

CORONAVIRUS Q&A

LOCAL AUTHORITIES' OTHER ENFORCEMENT POWERS

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During the current pandemic, taking steps to prevent the spread of disease will be an important priority for local authorities ('LA's). Much has already been written on the powers contained in the Health Protection (Coronavirus Restrictions) Regulations 2020 (the "2020 Regs") especially Regs 4 and 5.

In the attached Q&A, we outline in brief some other key LA powers that may be worthy of consideration in response to specific issues and challenges that may arise over the coming months and which set the 2020 Regs in context.

In particular, we look at:

- Section 222, Local Government Act 1972 ("LGA 1972");
- Parts 1, 4, and 5, Anti-Social Behaviour, Crime, and Policing Act 2014 ("ASBCPA 2014")
- Part 2A of the Public Health (Control of Diseases) Act 1984 ("PHCDA 1984")
- The Health Protection (Part 2A Orders) Regulations 2010 ("2010 Regulations");
- Section 51 and schedule 21 of the Coronavirus Act 2020 ("CA 2020");
- Regulations 4 and 5 of the Health Protection (Coronavirus Restrictions) Regulations 2020 (the "2020 Regulations").

For reasons of space, we discuss these powers below in the context of a few specific situations, but the remedies are not, of course, limited to those situations. As ever, we should be happy to discuss any issues with you to help identify the best way forward.

Q1: WHAT CAN BE DONE IF A BUSINESS REFUSES TO CLOSE, OR TO STOP SELLING FOOD FOR ON-SITE CONSUMPTION?

A1: Certain shops and businesses must close under reg.4(4), 2020 Regulations. Subject to limited exceptions (e.g. hospitals, care homes, schools, prisons workplace/army canteens and services feeding the homeless), food businesses must close (reg.4(1), 2020 Regulations) except to sell food and drink for consumption off site (by delivery or collection: reg.5(1),(2)).

If a business refuses to comply, various enforcement options can be considered.

(1) 2020 Regulations LAs can designate a 'relevant person' ('RP') to enforce closures and take 'such action as is necessary' to do so. A prohibition notice under Reg.7 may not be much of a deterrent to a business determined to remain open, however, as enforcement by way of FPN or prosecution may prove to be no real little deterrent and do not force closure. The amount of an FPN will be significantly less than the business will make by continuing trading; prosecutions will take months in current circumstances, and the level of any fine is unknown. Neither has the effect of forcing closure now.

(2) LGA 1972 A more immediate remedy may be provided by an injunction application under section 222, LGA 1972. The LA must consider to expedient for the promotion or protection of the interests of the inhabitants of their area, but this is likely be satisfied by a need to prevent the spread of a national health emergency and to ensure compliance with essential lockdown requirements. Injunctions under this power were used to enforce Sunday trading laws in the 1980s and 1990s where criminal penalties were insufficient to prevent deliberate and flagrant breaches of the Shops Acts. If granted, an interim injunction would also operate to ensure the immediate closure of the business. An undertaking in damages is not normally necessary where the LA is performing a law enforcement function.

(3). ASBCPA 2014 If the use of the continued use of the business premises is also causing a nuisance to members of the public, the LA could issue a Closure Notice and apply for a Closure Order (see **Q2** below)

Q2: WHAT CAN BE DONE ABOUT UNLAWFUL GATHERINGS ON PRIVATE PREMISES?

A2: Where gatherings are taking place at a specific premises, several remedies may be available.

(1) Injunctions In the past few weeks, social landlords have obtained injunctions under Part 1, ASBCPA 2014 against tenants who host large gatherings at their homes¹. Application may also be made for an exclusion order to prevent non-residents from gathering at a property. If the conduct poses a 'significant risk of harm to other persons', a power of arrest may also be granted. This approach is flexible enough to address all kinds of conduct and provide a remedy to deal with the specific factual issues arising during the emergency period; the application and enforcement processes are also already very familiar to LAs, courts, and police.

(2) Closure If gatherings involve larger numbers of people (especially unidentified people), and are causing nuisance to members of the public (which can include the risk of spreading disease), an LA may consider making use of the premises closure procedure under Part 4, ASBCPA 2014.

Closure can prohibit access to particular people at particular times and can be issued by an LA where necessary to prevent nuisance or disorder continuing, recurring, or occurring from the use of a particular premises. The initial Notice cannot exclude owners or residents and lasts for up to 48 hours during which time an application must be made to the magistrates court for a Closure Order. A Closure Order may be made for up to three months (and can be renewed for a further three months on application). A closure order does not have to exclude people who live on the

¹ See: Lexis Nexis, 'Social Landlord takes Enforcement Action against Anti-Social Tenant', 6 April 2020. Available online: [https://www.lexisnexis.co.uk/blog/covid-19/coronavirus-\(covid-19\)-social-landlord-takes-enforcement-action-against-antisocial-tenant](https://www.lexisnexis.co.uk/blog/covid-19/coronavirus-(covid-19)-social-landlord-takes-enforcement-action-against-antisocial-tenant).

premises. The court should not normally be asked to exclude residents during the emergency period.

