



The Attorney General Falkland Islands

AGG23

The Attorney General's Guidance on the Infectious Diseases Control (Coronavirus) (No.2) Regulations 2020

Published by Authority of the Attorney General

The Law and Regulation Directorate
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1. Introduction

1. Covid-19 or coronavirus is an infectious and contagious disease which is caused by the SARS-CoV-2 virus. The virus has never been encountered before and there is currently no vaccine. The virus has rapidly spread across the globe and the World Health Organisation has identified the coronavirus as a public health emergency of international concern and characterised it as a pandemic.
2. In order to reduce the spread of coronavirus infection the Falkland Islands Government introduced guidelines in relation to self-isolation, social distancing and non-essential business and working arrangements.
3. The Infectious Diseases Control (Coronavirus) (No.2) Regulations 2020 ("the Regulations") give legal effect to restrictions and requirements on businesses, premises, movement and gatherings and mean that the restrictions and requirements can be legally enforced.
4. The Regulations have a significant impact on people's individual liberties as enshrined in the Constitution. The Regulations contain extreme measures but the threat posed by coronavirus to public health is so great that the measures are considered to be justified and necessary to prevent the spread of coronavirus infection and to save lives.

2. Emergency Period

5. Requirements and restrictions contained in Part 2 of the Regulations may be brought into force for a period of time known as an “emergency period”. Under this Part of the Regulations, requirements may be placed on premises and businesses and restrictions on movement and gatherings.
6. In accordance with regulation 4 an emergency period can be declared by the Governor if the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in the Falkland Islands and one or more of the requirements and restrictions contained in the Regulations will be an effective means of preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in the Falkland Islands.
7. A declaration can bring into force one or more of the requirements and restrictions set out in Part 2 of the Regulations and apply those requirements and restrictions to the whole of the Falkland Islands or to specified areas within the Falkland Islands. Depending on the circumstances existing at the time this allows requirements and restrictions to be brought into force in a gradual or targeted manner so as to ensure that their use remains reasonable and proportionate.
8. A declaration is made when it is published online and as soon as reasonably practicable thereafter the declaration must also be published in the *Gazette*.
9. In accordance with regulation 5 the Government must review the need for the requirements and restrictions imposed by the Regulations at least once every 21 days. This is to ensure that the requirements and restrictions imposed remain necessary to prevent the spread of coronavirus.
10. The restrictions and requirements can be terminated in whole or in part and termination may also be limited to specified locations, businesses or services. This allows for restrictions and requirements to be lifted gradually depending on the specific circumstances at the time of the review.

3. Restrictions - Businesses and Premises

Regulation 6 – Requirement to close premises (food and drink)

11. During an emergency period to which the Regulation applies a person responsible for a business listed in Schedule 2 must close any premises, or part of the premises in which food or drink are sold for consumption on those premises, and stop selling food or drink for consumption on its premises.
12. Schedule 2 includes public houses, bars, restaurants, hotels, members' clubs, cafes and workplace canteens but does not include food or drink sold by a hotel or other accommodation as part of room service and a workplace canteen where there is no practical alternative.
13. The requirement does not apply to cafes or canteens in hospitals, care homes, schools, prisons, military establishments and for the purposes of providing food or drink to the homeless.

Regulation 7 – Requirement to stop businesses and services (non-essential)

14. During an emergency period to which the Regulation applies a person responsible for a business or providing a service listed in Schedule 3 must stop carrying on the business or providing the service.
15. Schedule 3 lists a wide range of businesses and services that are considered to be non-essential during the emergency period. The list includes cinemas, museums, gyms, playgrounds and hair salons.

Regulation 8 – Requirement to close holiday accommodation

16. During an emergency period to which the Regulation applies a person responsible for carrying on a business providing holiday accommodation, whether in a hotel, lodge, hostel, boarding house, bed and breakfast accommodation, apartment, house, cottage, campsite, caravan park, or home, must stop carrying on that business.
17. The requirement does not apply to holiday accommodation provided to any person unable to return to their main residence, or to holiday accommodation used by a person as their main residence, or by a person who needs accommodation whilst moving house or who needs accommodation to attend a funeral.
18. The requirement does not apply if the accommodation is provided to support services for the homeless, host blood donations or for any other purpose requested by the Government.

