 - (ii) to provide care or assistance to a vulnerable person, including relevant personal care within the meaning of [paragraph 7\(3B\)](#) of Schedule 4 to the [Safeguarding of Vulnerable Groups Act 2006](#),
 - (iii) to provide emergency assistance, or
 - (iv) to participate in legal proceedings or fulfil a legal obligation.

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

Powers of enforcement

82. Powers of enforcement are set out in [regulation 8](#). As noted in paragraph 53 above, the powers of enforcement under the Regulations extend to a “**relevant person**”, which is defined in [regulation 8\(12\)](#) as:
- (a) a police constable;
 - (b) a PCSO;
 - (c) a person designated by a local authority (only for the purposes of a requirement relating to restrictions on business activities and closure of premises under [regulation 4](#) or [5](#)); and
 - (d) a person designated by the Secretary of State.
83. Powers of enforcement under the Regulations fall into three categories:
- (a) In relation to **restrictions on business activities and closure of premises** ([regulations 4](#) and [5](#)), a relevant person may:
 - (i) take such action as is necessary to enforce any requirement; and
 - (ii) give a prohibition notice to a person if the relevant person reasonably believes that the person is contravening a requirement in [regulation 4](#) or [5](#) and it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to contravene the requirement ([regulation 8\(2\)](#)).
 - (b) In relation to the **restriction on freedom of movement** ([regulation 6](#)), provided that the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the requirement:
 - (i) A relevant person may, if they consider that a person is outside the place where they are living without reasonable excuse, direct (or give reasonable instructions to) that person to return to the place where they are living or remove that person to the place where they are living and, if necessary, use reasonable force to do so.
 - (ii) Where the person outside the place where they are living without reasonable excuse is a child accompanied by an individual who has responsibility for

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

that child, the relevant person may direct (or give reasonable instructions to) that individual to take the child to the place where they are living, and that individual must, so far as reasonably practicable, ensure that the child complies with any direction or instruction given by the relevant person to the child.

(iii) Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction in [regulation 6](#), the relevant person may direct any individual who has responsibility for the child⁸ (or give reasonable instructions) to secure, so far as reasonably practicable, that the child complies with that restriction.

(c) In relation to **restrictions on gatherings of more than 2 people** ([regulation 7](#)):

(i) A relevant person may take such action as is necessary to enforce any requirement ([regulation 8\(1\)](#)).

(ii) Where a relevant person considers that three or more people are gathered together in contravention of [regulation 7](#) and it is necessary and proportionate to do so, the relevant person may direct (or give reasonable instructions to) the gathering to disperse, direct any person to return to the place where they are living, or remove any person in the gathering to the place where they are living and may, if necessary, use reasonable force to do so.

(iii) Where the person in contravention of [regulation 7](#) is a child accompanied by an individual who has responsibility for that child, the relevant person may direct (or give reasonable instructions to) that individual to take the child to the place where they are living, and that individual must, so far as reasonably practicable, ensure that the child complies with any direction or instruction given by the relevant person to the child.

(iv) Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction in [regulation 7](#), the relevant

⁸ This is defined as an individual with custody or charge of the child for the time being or parental responsibility for a child within the meaning of the [Children Act 1989](#).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

person may direct any individual who has responsibility for the child⁹ (or give reasonable instructions) to secure, so far as reasonably practicable, that the child complies with that restriction.

No express power of entry

84. The Regulations – in contrast to [Part 2](#) of Schedule 21 to the Act – do not expressly provide for a power of entry for the purposes of enforcement (for example, to break up a gathering that contravenes [regulation 7](#)). This is also in contrast to the Regulations applicable in Wales which specifically provide for a power of entry where a relevant person has reasonable grounds for suspecting that a requirement imposed by the those regulations is being, has been, or is about to be contravened on the premises and the relevant person considers it necessary to enter the premises for the purpose of ascertaining whether the requirement is being, has been, or is about to be contravened (see [regulation 11](#) of the [Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#)).
85. The power to take “such action as is necessary” in [regulation 8\(1\)](#) to enforce a requirement imposed by [regulation 4, 5, or 7](#) is very broadly worded. It should be noted that this power of enforcement does **not** apply to [regulation 6](#) (*i.e.* the restriction on leaving home without a reasonable excuse).
86. It remains unclear – and a matter of speculation – whether “such action as is necessary” encompasses a power of entry. In any event, police officers and PCSOs should always consider whether enforcement action is necessary and proportionate in the circumstances. Constables may also consider, as an alternative, whether there may be a power of entry under [s.17\(1\)\(e\)](#) of [PACE](#) for the purposes of saving life or limb or preventing serious damage to property.

