2. Coronavirus police powers and their use on protests

This page updated 16/7/21

The law affecting protest has now been revoked. This page detailed the law, as it affected protest, that had been in effect between March 2020 and 19th July 2021

The most relevant aspect of the law is that relating to outside gatherings.

New coronovirus regulations came into force on 29th March 2021. The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 and The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609)

On 22nd February 2021 the government announced steps in a roadmap out of lockdown. From 12th April the country would go to step 2 and step 3 from May 17th (The system for tiers has been dropped). So from those dates it will be lawful to meet outdoors in groups of 6 or fewer and 30 or fewer respectively, and there are exceptions to allow protests, pickets and electoral campaigning. There seems to be no limit on the number of people who can attend a protest in step 2 and step 3. See details about steps 2 and 3 below.

Police may use fixed penalty notices, i.e. fines, for breaking the covid regulations both by attending a protest and being an organiser.

If regulations are broken in attending a protest one may be issued a fixed penalty notice – £200 for a first offence. These may be challenged by a refusal to pay which may result in being charged with breaking the covid regulations and an opportunity to argue a defence for protesting, in court.

The fine for an organiser is £10,000

Steps 2 and 3

For Step 2 and Step 3 the regulations allow people to meet outdoors in gatherings of no more than 6 people or 30 people respectively but there are exceptions – people may gather for the purpose of protest, and there seems to be no limit specified on how many people may gather at a protest. The protest must have been organised by a political body, (or a business, a charitable, benevolent or philanthropic institution, or a public body). There is also an exception for picketing and election campaigning.

The fixed penalty notice for breaking the regulations when attending the protest is £200 for a first offence.

There are conditions and penalties for those involved in organising a protest detailed below

Previous Tiers 2 and 3 were similar to the new Steps 2 and 3.

Penalties for breaking the regulations

If regulations are broken one may be issued a fixed penalty notice – £200. Refusal to pay may result in being charged with breaking the covid regulations, an opportunity to make a defence case as to why one should have been able to protest.

For attending the protest the fine is £200 for a first offence, but £10,00 for organising the protest.

Police and State actions

If the police "consider" that the rules on gatherings are being broken they have the power to:

- **Direct the gathering to disperse**
- **Direct participants to return home**
- **Use "reasonable force" to take a participant back to their home.**

If the police consider that you have broken the rules they also have the power to:

Either – **Issue you a Fixed Penalty Notice (£200 for a first offence, rising if you have received previous fines up to a maximum of £6400)**

Or – **Arrest you on suspicion of having broken the Coronavirus regulations. If successfully convicted under this legislation, the maximum penalty is a fine. Breaking Coronavirus regulations is a 'non recordable' offence, thus if arrested the police should not take fingerprints or DNA samples.**

The police will require name and address to issue the FPN on the street, if this is withheld then they may make an arrest and subsequently issue an FPN.

A Fixed Penalty Notice is not a criminal record, and will not show up on DBS checks, whereas a conviction could do. However it remains on police records so there is a possiblity it would show up on an enhanced DBS check.

So far, these powers have been used very frequently at protests. Netpol's Policing the Corona State blog has more details of how they have been used, and you can also contact Netpol with your experiences.

Specific rules around protest

For Steps 2 and 3 there are specific exemptions around protests, with some rules:

- **Gatherings are exempted under the regulations where a gathering is for the sake of protest and has been organised by, among other things, a political body, and the organiser of the gathering takes the required precautions, then the gatherings are permissible. 'political body' is defined as a person doing activities which promote changes in law or government policy.**
- **all reasonable measures have been taken by the organiser to limit the risk of transmission of coronavirus, taking into account the risk assessment and any relevant government guidance.**
- **a risk assessment has been undertaken. It is difficult to summarise but, in short, it requires a 'suitable and sufficient' assessment of the health risks to participants and to those affected by their conduct.**
- **if the gathering is considered unlawful then there is a fixed penalty notice of £10,000 for anyone who is *involved* in organising a gathering of more than 30 people (this could include, as an example, performing or speaking at an event).**

Exception for Canvassing & Picketing

The March 2021 changes introduce an exception so that campaigning for election purposes or for referendum purposes will be permitted in England.

In 2020 Unite the Union won a JR (judicial review) which meant that picketing was exempt from the restrictions, and was thus permitted.

Earlier leglislation

The so-called 'lockdown regulations' (The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020) initially came into force on 26th March 2020. They were amended a number of times, and then replaced by a new regime, called The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, which came into force on 4 July 2020 and were a bit more permissive with regard to gatherings.

The (No.2) lockdown regulations were subject to numerous amendments too, and there were lots of local regulations which ran alongside the general English regulations, which related to areas with higher infection rates.

The (No.2) lockdown regulations were then effectively replaced by a third set of regulations, organised into three tiers: Medium, High and Very High. They were actually three different sets of regulations which came into force on 14 October 2020. The legislation in effect until 4th November 2020 was very similar to the Tier 1-3 legislation detailed above.

These Restrictive rules were in effect for the November lockdown, coronovirus regulations number 4, restricting gatherings to 2 people at the most.

A set of regulations, organised into four tiers Medium, High, Very High and Stay at Home came into force, as an amendment (The Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020) of The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, on 20th December 2020. On the 6th January 2021, an amendment was made to the regulations that placed the whole of England into Tier 4 and thus no longer permitted protests. 5th March 2021 saw further amendments to the regulations which also made an explicit exception for electoral canvassing and campaigning. Meanwhile in March 2021 the government announced the return to Tier 3 thus permitting gathering in a protest once again.

Other Links

There is a useful article on the ITN solicitors' news blog which goes into some detail about the pre 5/11 covid legislation for protest gatherings.

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There is an article at Freedom News about the covid legislation coming into effect on 5th November 2020.

These regulations are untested in the courts as yet. Care should always be taken to look at the relevant regulations in place when planning any action, as the regulations change frequently.

If you have been arrested or issued a Fixed Penalty Notice at a demonstration since 26th March 2020, please contact courtsupport@protonmail.com or call 07946541511