



Department  
of Health &  
Social Care



Public Health  
England

# Guidance for public health officers

## Potentially infectious persons

Schedule 21 to the Coronavirus Act 2020

## About Public Health England

Public Health England exists to protect and improve the nation's health and wellbeing and reduce health inequalities. We do this through world-leading science, research, knowledge and intelligence, advocacy, partnerships and the delivery of specialist public health services. We are an executive agency of the Department of Health and Social Care, and a distinct delivery organisation with operational autonomy. We provide government, local government, the NHS, Parliament, industry and the public with evidence-based professional, scientific and delivery expertise and support.

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This guidance applies for public health officers under Public Health England.



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## Overview

The Secretary of State for Health and Social Care declared the outbreak of Covid-19 as a 'serious and imminent threat to public health', which engages powers within the Coronavirus Act 2020 ("the Act") in response to the outbreak, these include powers for Public Health Officers. The Act revokes and replaces The Health Protection (Coronavirus) Regulations 2020 that came into force on 10 February 2020.

Guidance on the use of these powers in England is set out in the following document.

# 1. Introduction

1.1 To manage the spread of coronavirus, the Coronavirus Act 2020 (“the Act”) provides Public Health Officers (PHO) with powers to control the spread of coronavirus in the UK. Some of these powers existed already for England in The Health Protection (Coronavirus) Regulations 2020. However, the Act replaces these regulations with a consistent, UK-wide, approach and includes certain new powers for immigration officers and constables.

1.2 The powers in the Act, as relevant to PHOs in England, are set out in section 51 and Schedule 21, Parts 1 and 2. The powers enable the imposition of proportionate requirements (which may include screening and isolation, for example) and other appropriate restrictions, on individuals where a Public Health Officer has reasonable grounds to suspect that an individual in England is, or may be, infected or contaminated with coronavirus and considers that there is a risk that they will infect or contaminate others, or where they have reasonable grounds to believe the individual has recently travelled from a specified infected area.

1.3 The relevant powers can only be used once the Secretary of State for Health and Social Care has issued a declaration (and such declaration remains in force) that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in England, and the measures set out in the Act are considered as an effective means of delaying or preventing further transmission of coronavirus in England. Such a declaration has been made on 10th February 2020<sup>1</sup> and remains valid for the purpose of these new powers - no new declaration is needed for these powers to be available. It may be revoked at any time should the Secretary of State cease to be of the view as to the serious and imminent threat set out above, by publishing a further notice on gov.uk. Please refer to gov.uk for the latest information.

1.4 The relevant provisions of the Act give powers to PHOs. A PHO is either (i) an officer of the Secretary of State (e.g. an employee of Public Health England (PHE)) designated by the Secretary of State for the purposes of exercising the powers conferred by Part 2 of Schedule 21 to the Act; or (ii) a registered public health consultant so designated by the Secretary of State. If you have received a letter from Public Health England (acting on behalf of the Secretary of State) which confirms that you have been designated as a “registered public health consultant” for the purposes of Schedule 21, then you will fall within the definition of PHO, and thus, be able to exercise the relevant powers. You should refer to the guidance provided in this

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<sup>1</sup> [www.gov.uk/government/news/secretary-of-state-makes-new-regulations-on-coronavirus](http://www.gov.uk/government/news/secretary-of-state-makes-new-regulations-on-coronavirus)

document and contact the Centres & Regions Operating Centre Chair or the Public Health Advisor if you have any questions about how the powers should be exercised.

1.5 It should be noted that the NHS will remain a key point of contact for anyone suffering from coronavirus disease and in need of urgent care. All reasonable measures will be taken to persuade individuals to comply with public health advice voluntarily. Such advice given by the NHS is likely to include an explanation to the individual concerned that by following the public health advice, the individual is helping to minimise the risk to themselves, their family and friends and the wider community. It is anticipated, therefore, that the powers contained in Schedule 21, will only need to be used in very limited circumstances since most people will comply voluntarily.