Regulation 9 – Restrictions on businesses offering goods for sale or hire

19. During an emergency period to which the Regulation applies a person responsible for carrying on a business offering goods for sale or for hire in a shop must stop carrying on that business.
20. A business may make deliveries in response to orders received online, by telephone or text message or by post.
21. The restriction does not apply to the businesses listed in Schedule 4. The list includes food retailers, homeware, building suppliers, fuel stations, car repairs, taxis, banks, post offices, laundrettes and agricultural supplies.

Regulation 10 – Other closures and restrictions (places of worship and community centres)

22. During an emergency period to which the Regulation applies a person who is responsible for a place of worship must ensure that the place of worship is closed.
23. A place of worship may be used for funerals or to provide essential support services such as the provision of food banks, blood donations and support for the homeless and vulnerable.
24. A place of worship may be used to broadcast acts of worship over the internet, radio or television (providing the act of worship does not breach restrictions on gatherings).
25. A person who is responsible for a community centre must ensure that during an emergency period the community centre is closed except where it is used to provide essential voluntary activities or urgent public support services (including the provision of food banks or other support for the homeless or other vulnerable people, and blood donation services).

4. Restrictions – Movement and Gatherings

Regulation 11 – Restrictions on movement

26. During an emergency period to which the Regulation applies a person must not leave or be outside of the place where they are living unless they have a reasonable excuse to do so.
27. The place where a person is living includes premises with any garden, yard, passage, stair, garage, outhouse or similar place associated with the premises.
28. A reasonable excuse includes:

Food and medical supplies – obtaining food and medical supplies for those in the same household (including pets and animals in the household);

Other essential supplies – obtaining supplies for the essential upkeep, maintenance and functioning of the household;

Supplies for a vulnerable person – obtaining food, medical supplies and other essential household supplies for a vulnerable person;

Obtaining and depositing money;

Exercising – to take exercise, either alone or with other members of their household;

Seeking medical assistance – including to access dental or veterinary services or any other medical services;

Providing care or assistance – including personal care to a vulnerable person;

Providing emergency assistance;

Donating blood;

Travelling to work and being at work – where it is not reasonably possible to work from the place where a person is living. This includes voluntary work and charitable services;

Attending a funeral – where the funeral is for a member of the person's household, a close family member or if no one from the deceased's household or close family is attending, a friend;

Visiting a burial ground or garden of remembrance – to pay respects to a member of the person's household, a family member or friend;

Fulfilling a legal obligation – including attending court or answering bail;

Accessing critical public services – including childcare, educational facilities, social services, services provided to victims (such as victims of crime);

Contact with children - in relation to a child who does not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between the child and their parents (and for the purposes of this paragraph, "parent" includes a person who has parental responsibility for, or care of, the child);

Religion – a minister of religion or worship leader, may go to their place of worship;

Moving house – where reasonably necessary;

Avoiding harm – to avoid injury or illness or to escape risk of harm.

29. This is not an exhaustive list and other reasons may also amount to a reasonable excuse.

Regulation 12 – Restrictions on movement (specified areas)

30. During an emergency period to which the Regulation applies restrictions may be placed on specified areas to prevent people from entering or leaving the specified area unless they have a reasonable excuse to do so.

31. If the following activities cannot be done without leaving or entering a specified area then a reasonable excuse includes:

Obtaining basic necessities – food, medical and essential supplies;

Providing care or assistance – including personal care to a vulnerable person;

Providing emergency assistance;

Donating blood;

Travelling to work and being at work – where it is not reasonably possible to work from the place where a person is living. This includes voluntary work and charitable services;

Attending a funeral – where the funeral is for a member of the person's household, a close family member or if no one from the deceased's household or close family is attending, a friend;

Visiting a burial ground or garden of remembrance – to pay respects to a member of the person's household, a family member or friend;

Fulfilling a legal obligation – including attending court or answering bail;

Accessing critical public services – including childcare, educational facilities, social services, services provided to victims (such as victims of crime);

Contact with children - in relation to a child who does not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between the child and their parents (and for the purposes of this paragraph, "parent" includes a person who has parental responsibility for, or care of, the child);

Religion – a minister of religion or worship leader, may go to their place of worship;

Moving house – where reasonably necessary;

Avoiding harm – to avoid injury or illness or to escape risk of harm.