(3) LAs could also consider making use of CPNs (see **Q3** below).

Q3: WHAT ABOUT INDIVIDUALS BREAKING 'LOCKDOWN' RULES?

A3: An LA cannot designate an RP for the purpose of enforcing 'lockdown' rules under the 2020 Regulations. The responsibility for enforcement of these restrictions lies with the police and anyone else designated by the Secretary of State; LAs should work alongside these bodies to deal with breaches.

(1) CPNs Where an LA feels it is necessary to take action to deal with an individual who is persistently breaking the restrictions, it may be possible to serve a Community Protection Notice ('CPN') under Part 4, ASBCPA 2014. This is a broad power to deal with conduct of any type which is: having a detrimental impact on the quality of life of those in the locality; is persistent in nature; and is unreasonable. A fixed penalty notice can be issued where the CPN is breached. An LA can also designate persons to issue CPNs, including registered providers of social housing.

(2) Injunctions In appropriate cases an LA may also consider making an application for an injunction to restrain the behaviour under Part 1, ASBCPA 2014, on the basis that it constitutes anti-social behaviour as defined (see **Q6** below).

Q4: INFECTED INDIVIDUALS WHO REFUSE TO ISOLATE/QUARANTINE?

A4(1) PHCDA 1984: Where an individual is, or is suspected to be, infectious, an LA can seek an order under Part 2A of PHCDA 1984. Applications are made to the Magistrates' Court under the 2010 Regulations. The court may order a person to:

- submit to medical examination;
- be removed to and/or detained in a hospital or other suitable establishment;
- be kept in isolation or quarantine;
- be disinfected or decontaminated;
- wear protective clothing;

- provide information or answer questions about their health or other circumstances;
- have their health monitored and the results reported;
- attend training or advice sessions on how to reduce the risk of infecting or contaminating others;
- be subject to restrictions on where they go and with whom they have contact;
- abstain from working or trading.

Risks arising from third parties who may have infected the respondent can themselves be reflected in contact tracking requirements for the respondent to provide information or answer questions about that third party.

(2) ASBCPA 2014 a refusal to self-isolate or quarantine could amount to anti-social behaviour under the Act, entitling an LA to consider injunction proceedings: see **Q2 and Q6**.

(3) CA 2020 By s.51 and sch.21, CA 2020, public health officials, immigration officers, and the police have extensive powers to impose restrictions on individuals who are infectious or potentially infectious without the need for a court order. LAs may consider whether their objectives can be achieved by working alongside agencies exercising these powers to reinforce (or negate the need for) a Part 2A order and/or injunction.

Enforcement With any of the above remedies, enforcement of the order against an infectious person is likely to be a critical consideration. Discussions with police will need to include what happens if the respondent breaches the order, as unless they will be arrested, the orders may lose much of their force.

Q5: GROUPS GATHERING IN PUBLIC PLACES?

A5: As with individuals breaking the lockdown rules, LAs cannot designate RPs to enforce such breaches of the 2020 Regulations.

(1) PSPOs Persistent problems in particular public areas could be considered for a Public Space Protection Order (s.59, ASBCPA 2014). There is a consultation

requirement before such a PSPO may be made, which means that a PSPO cannot be an immediate response to gatherings or ASB during the emergency period.

(2) Injunctions against gatherings of unknown people can be the subject of s.222 injunctions, whether to protect the position pending a PSPO or more generally. Orders against Persons Unknown may also be available under s.222 LGA 1972 (but not under ASBCPA 2014).

LAs could also consider an injunction to restrain the behaviour on the basis that it is anti-social (see **Q2** above and **Q6** below).

Q6: WHAT ABOUT TENANTS BEHAVING ANTI-SOCIALLY?

(1): Possession Possession proceedings are stayed until at least 25 June 2020 pursuant to Practice Direction 51Z, where the anti-social behaviour is perpetrated by a tenant of the LA it remains possible to serve a notice of seeking possession. This may be used both to impress upon the tenant the seriousness and potential consequences of the behaviour and so that the notice period can begin to run.

CA 2020, however, has amended s.83, Housing Act 1985 so that a minimum of 3 months' notice must be given in all cases, including where Ground 2 or an absolute ground is relied on.

(2) Injunctions Injunctions continue to be available (see **Q1** and **Q2** above).

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