1.6 Please note that you do not need a lawyer present in order to use your powers. If a person wishes to have access to a lawyer when you are using your powers, such a request should be accommodated if possible, but it should not be allowed to delay the powers being used. It would also be necessary to ensure steps, such as video or telephone conferencing, were taken so that any lawyer was not put at risk of being infected with coronavirus.

1.7 Schedule 21, Parts 1 and 2, also include powers for Constables and Immigration Officers (IOs) to support the functions of PHOs. For example, they may direct or remove potentially infectious persons to a suitable place and require them to remain at a suitable place for a specified period for the purposes of screening and assessment (carried out under the direction of PHOs). In exercising these powers, Constables and IOs must first consult PHOs as far as is reasonably practicable, and where it is not possible, this should be recorded. Therefore, PHOs should expect to be consulted by IOs or Constables before, during or after the exercise of their powers, as appropriate, regarding whether a person is or may be infected or contaminated and there is a risk that that person may infect or contaminate another. For these purposes, Constables and IOs should in the first instance contact their local health protection teams (who are on call 24 hours). Contact numbers can be found at: [www.gov.uk/health-protection-team](http://www.gov.uk/health-protection-team).

1.8 Police assistance may be necessary where a person is refusing to comply with instructions given by a PHO. For example, police assistance might be necessary: to try to persuade a person to comply with requirements voluntarily; to take a person to a place for screening and assessment and to keep them there for a limited time where there is a risk that a person may leave; and to assist with enforcing any restrictions or requirements that a PHO may place on a person. The exact nature of police assistance required will need to be discussed on a case-by-case basis with your local resilience partner organisations.

1.9 PHOs will need to consider how their powers sit alongside other civil powers of similar effect. In particular, when making decisions in relation to people who may lack mental capacity or have a mental disorder, and who are or may be, deprived of their liberty for either or both of these reasons.

## 2. Powers of a Public Health Officer under the Coronavirus Act 2020

**Summary table of powers under the Act, Schedule 21, Parts 1 and 2. All references to Paragraphs are to paragraphs in Schedule 21**

<b>Paragraph 6(2) and 9(1)</b>	<b>Paragraph 10</b>	<b>Paragraph 14(2)</b>
PHO may direct, remove or request a constable to remove, an individual to a place suitable for screening and assessment.  The time such person is required to remain at the place for screening and assessment cannot exceed 48 hours.	PHO may require an individual to be screened and impose other requirements on an individual in connection with their screening and assessment.	Following an assessment, a PHO can impose requirements and restrictions on the individual.

### Where do these powers apply?

2.1 These powers only apply in England<sup>2</sup>.

### Who do your powers apply to?

2.2 Your powers apply to people in England whom, during the transmission control period, you have reasonable grounds to suspect may be potentially infectious.

2.3 A person is potentially infectious (Paragraph 2) if:

(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.

OR

(b) the person has been in an infected area within the 14 days preceding that time.

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<sup>2</sup> Similar powers for Scotland, Wales and Northern Ireland are provided by Parts 3, 4 and 5 of Schedule 21.



2.4 'Infected area' refers to any country, territory or other area outside UK that the Secretary of State has declared for this purpose in a notice on [www.gov.uk](http://www.gov.uk)<sup>4</sup>.

2.5 'Transmission control period' is the period starting from when the Secretary of State made the declaration that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health to the date when such a declaration is revoked by the Secretary of State. For these purposes, the declaration was made on 10th February 2020 and has not yet been revoked<sup>5</sup>. This means that we are currently in the transmission control period.

## How to implement your powers?

2.6 It is likely that you may become aware of an individual who may be potentially infectious through the NHS (primary and/or secondary care), independent hospitals or care homes, local authorities, or voluntary and community sector organisations supporting individuals, or through Constables or IOs.