32. This is not an exhaustive list and other reasons may also amount to a reasonable excuse.

Regulation 13 – Restrictions on gatherings

33. During an emergency period to which the Regulation applies a person must not participate in a gathering in a public place of more than two people.
34. The restriction does not apply where all the people in the gathering are members of the same household, the gathering is for essential work or the gathering is for a funeral.
35. The restriction does not apply where the gathering is reasonably necessary to facilitate a house move, provide care or assistance to a vulnerable person, provide emergency assistance or to participate in legal proceedings or fulfil a legal obligation.

5. Enforcement Powers

Regulation 14 – Enforcement Powers (Businesses and Premises)

36. A police officer or other person designated by the Government (“officers”) can take such action as is necessary to enforce any requirement or restriction relating to business or premises.

Regulation 14(1)

37. Officers have the power to issue a prohibition notice to a person if the officer reasonably believes that the person is contravening a requirement or restriction relating to businesses or premises and it is necessary and proportionate to issue the prohibition notice to prevent the person from continuing to contravene the requirement or restriction.

Regulation 14(2)

Regulation 14 – Enforcement Powers (Movement)

38. Where it is necessary and proportionate to ensure compliance, officers have the power to direct a person to return to the place where they are living if the officer considers that a person is outside the place where they are living in contravention of the Regulations.

Regulation 14(3)

39. Officers may remove a person to the place where they are living and may use reasonable force, if necessary, to exercise this power.

Regulation 14(4)

40. Where it is necessary and proportionate to ensure compliance and where, without reasonable excuse, a child is outside the place they are living and is in the company of a person who has responsibility for the child, an officer may direct the person with responsibility to take the child to the place where the child is living. The person with responsibility for the child must, so far as is reasonably practicable, ensure that the child complies with any direction or instruction issued by an officer.

Regulation 14(5)

41. Where it is necessary and proportionate to ensure compliance and where an officer has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction on leaving the place where they live, the officer may direct a person who has responsibility for the child to ensure, so far as reasonably practical, that the child complies with the restriction.

Regulation 14(6)

42. For the purposes of the Regulation, an individual has responsibility for a child if the individual has custody or charge of the child for the time being; or has parental responsibility for the child within the meaning of the Children Ordinance 2014.

Regulation 14(7)

43. Where an officer considers that a person has entered or left a specified area in contravention of regulation 12 the officer may direct the person to return to, or leave, the specified area. Where an officer considers that a person is seeking to leave, or enter, a specified area in contravention of regulation 12 the officer may direct the person to remain in, or not to leave, the specified area. Officers may also remove a person to, or from, a specified area and may use reasonable force, if necessary, when exercising this power.

Regulation 14(9) and (10)

44. Where a child, without reasonable excuse, has entered or left a specified area whilst in the company of a person who has responsibility for the child, an officer may direct the person to take the child to the place where the child is living. The person with responsibility for the child must, so far as is reasonably practicable, ensure that the child complies with any direction or instruction given by an officer to or in respect of the child.

Regulation 14(11)

45. Where a relevant person has reasonable grounds to believe that a child is repeatedly failing to comply with the restriction in regulation 12(2) the relevant person may direct a person who has responsibility for the child to ensure, so far as reasonably practical, that the child complies with that restriction.

Regulation 14(12)

46. When exercising the powers contained in regulation 14 an officer may give a person concerned any reasonable instruction they consider necessary.

