

Regulations made by the Scottish Ministers and laid before the Scottish Parliament under paragraph 6(3) of schedule 19 of the Coronavirus Act 2020 for approval by resolution of the Scottish Parliament within 28 days beginning with the day on which the Regulations were made, not taking into account any period of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2020 No.

PUBLIC HEALTH

The Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020

Made - - - - at 1.55 p.m. on 5th August 2020

Laid before the Scottish Parliament at 4.00 p.m. on 5th August 2020

Coming into force - - at 5.00 p.m. on 5th August 2020

The Scottish Ministers make the following Regulations in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020(a) (“the Act”) and all other powers enabling them to do so.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

In accordance with paragraph 6(2) and (3) of schedule 19 of the Act, the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by, a resolution of the Scottish Parliament.

Citation, commencement and application

- 1.—(1) These Regulations may be cited as the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 and come into force at 5.00 p.m. on 5 August 2020.
- (2) These Regulations apply in Scotland.

Meaning of “the protected area”

2. In these Regulations, “the protected area” means the area comprising the local government area of Aberdeen City(a).

Interpretation: general

3. In these Regulations “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012(b).

The review of need for requirements and restrictions

4.—(1) The Scottish Ministers must review the need for the requirements and restrictions imposed by these Regulations at least once every 7 days with the first review being carried out by 12 August 2020.

(2) As soon as the Scottish Ministers consider that any requirement or restriction set out in these Regulations is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus, the Scottish Ministers must revoke that requirement.

Requirement to close premises and businesses

5.—(1) A person responsible for carrying on a business in the protected area which is listed in the schedule must—

- (a) close any premises, or part of the premises, in the protected area in which food or drink is sold for consumption on those premises, and
- (b) cease selling food or drink for consumption on its premises in the protected area.

(2) For the purposes of paragraph (1), food or drink sold by a hotel or other accommodation as part of room service is not to be treated as being sold for consumption on its premises.

(3) For the purposes of paragraph (1), an area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

(4) If a business listed in the schedule (“business A”) forms part of a larger business (“business B”), the person responsible for carrying on business B complies with the requirement in paragraph (1) if it closes down business A.

Enforcement of requirements

6.—(1) A relevant person may take such action as is necessary to enforce any requirement imposed by these Regulations.

(2) A relevant person may give a prohibition notice to a person if the relevant person reasonably believes that—

- (a) the person is contravening a requirement in these Regulations, and
- (b) it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to contravene the requirement.

(3) For the purposes of this regulation, a “*relevant person*” means—

(a) The boundaries of Aberdeen City are mered by Ordnance Survey, in accordance with section 1, paragraph 1 of Part 1 of schedule 1 and paragraph 1 of Part 2 of schedule 1 of the Local Government etc. (Scotland) Act 1994. The local government area “City of Aberdeen” was changed to “Aberdeen City” by resolution under section 23 of the Local Government etc. (Scotland) Act 1973 (inserted by paragraph 92 of Schedule 13 to the Local Government etc. (Scotland) Act 1994) at a special meeting convened on 9th May 1995.

(b) 2012 asp 8.

- (a) a constable, or
- (b) subject to paragraph (4), a person designated by a local authority for the purposes of this regulation.

(4) A local authority may only designate a person for the purposes of this regulation in relation to a requirement in regulation 5.

(5) For the purposes of this regulation references to a requirement include references to a restriction.

Offences and penalties

7.—(1) A person who contravenes a requirement in regulation 5 commits an offence.

(2) A person who obstructs any person carrying out a function under these Regulations commits an offence.

(3) A person who fails to comply with a prohibition notice given by a relevant person under regulation 6 commits an offence.

(4) It is a defence to a charge of committing an offence under paragraph (1), paragraph (2) or paragraph (3) to show that the person, in the circumstances, had a reasonable excuse.

(5) A person who commits an offence under this regulation is liable, on summary conviction, to a fine not exceeding the statutory maximum.

(6) If an offence under this regulation committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer (as well as the body corporate) commits the offence and is liable to be prosecuted and proceeded against and punished accordingly.