2.7 The reasonable grounds test as to whether someone is potentially infectious could be met, for example, if you have been advised that a person (i) has tested positive for coronavirus; (ii) is presenting with symptoms of coronavirus (regardless of whether the person has been tested); (iii) is, or has been, in close contact with another person with symptoms of coronavirus, regardless of whether that other person has been tested for coronavirus; or (iv) has arrived within the last 14 days from an infected area.

2.8 A PHO is not required to carry out a clinical assessment of a person that is suspected of being potentially infectious. This should be carried out by the NHS or other appropriate organisation or individual, where necessary upon request by the PHO.

2.9 The PHO should bear in mind that all reasonable measures should be taken to persuade people to voluntarily comply with requirements for isolation or testing and that the people being asked to comply voluntarily have the capacity to understand what is being asked of them.

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<sup>3</sup> At the time of writing, Wuhan and Hubei province are 'infected areas' for this purpose see [www.gov.uk/government/news/secretary-of-state-makes-new-regulations-on-coronavirus](http://www.gov.uk/government/news/secretary-of-state-makes-new-regulations-on-coronavirus). Check [www.gov.uk](http://www.gov.uk) for further notices and PHE will issue revised guidance if a new notice is published.

<sup>4</sup> At the time of writing, Wuhan and Hubei province are 'infected areas' for this purpose see [www.gov.uk/government/news/secretary-of-state-makes-new-regulations-on-coronavirus](http://www.gov.uk/government/news/secretary-of-state-makes-new-regulations-on-coronavirus). Check [www.gov.uk](http://www.gov.uk) for further notices and PHE will issue revised guidance if a new notice is published.

<sup>5</sup> See paragraph 1.3 of this guidance.

2.10 In this regard, the PHO should, as far as possible, provide information in a range of formats that respond to and meet the communications needs of that person.

2.11 Should you have to use the powers conferred by the Act, you, as the PHO, should conduct a decision-making process in line with this guidance, and this should be documented, in reasonable detail, and retained. It is important that any direction given, whether verbally or in writing, is accurately recorded. That is because a criminal offence may be committed by a person who fails to comply with a direction so they must understand what a direction requires of them. Further, the General Data Protection Regulation (GDPR), as given effect by the Data Protection Act 2018, will apply and any personal data recorded must be used and stored in accordance with that Act.

## 3. Power to direct or remove persons to a place for screening and assessment

3.1 If, during the transmission control period, you have reasonable grounds to suspect that a person is potentially infectious, you may (under Paragraph 6(2)):

- (a) direct the person to go immediately to a place specified which is suitable for screening and assessment;
- (b) remove the person to a place suitable for screening and assessment; or
- (c) request a Constable to remove the person to a place suitable for screening and assessment.

3.2 The PHO can require such person to remain at a place for screening and assessment for up to 48 hours (Paragraph 9(1)). The 48-hour period starts from the time the person is removed to, or arrives at, a place suitable for screening and assessment.

3.3 You may only exercise these powers if you consider it is necessary and proportionate to do so in the interests of the person, for the protection of other people or for the maintenance of public health (Paragraph 6(3)).

3.4 You should document and keep a detailed record of the decision-making process. It is important that any direction given, whether verbally or in writing, is accurately recorded. That is because a criminal offence may be committed by a person who fails to comply with a direction so they must understand what a direction requires of them. Further, the General Data Protection Regulation (GDPR), as given effect by the Data Protection Act 2018, will apply and any personal data recorded must be used and stored in accordance with that Act.

3.5 You must give the individual notice<sup>6</sup> of your decision to direct or remove them under paragraph 6(2). This must include clear notification of i) your reasons for so directing or removing them and ii) that it is an offence for them not to comply or to abscond from the specified place. This notice can be given orally or in writing, and whilst it is not required for directions under paragraph 6, it is strongly recommended

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<sup>6</sup> Or, where appropriate, a responsible person for their care.

that any oral notice is followed up by a written notice – see the Annex (Notice A, or a combination of A and C).