Regulation 14(19)

Regulation 14 – Enforcement Powers (Gatherings)

47. An officer can take such action as is necessary to enforce any requirement or restriction relating to gatherings.

Regulation 14(1)

48. Where an officer considers that three or more people are gathered together in contravention of the restriction on gathering the officer may direct the gathering to disperse, direct any person in the gathering to return to the place where they are living and remove any person in the gathering to the place where they are living.

Regulation 14(14)

49. Officers may remove a person to the place where they are living and may use reasonable force, if necessary, to exercise this power.

Regulation 14(15)

50. Where a person who is gathering in contravention of regulation 13 is a child accompanied by an individual who has responsibility for the child an officer may direct that individual to take the child to the place where the child is 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.

Regulation 14(16)

51. Where a relevant person has reasonable grounds to believe that the child is repeatedly failing to comply with the restriction in regulation 13, an officer may direct any individual who has responsibility for the child to secure, so far as reasonably practicable, that the child complies with that restriction.

Regulation 14(17)

Regulation 15 – Offences

52. A person who, without reasonable excuse, contravenes a requirement or restriction in the Regulations commits an offence.
53. A person who, without reasonable excuse, obstructs a person carrying out a function under the Regulations commits an offence.
54. A person who, without reasonable excuse, contravenes an enforcement direction or fails to comply with a reasonable instruction or prohibition notice commits an offence.
55. Offences under the Regulations can be committed by a body corporate if it is proved to have been committed with the consent or connivance of an officer of the body or is attributable to any neglect on the part of such an officer. In these circumstances the officer, as well as the body corporate, commits the offence.

Regulation 15 – Penalties

56. An offence committed under the Regulations is punishable on conviction by a fine not exceeding level 4 on the standard scale or imprisonment not exceeding 3 months or both.

Regulation 15 – Power of Arrest

57. A police officer may arrest any person, without a warrant, for the purposes of maintaining public health and to maintain public order.

6. Directions (Gatherings, Events, Premises)

58. In accordance with Part 3 of the Regulations the Governor may make a public health response period declaration.
59. A declaration can be made where the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in the Falkland Islands; and the powers contained in the Regulations will be an effective means of preventing, protecting against, delaying or otherwise controlling the incidence or transmission of coronavirus in the Falkland Islands; or facilitating the most appropriate deployment of medical or emergency personnel and resources in the Falkland Islands.
60. Regulations 17 and 18 allow the Governor, during a public health response period, to issue directions to the organisers of events or concerning the use of premises. A direction can prohibit the holding of an event or the use of premises. Alternatively, requirements or restrictions can be imposed on the event or premises.
61. The purpose of Part 3 is to prevent large scale public events or gatherings such as sporting events, carnivals and parades or to allow those events to take place but to impose restrictions and requirements for the purposes of promoting public health.
62. Officers may take such action as is necessary to enforce compliance with a direction made under Part 3.
63. A person commits an offence if they fail, without reasonable excuse, to comply with a direction made under Part 3. An offence committed under this Part is punishable on conviction by a fine not exceeding level 4 on the standard scale or imprisonment not exceeding 3 months or both.
64. An offence under this Part can be committed by a body corporate if it is proved to have been committed with the consent or connivance of an officer of the body or is attributable to any neglect on the part of such an officer. In these circumstances the officer, as well as the body corporate, commits the offence.

7. Use of Enforcement Powers

ENFORCEMENT IS A LAST RESORT

EXCEPTIONAL POWERS FOR EXCEPTIONAL CIRCUMSTANCES ONLY

The law should be applied in a way that is flexible, discretionary and pragmatic.

Officers should make sensible decisions and employ their judgement.