(7) In paragraph (6), “officer” in relation to a body corporate means—

- (a) in the case of a company—
 - (i) a director, secretary, manager or similar officer, or
 - (ii) where the affairs of the company are managed by its members, a member,
- (b) in the case of a limited liability partnership, a member,
- (c) in the case of a partnership other than a limited liability partnership, a partner,
- (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

Fixed penalty notices

8.—(1) A constable may issue a fixed penalty notice to a person that the constable reasonably believes—

- (a) has committed an offence under these Regulations, and
- (b) is aged 18 years or over.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty in accordance with these Regulations.

(3) The penalty payable in respect of a fixed penalty notice, subject to paragraph (4), is £60.

(4) Unless paragraph (5) applies, if £30 is paid before the end of the period of 28 days beginning with the date of the fixed penalty notice, then that is the amount of the fixed penalty (and the fixed penalty notice must make known the effect of this paragraph).

(5) If the person to whom a fixed penalty notice is given has already received a fixed penalty notice under these Regulations—

- (a) paragraph (4) does not apply, and

- (b) the penalty payable in the case of—
 - (i) the second fixed penalty notice received is £120,
 - (ii) the third and subsequent fixed penalty notice received is double the amount specified in the last fixed penalty notice received by that person, to a maximum of £960.
- (6) For the purposes of these Regulations—
 - (a) the form of a fixed penalty notice,
 - (b) the effect of a fixed penalty notice, and
 - (c) the procedure that applies to a fixed penalty notice,
 are the same as those that apply to a fixed penalty notice given under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004^(a), as provided for in sections 129 to 134 of that Act and sections 226B and 226I of the Criminal Procedure (Scotland) Act 1995^(b), subject to the modifications in paragraph (7).

- (7) The modifications are—
 - (a) section 129(1) is to be disregarded,
 - (b) the definitions of “fixed penalty notice” in sections 129(2) and 134 are to be construed as a reference to a notice under paragraph (1),
 - (c) the definition of “prescribed area” in section 129(2) is to be disregarded,
 - (d) section 130(1), (2) and (3)(f) is to be disregarded,
 - (e) the references to “section 129” in section 131(1) and section 133(1) are to be construed as references to this regulation,
 - (f) in section 131(5)—
 - (i) the reference to “*in accordance with this Part*” is to be construed as a reference to these Regulations, and
 - (ii) the reference to “*a sum equal to one and a half times*” is to be disregarded,
 - (g) the definition of “*fixed penalty offence*” in section 134 is to be construed as though it referred to an offence of the type referred to in paragraph (1)(a), and
 - (h) in section 226B(5)(a)(ii) of the Criminal Procedure (Scotland) Act 1995—
 - (i) the reference to “*by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004*” is to be construed as a reference to that section as modified by this paragraph, and
 - (ii) the reference to “*a fixed penalty notice given under section 129 (fixed penalty notices) of that Act*” is to be construed as a reference to section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 as modified by this paragraph.

Expiry

- 9.—(1) These Regulations expire at the end of the period of three weeks beginning with the day on which they come into force.
- (2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.

JEANE FREEMAN
A member of the Scottish Government

St Andrew’s House,
Edinburgh
At 1.55 p.m. on 5th August 2020

(a) 2004 asp 8.
(b) 1995 c.46.

SCHEDULE

Regulation 5

Businesses subject to restrictions or closure

1. Restaurants, other than a restaurant or dining room in a hotel open exclusively for the use of hotel residents or staff.

2.—(1) Cafes, including workplace canteens (subject to sub-paragraph (2)), but not including—

- (a) cafes or canteens at a hospital, care home or school,
- (b) 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,
- (c) services providing food or drink to the homeless.

(2) Workplace canteens may remain open where—

- (a) there is no practical alternative for staff at that workplace to obtain food, and
- (b) so far as reasonably possible, a distance of two metres can be maintained between any person using the canteen.

3. Bars, including bars in hotels or members' clubs.

4. Public houses.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require the closure of businesses selling food or drink for consumption on the premises in the local authority area of Aberdeen City. Businesses listed in the schedule are required to close, subject to the limited exceptions in that schedule.

These Regulations expire at the end of a period of three weeks beginning with the day on which they come into force. The Scottish Ministers must review the need for the requirements and restrictions imposed by them at least once every 7 days.

No impact assessment has been prepared for these Regulations.