3.6 Similarly, you must give the individual notice<sup>7</sup> of a requirement to remain at a suitable place for screening and assessment under paragraph 9(1), which must include your reasons for the requirement, the maximum period they may be required to remain there, and that it is an offence not to comply with the requirement. This notice can be given orally or in writing, and whilst it is not required for directions under paragraph 9, it is recommended that any oral notice is followed up by a written notice – see the Annex (Notice C, or a combination of A and C).

### How to implement your powers?

3.7 Implementation of your powers will be done at a local level, co-ordinating with local resilience partners, in accordance with local arrangements. It is possible that you may have to organise an Incident Management Team meeting, engaging your local resilience partners to discuss and agree a way forward. However, you, as a designated PHO, must make the decisions to exercise the powers under Schedule 21.

3.8 You should ascertain details of the person not willing to comply with any request made by, for example, the clinical staff, to present for screening and assessment. You should also ascertain whether the person is a minor or whether the person has the relevant capacity or ability to understand what is being asked of them.

3.9 If the person is not willing to comply voluntarily, a PHO should first have a conversation (which can be done remotely over the telephone) with the person in order to persuade them of the need to attend for screening and assessment in order to protect the health of others. This should be documented in a risk assessment. If the person is still not willing to comply then you can inform them that you intend to use the powers in the Act. If the person is still not compliant, then you should invoke the powers conferred on you by the Act. Before you do, it is important that, under your direction, the local health protection team co-ordinates with the local resilience partners, which could include local authorities, NHS Trusts and police, as only then can the exercise of these powers be effective. Issues to consider might include:

- (d) whether the person has been given every opportunity to understand the information being provided and be supported in doing this.

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<sup>7</sup> See footnote 5

- (e) where will the person be taken for screening and assessment – this facility must be suitable for screening and assessment. This could be an isolation facility, an NHS facility or any other agreed facility (as long as it is suitable for screening and assessment);
- (f) whether the facility will be able to accommodate any complex needs of the individual
- (g) whether transport for the person be required;
- (h) whether security arrangements be required; and
- (i) whether there are associated costs and how these will be paid.

3.10 Factors to take into account when assessing whether a place is suitable for screening and assessment include: availability of staff with the clinical expertise to take samples and/or medical history at the facility; whether the staff at the facility have the relevant protective equipment and can safely take biological samples; whether the facility is cleaned appropriately; and the proximity of the laboratories required to carry out the testing on the biological samples. Suitable places are more likely to be hospitals unless there are alternative local arrangements.

3.11 Although a PHO does have the power to remove a person to a suitable place for screening and assessment, it is unlikely that in practice a PHO or any member of PHE staff under the PHO will be directly involved in removing a person. It is more likely that a PHO will co-ordinate efforts to remove the person with their local resilience partner organisations. We anticipate that the vast majority will comply with any instructions, however, Constables can provide support if needed and have statutory powers to do so, if necessary, under Schedule 21 to the Act.

### Ancillary powers

3.12 Under Paragraph 20 of Schedule 21, you may give reasonable instructions to a person in connection with:

- (j) a direction given to that person under a power conferred by Part 2 of Schedule 21, or
- (k) removing the person to or keeping the person at a place under a power conferred by Part 2 of Schedule 21.

3.13 When directing a person to go to a suitable place for screening under Paragraph 6 or Paragraph 11 (see para 4.8 of this guidance), for example, you may instruct them as to the means of transport they should take, or that they must wear a face-mask or other protective equipment.

3.14 The power to give reasonable instructions applies in connection with directions given, and the removal or keeping of a person, under any provision of Part 2 of Schedule 21.

3.15 If you give reasonable instructions in connection with the exercise of your other powers, you must inform the person: i) of the reason for the instruction, and ii) that it is an offence to fail to comply with it. This information, together with the instructions, should therefore be included in any notice you give of the exercise of your principal powers. The same considerations as to documenting your decision-making process (see para 3.4 of the guidance above) will also apply.