⁹ This is defined as an individual with custody or charge of the child for the time being or parental responsibility for a child within the meaning of the [Children Act 1989](#).

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

Offences and penalties

87. [Regulation 9](#) makes it an offence, punishable on summary conviction by a fine,¹⁰ for a person to:
- (a) contravene a requirement in [regulation 4, 5, 7 or 8](#) without reasonable excuse;
 - (b) contravene a requirement in [regulation 6](#);
 - (c) obstruct, without reasonable excuse, any person carrying out a function under the Regulations; or
 - (d) contravene a direction given under [regulation 8](#), or fail to comply with a reasonable instruction or a prohibition notice given by a relevant person under [regulation 8](#).
88. In relation to the power of arrest without warrant, [regulation 9\(7\)](#) provides that [s.24](#) of [PACE](#) applies to an offence under the Regulations as if the reasons for arrest listed in [s.24\(5\)](#) of [PACE](#) included:
- (a) to maintain public health; and
 - (b) to maintain public order.
89. It follows that if all the other requirements of [s.24](#) of [PACE](#) are met, it is lawful to arrest a person if the officer has reasonable grounds for believing that the arrest is necessary for one, or both, of the two reasons set out immediately above.
90. Under [regulation 10](#), an “authorised person” (which has the same definition as a “relevant person” in [regulation 8\(12\)](#), set out in paragraph 78 above) may issue a fixed penalty notice to anyone that the authorised person reasonably believes has committed an offence under the Regulations and is over the age of 18.
91. Payment of the fixed penalty notice to the local authority in whose area the offence is alleged to have been committed discharges a person’s liability in relation to the offence ([r.10\(3\)](#)).
92. If a fixed penalty notice has been issued, no court proceedings may be commenced until 28 days after the notice was issued and the person cannot be convicted if they pay the fixed penalty notice before the end of that period ([r.10\(4\)](#)).

¹⁰ The Regulations are silent as to the level of fine which may be imposed. [Section 37](#) of the [Criminal Justice Act 1982](#) states that the maximum fine on the standard scale for summary offences is £5,000.

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

93. Pursuant to [regulation 10\(5\)](#), a fixed penalty notice must:
- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
 - (b) state the period during which proceedings will not be commenced (pursuant to [r.10\(4\)](#));
 - (c) specify the amount of the fixed penalty;
 - (d) state the name and address of the person to whom the fixed penalty may be paid; and
 - (e) specify permissible methods of payment.
94. The amount to be paid is:
- (a) £60 for the first fixed penalty notice (reduced to £30 if paid within 14 days);
 - (b) £120 for the second fixed penalty notice; and
 - (c) For the third and subsequent fixed penalty notices, double the amount specified in the last fixed penalty notice, up to a maximum of £960.

CONCLUSION

95. The speed and scale of the coronavirus pandemic require swift and robust measures to delay and limit the spread of the disease. The Act and the Regulations impose very significant restrictions on the rights and freedoms of all persons in England and Wales. These public health measures have been imposed because the Government believes that they are necessary to successfully combat the coronavirus. Police forces are at the frontline of enforcing these extraordinary new measures.
96. Police forces will need to strike the right balance: securing widespread compliance with the new measures and avoiding the potential for disorder and unrest at a time when public services are already very stretched. Ministerial statements and guidance documents do not, of themselves, grant powers to the police. Frontline officers and police staff should, above all, pay close attention to the wording of the Act and the Regulations.
97. The legislative landscape is likely to change frequently over the coming weeks and months. It will be the responsibility of all police forces to stay on top of legal developments and

CORONAVIRUS: A GUIDE FOR POLICE FORCES IN ENGLAND

ensure that enforcement action is strictly limited to what is provided for by statute and secondary legislation.

98. Police forces may also wish to keep in mind that, above all, the Act and the Regulations were adopted to protect public health. Enforcement action taken should, therefore, be taken with a view to securing this ultimate aim.

1 APRIL 2020

5 ESSEX COURT

This guide was prepared by members of the Police Practice Group at **5 Essex Court**. We are particularly grateful to Remi Reichhold and Jennifer Wright for their significant contribution.

Members of chambers are available to offer legal advice and support to police forces in interpreting these new powers. If you would like to consult with a barrister then please telephone the clerks on 0207 410 2000 (or email: clerks@5essexcourt.co.uk) and ask about the advice line.