General principles

65. The restrictions and requirements contained in the Regulations are an exceptional response to an exceptional set of circumstances. The Regulations have a significant impact on the fundamental rights and freedoms contained in the Constitution. The approach to policing the Regulations needs to reflect these exceptional circumstances.
66. The purpose of the enforcement powers is not to criminalise people. Enforcement should focus on the underlying purpose of the Regulations which is to prevent and protect against the spread of infection or contamination from coronavirus.
67. Enforcement should be proportionate and delivered in a manner that protects community relations. The starting point is that people are to be assumed to be complying with requirements and restrictions. Officers should restrict their interventions to instances where they have a reasonable suspicion that a person or persons are breaching the Regulations.
68. Officers should not encourage people to report on their neighbours for potential infringements of "the rules". To do so may risk a breakdown in trust between citizens at a difficult time when mutual support and aid is of critical importance. Most offences under the Regulations require proof that behaviour constitutes an offence and is not behaviour that falls within the exception of being a "reasonable excuse". At the minimum this will generally require some questioning to be undertaken and means that offences cannot simply be observed. Given that this is the case people are to be discouraged from confronting other members of the public and asking them to account for their behaviour. This will almost certainly engender an atmosphere of mutual distrust and intrusive behaviour which should not be encouraged.

69. Regulations do not expressly give officers a power to stop and question people who they do not reasonably suspect are committing an offence. Whilst officers can question people in the normal manner it is also the case that people have no duty to provide answers. Officers should be aware that any questioning is highly intrusive and therefore needs to be justified by virtue of there being sufficient grounds for there to be a reasonable suspicion that a person is not complying with a restriction or requirement.

Four-Step Escalation Principles

70. Officers should approach enforcement using the following four-step escalation principles:

Engage – Where there are reasonable grounds to suspect that a person may not be complying with a restriction or requirement, officers should engage the person with an open and enquiring mind.

Explain – Where a person appears not to be complying with a requirement or restriction the requirement or restriction should be carefully explained. Officers should stress that non-compliance puts people's lives at risk and threatens the health service.

Encourage – People who are not complying with a requirement or restriction should be encouraged to comply voluntarily. This step should not be rushed and officers should exercise patience and perseverance.

Enforce – Enforcement is the absolute last resort and should only be used where a person continuously refuses to comply with a requirement or restriction and where the person has been given a full and proper opportunity to comply on a voluntary basis.

Use of enforcement powers relating to businesses and premises

71. Enforcement of the regulations relating to restrictions and requirements on businesses and premises will only be enforced by use of prohibition notices pursuant to regulation 14(2). Before a prohibition notice is served officers should consult a member of Government Legal Services to ensure that it is appropriate to serve a prohibition notice.
72. It **will not** be a reasonable and proportionate use of enforcement powers for officers to direct people to leave businesses or premises and to direct the business or premises to close immediately. If enforcement is considered to be necessary then it will be undertaken by serving a prohibition notice.

Use of enforcement powers relating to movement and gatherings

73. It **will not** be reasonable, proportionate or necessary to stop people and ask them to account for their movements without having reasonable grounds to suspect that the person may have contravened a requirement or restriction. There is no power and no need to stop every person who is outside in a public place.
74. At all times officers must remember that the objective of the Regulations is not to criminalise people but to ensure that they comply with the restrictions and requirements in place at the time.
75. Officers must bear in mind that the list of 'reasonable excuses' contained in regulation 11 and regulation 12 is **non-exhaustive**. This means that there may be many other valid and reasonable excuses for not complying with a restriction. People must be permitted to retain a level of personal autonomy and discretion over what is 'reasonable' for them. If a person is maintaining social distancing and not risking the spread of coronavirus then enforcement action will not be necessary and all that will be required is advice.
76. Where there are reasonable grounds to suspect that a person is acting in contravention of a requirement or regulation and the **Engage, Explain** and **Encourage** steps have all failed then an officer can use an enforcement power.
77. There are a number of options available to an officer who is justified in using an enforcement power. Enforcement powers should be used in the following escalating order:

Direct – Officers should give a formal direction for a person to return to the place where they are living.

Warn – Officers should warn the person that if they fail to comply with the direction then they can be removed to the place where they are living.

Remove – Officers should remove the person to the place where they are living. If necessary reasonable force can be used to ensure compliance. Removal will be sufficient to achieve the objective of the Regulations, which is the prevention of the spread of coronavirus. If a person is successfully removed to the place where they are living and there are no further contraventions of the Regulations it will not be necessary to submit a case file to a prosecutor to consider prosecution.