## 4. Screening and assessment (Paragraphs 8-12)

4.1 Where a person is at a place suitable for screening and assessment and you have reasonable grounds to suspect that the person is potentially infectious, you may in accordance with Paragraph 10:

- (a) require the person, to be screened and assessed, which includes, at a time specified by the PHO;
  - (i) to provide a biological sample (blood sample or respiratory secretions sample (including swabbing the person's nasopharyngeal cavity)) to either the PHO or to a healthcare professional (registered doctor, registered nurse or other registered healthcare professional as designated by the Secretary of State); and
  - (ii) to answer questions about their health or other relevant matters (including travel history and information about other individuals with whom the person may have had contact).
- (b) and impose other requirements in connection with their screening and assessment, including requiring a person to:
  - (i) produce documents that may assist in their assessment;
  - (ii) provide contact details so that the PHO could contact them during a specified period.

4.2 You can use these powers whether the person has been required to remain at the suitable place under the initial powers described at section 3 above, or if the person is attending the place voluntarily.

4.3 These powers are in addition to the abilities that you may have to require a screening and assessment of a consenting individual.

4.4 Under the Act, assessment means assessing measures that would be appropriate to take in relation to a person to mitigate the risk of that person infecting or contaminating others.

4.5 You can only impose screening and assessment requirements upon a person if you consider that it is necessary and proportionate to do so in the interests of the person, for the protection of other people or for the maintenance of public health.

4.6 You can impose these requirements orally, or in writing, but if orally, you should, though are not required to, provide the person<sup>8</sup> with a written notice that you have imposed the requirement as soon as possible, in the format of the Annex Notice B. If the person is a child, you must provide the written notice to the individual who has responsibility for the child<sup>9</sup>.

4.7 You or a Constable can enforce the requirement for the person to remain at the suitable place for screening and assessment by keeping the person at that place.

4.8 A PHO may direct or remove, or request a Constable to remove, a person to another place that is suitable for screening and assessment (Paragraph 11). This would be applicable, for example, if the original place was no longer suitable, for example if staff or equipment were not available to carry out screening, or if another place were considered more suitable (see para 3.11 of this guidance).

4.9 If you exercise this power, you must provide the person<sup>10</sup> with a notice. The notice must set out i) the reasons for directing or removing them, and ii) that it is an offence not to comply with the direction or an offence to abscond from the specified place. This notice can be given orally or in writing, and whilst it is not required for directions under paragraph 11, it is recommended that any oral notice is followed up by a written notice – see Annex - Notice H.

4.10 You should document, in reasonable detail, and keep a record of the decision-making process. The General Data Protection Regulation (GDPR), as given effect by the Data Protection Act 2018, will apply and any personal data recorded must be used and stored in accordance with that Act.

## How to implement your powers?

4.11 It is recognised that many PHOs will not be able to take biological samples as they do not have the necessary equipment or clinical expertise, and in any event, are unlikely to be physically present at the suitable place where the person has been taken. Such samples will only be taken by doctors, nurses and any other healthcare professional designated by the Secretary of State, as instructed by a PHO.

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<sup>8</sup> Or, where appropriate, a responsible person for their care.

<sup>9</sup> An individual who has responsibility of the child, in relation to that child, means a person with parental responsibility for them (within the meaning of the Children Act 1989) or a person who has custody or charge of the child for the time being.

<sup>10</sup> See footnote 7.



4.12 With respect to assessment, asking for documents or contact and contact tracing information, you only require such details as is necessary in order to reduce or remove the risk of the person infecting or contaminating others. You should also specify the period that the contact or contact tracing information should cover.

4.13 A PHO can enforce a requirement imposed on a person to remain in a suitable place for screening and assessment. For example, you may call upon security personnel (at a hospital) to assist in preventing the person from leaving. You may do this with the support and assistance of a Constable if necessary. As such, the local police may be involved when exercising these powers if you need their assistance.

## 5. Your powers post-assessment and screening (Paragraphs 14-17)

5.1 The powers set out below are available to you where a person in England has been screened and assessed by a PHO, and where:

- (a) the individual tested positive for coronavirus; or
- (b) screening was inconclusive; or
- (c) you have reasonable grounds to suspect that the person is potentially infectious. (This may be applicable where for example testing has not been carried out or if test results have been delayed).

5.2 You may impose **requirements** (Paragraph 14(3)) on a person, such as:

- (a) to provide information to a PHO or any specified person;
- (b) to provide contact details for contact during a specified period;
- (c) to undergo further screening and assessment;
- (d) to remain at a specified place for a specified period (**'requirement to remain'**);
- (e) to remain at a specified place in isolation for a specified period (**'requirement to remain in isolation'**).

5.3 You may impose **restrictions** (Paragraph 14(4)) on a person for a specified time, such as on the person's:

- (a) movements or travel (in or out of UK);
- (b) activities (including work or business activities);
- (c) contact with other persons or with specified persons.

5.4 You can only impose these requirements and restrictions upon a person if you consider that it is necessary and proportionate to do so in the interests of the person, for the protection of other people or for the maintenance of public health.

5.5 You can impose these requirements and restrictions orally, or in writing but if orally, you must under paragraph 19(2) provide the person<sup>11</sup> with a written notice that you have imposed the requirement as soon as possible, in the format of Annex (Notice D, F and G, or a combination of them). The notice must inform the person i) of your reasons for imposing the requirement or restriction, and ii) that it is an offence not to comply. If the person is a child, you must provide the written notice to the individual who has responsibility for the child.

5.6 You should document and keep a reasonably detailed written record of the decision-making process and the notices that have been issued. The General Data Protection Regulation (GDPR), as given effect by the Data Protection Act 2018, will apply and any personal data recorded must be used and stored in accordance with that Act.

## Requirements to remain and restrictions

5.7 The two requirements to remain (see para 5.2(d) and (e) of the guidance above) are in effect the power to require a person to remain in a place and the power to require them to remain in isolation at a place.

5.8 In deciding whether to impose a requirement to remain or a requirement to remain in isolation on a person, you must have regard to that person's wellbeing and personal circumstances (Paragraph 14(6)).

5.9 When imposing a requirement to remain, or remain in isolation, or any other restrictions under paragraph 14 (see para 5.2 and 5.3 of the guidance):

- (a) the period specified by you cannot exceed 14 days (Paragraph 15(1));
- (b) you must assess the person within 48 hours of such imposition and following such assessment reconsider whether such impositions are necessary and proportionate in the interest of the person, for the protection of other people or for the maintenance of public health Paragraph 15(2);
- (c) following reconsideration, you may revoke or substitute a requirement to remain or restriction, or specify a different period not exceeding 14 days (Paragraph 15(3) and see Notice I at Annex). If you revoke, the Secretary of State could re-impose a

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<sup>11</sup> Or, where appropriate, a responsible person for their care.

requirement to remain or restriction for the original specified period, if they are satisfied that a person is potentially infectious.

5.10 The 14-day period does not include the initial period of 48 hours for screening and assessment (Paragraph 9(1)).

5.11 If you reasonably suspect that the person will be potentially infectious at the end of the time period that you specified in their requirement to remain or restrictions and if you consider that the requirement to remain or restrictions are still necessary and proportionate in the interest of the person, for the protection of other people or for the maintenance of public health, then you:

- (a) can extend the time period by a further specified period which, for a requirement to remain in a specified place, or any other restrictions under paragraph 14 (other than isolation), cannot exceed 14 days (Paragraphs 15(5) and 15(6)); and
- (b) if you extend the time period, you must review the requirement to remain or restriction at least once every 24 hours (Paragraph 15(7)). If, upon review, you consider that person:
  - (i) is no longer potentially infectious, you must revoke requirement to remain or restrictions (Paragraph 15(8)); or
  - (ii) if the person is still potentially infectious but you think that the requirement to remain or restrictions is no longer necessary or proportionate to the aims, then you substitute a different requirement or restriction, which may not go beyond the further period of 14 days (Paragraph 15(9)).