Arrest and street bail – Officers should only arrest a person where the contravention of the Regulations is particularly serious and it is likely that the contravention justify a case file being submitted to a prosecutor to consider prosecution. Where an arrest is necessary then a person should be given "street bail".

Arrest and detain – It will be an exceptional set of circumstances that justify the arrest of a person and their detention in police custody for the purposes of investigating an alleged offence under the Regulations or for a case file to be submitted to a prosecutor to consider a prosecution. Officers should remember that the objective of the Regulations is to prevent the spread of coronavirus infection. Detaining a person in custody will have the direct opposite effect because it will bring the person into contact with an even wider sphere of people.

Stopping Vehicles

78. The Regulations do not confer on officers a specific power to stop vehicles. Officers may stop vehicles using the general power contained in section 45 of the Road Traffic Ordinance 1948.
79. It **will not** be reasonable, proportionate or necessary to stop vehicles and ask the occupants to account for their movements without having reasonable grounds to suspect that the person may have contravened a requirement or restriction. There is no power and no need to stop every vehicle. There is no power to establish road blocks as road checks on every vehicle would be disproportionate.

Entering Premises

80. Restrictions on gatherings only relate to gatherings **in a public place**.
81. There are no restrictions relating to gatherings in private places (such as dwellings) but a person may have breached a restriction on movement in order to attend a gathering in a private place as a result of not having a reasonable excuse for having left the place where they live.
82. The Regulations do not confer on officers any additional powers of entry. As per the Criminal Procedure and Evidence Ordinance 2014 Officers require a warrant to enter premises unless sections 22 and 23 of the Ordinance apply.
83. It will be an exceptional set of circumstances that make it reasonable and proportionate to seek to enter premises on the basis that an officer is seeking to arrest a person for an imprisonable offence contrary to the Regulations. The reason for this is that the objective of the Regulations is to manage public spaces.

Vulnerable people and child safeguarding

84. Officers must be aware that there may be hidden reasons why a person appears to be in contravention of the Regulations and the person may not be able, through fear or embarrassment, to explain these reasons.
85. For example, a person may be the victim of domestic abuse but be too frightened to explain to an officer that they fear to return to their home.

86. People may have mental health issues that are not readily apparent.
87. In respect of children a child may appear to be in contravention of the Regulations but they may be escaping abusive behaviour or they may be being groomed by a sexual offender who has encouraged them to engage in activity that places them in breach of the Regulations.
88. Officers must not allow enforcement of the Regulations to prevent the detection of more serious criminal offending and extra care must be taken to ensure that vulnerable people are not victimised twice over.

Submission of case files

89. In the rare instance when it is appropriate to submit a case file to a prosecutor for a charging decision to be made all case files must be submitted in accordance with the normal case file standard as set out in AGG4 – The Attorney General's Guidance on File Standards.
90. Prosecutors will consider case files fully and in accordance with AGG2 - The Attorney General's Code for Prosecutors.

Enforcement and Other Guidance

91. At times it may be the case that the Government issues guidance that is additional to the requirements and restrictions in force under the Regulations.
92. Officers must take extra care to ensure that they only enforce requirements and restrictions that have legal backing. Additional guidance is only guidance and it does not have the force of law. When engaging with members of the public, extra care will be required if officers seek to discuss what is contained in guidance, but is not restricted by law.
93. At all times officers must have respect for the individual rights and freedoms contained in the Constitution and only act when it is reasonable and proportionate to do so in accordance with the law as contained in the Regulations. Where action is required the appropriate level of action will be the least action necessary to achieve compliance with the requirements and restrictions in force at that time.

Document Control

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This document is also available online at: <http://www.fig.gov.fk/legal/>

Document Reference:

AGG23: The Attorney General's Guidance on the Infectious Diseases Control (Coronavirus)(No.2) Regulations 2020

Issue Date:

April 2020

Ownership and Review:

The Attorney General is the document owner for this document and the next scheduled review date is 2022