5.12 The extension for a further period of maximum 14 days does not apply to the requirement to remain where you are asking a person to remain in isolation. In that case, there is no time limit on the further period of isolation, however, the same requirements to review the requirement every 24 hours apply, as do the considerations described in paragraphs 5.4 and 5.8.

5.13 All variations to requirement to remain and restrictions should be set out in a Notice E or I at Annex.

5.14 The requirements to remain in a specified place and/or in isolation can be enforced by (Paragraph 16):

- (a) you or a constable can remove to, or keep the person at, a place; and
- (b) if the person absconds, a constable can take the person into custody and return the person to that place or any other place that you may specify.

## How to implement your powers?

5.15 The local health protection teams, will gather relevant information about the person in question and their circumstances, having regard to any duty of confidentiality owed to the person in question. The PHO will discuss the need to use their powers with senior colleagues within PHE, including whether the use of the powers is necessary and proportionate and is in the interests of the person, for the protection of other people or for the maintenance of public health. It is also important to consider the wider context and whether there are alternative interventions which may be appropriate, proportionate and easier to implement.

5.16 The exercise of powers to impose restrictions and requirements may require co-ordination with Local Resilience partners. A PHO should keep such partners engaged and notified throughout when dealing with a non-compliant person.

5.17 In circumstances where it is necessary for a PHO to remove or keep a person at a specified place or in isolation at a specified place, a PHO may seek assistance from security personnel (e.g. at a hospital), or if necessary, they may seek assistance from the police.

5.18 A person may be required to remain, or remain in isolation at:

- (a) the person's home;
- (b) a hospital; or
- (c) another suitable place

5.19 Paragraph 14(6) requires a PHO to have regard to a person's wellbeing and personal circumstances when imposing a requirement to remain at a specified place (whether in isolation). A PHO should give particular consideration to the needs of people with protected characteristics for example, the needs of children, the elderly, those with disabilities, those with existing medical conditions, those with mental health conditions, those who are pregnant, those who may not speak English, and any other groups on whom the impact of those requirements might be greater than would otherwise be the case.

5.20 When imposing any restrictions and requirements, a PHO should have regard to the relevant **publicly available guidance** as published on gov.uk.

5.21 For example, individuals with mobility needs may need to be provided with appropriate accommodation and adjustments made if they are to be placed into supported isolation.

## 6. Children

6.1 If you are exercising your powers in relation to a child (a person under the age of 18), and the child is not accompanied by an individual who has responsibility for the child<sup>12</sup>, you must (under Paragraph 18(5)):

- (a) if practicable, contact an individual who has responsibility for the child before you exercise your powers; or
- (b) if that is not practicable, take reasonable steps after you have exercised your powers to contact such an individual and inform them of what you have done.

6.2 You may only exercise your powers with respect to screening and assessment under Paragraph 10 and imposition of requirements and restrictions under Paragraph 14, on a child in the presence of:

- (a) an individual who has responsibility for the child; or
- (b) if no such adult is present, an adult that you consider to be appropriate (such as a social worker, local authority key worker, relative or foster carer) having regards to the views of the child (Paragraph 18(4)).

In other words, an adult must be present for any of these requirements and restrictions to be imposed, whether it be someone with responsibility for the child, or another appropriate individual having regard to the views of the child.

6.3 An individual who has responsibility for the child must (Paragraph 18(1) and 18(2)):

- (a) as far as reasonably practicable, ensure that the child complies with any directions, instructions, requirements or restrictions you give or impose under your powers; and
- (b) provide to you with such information and assistance in relation to the child as is necessary and practicable.

6.4 In exercise of your powers, you may direct or require an individual with responsibility for the child to take the child to a place as specified by you Paragraph 18(3)).

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<sup>12</sup> An individual who has responsibility of the child, in relation to that child, means a person with parental responsibility for them (within the meaning of the Children Act 1989) or a person who has custody or charge of the child for the time being.

6.5 Any notices to be given under Schedule 21 to the Act in relation to a child must be given to the individual who has responsibility for the child.



## 7. Appeals (Paragraph 17)

Any person subject to a restriction or a requirement under Paragraph 14 may appeal against it (or any variation or extension thereof) to a magistrates' court. If the person is a child, the right to appeal may be exercised by an individual who has responsibility for the child (Paragraph 18(6)). People detained pursuant to Schedule 21 powers have a right to appeal that decision to the Magistrates Court. The person detained should be permitted to use any mobile phone in their possession to seek legal advice relating to their detention. Assistance should be given to help people access a lawyer where necessary i.e. providing the telephone numbers of local Citizens Advice Bureaux or other sources of legal advice.

7.1 On appeal, a court may confirm, with or without modification, or quash, the requirement or restriction (or variation or extension).

7.2 Note that where the powers under this legislation have been applied to a person who lacks the relevant mental capacity, a challenge can be brought by someone or some authority on their behalf. This may, in some cases, be necessary even if the person is not objecting or does not appear to understand that they can make a challenge.

## 8. Criminal offences

8.1 There are circumstances in which you must inform people as to when they might be committing a criminal offence (see Paragraphs 6(4), 9(2), 11(2), 14(5) of Schedule 21, and paras 3.5, 3.6, 4.6, 4.9 and 5.5 of this guidance).

8.2 These are the same circumstances where you should give the person a notice of your decision and the reasons for it, whether orally or in writing, and they are indicated in the relevant pro forma notices at the Annex.

8.3 A person commits an offence if they:

- (a) fail, without reasonable excuse, to comply with any direction, reasonable instruction, requirement or restriction given or imposed by you under Schedule 21;
- (b) fail, when acting as an individual with responsibility for a child, to comply with their duties under Paragraphs 18(1) or (2);
- (c) abscond or attempt to abscond;
- (d) knowingly provide false or misleading information; or
- (e) obstruct a person exercising their powers under Schedule 21.

The relevant offences are set out in paragraph 23 of Schedule 21.

8.4 A person guilty of an offence under Schedule 21 is liable on summary conviction to a fine not exceeding 3 on the standard scale (currently £1,000).

## 9. Duties of a Public Health Officer under Schedule 21, Parts 1 and 2, of the Coronavirus Act 2020

### Voluntary compliance

9.1 Schedule 21, Parts 1 and 2, have been enacted to allow the enforcement of sensible and proportionate public health measures if individuals are unwilling to follow this voluntarily. Individuals should always be given the opportunity to comply voluntarily with public health advice and it should be explained to them that following the advice will ensure they minimise any risk to themselves, their family and friends, and the wider community.

9.2 It is only at the stage where individuals do not comply with such advice that we would look to impose measures under Schedule 21, Parts 1 and 2. If this is the case, a written notice (if appropriate, following up an oral notice) would need to be in line with the specific guidance above.

### Proportionality principle

9.3 The specific paragraphs of the guidance above explain the importance of and need to take a proportionate approach in decisions made under Schedule 21, Parts 1 and 2. In particular, when exercising these powers, consideration should be given to whether less invasive means could be used to secure the desired outcome, whether the restriction or requirement has any counterproductive outcomes, and whether it is necessary given the wider context of public health guidance. A PHO should ask themselves whether the same advice would be given to all individuals presenting with a similar risk profile. If not, they should question whether an approach should be taken which is in line with those other cases.

### Avoiding discrimination

9.4 PHOs should ensure that in exercising their powers under Schedule 21, Parts 1 and 2 they avoid discrimination against individuals who have any protected characteristics. For example, a PHO must ensure that any public health advice or requirements or restrictions imposed are based on their understanding of an individual's potential exposure to coronavirus and the risk of being infected or contaminated and infecting or contaminating others, rather than their nationality, ethnicity or place of residence.