

[The Health Protection \(Coronavirus Restrictions\) \(No. 2\) \(Wales\) Regulations 2020](#)

Guidance to enforcement officers on regulation 12: the requirement to take all reasonable measures to minimise risk of exposure to coronavirus in workplaces and premises open to the public

Introduction

The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 have been made “in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales”.

The appropriate use of powers to enforce these restrictions and requirements imposed by the Regulations is important to:

- promote and maintain sustained compliance as a preventative measure to help contain the coronavirus;
- ensure action is taken immediately to deal with situations in which there is a risk of coronavirus spreading;
- ensure that those who fail to comply are held to account.

Minimising risk of exposure to coronavirus

[Regulation 12](#) requires persons responsible for premises to do three things, all for the purpose of minimising the risk of exposure to coronavirus on the premises.

- (1) The first is to take “**all reasonable measures**” to maintain **2 metres distance between people** who are on the premises or are waiting to go in to the premises.
- (2) The second is to take “**any other reasonable measures**” to minimise the risk of **exposure** to coronavirus – this primarily means improving **hygiene** and taking measures to minimise face to face interaction (something which is particularly important where 2 metre distancing isn’t reasonably practicable).
- (3) The third is to provide **information** to those entering or working at the premises about how to minimise the risk of exposure to coronavirus – something that is closely linked to the other two requirements as measures taken will often depend on the behaviour of those on the premises.

Regulation 12 applies to “open premises” and any other premises in which work takes place. Open premises are premises that were previously required by regulations to close or open only on a limited basis (such as food shops which were always permitted to open but subject

to taking all reasonable measures to ensure people on the premises maintained a 2m distance between each other). These premises are now open, subject to the requirements of regulation 12. Premises also includes vehicles used for public transport.

Meaning of the requirements to minimise risk of exposure to coronavirus

The requirements in regulation 12 have deliberately been drafted in broad terms. This is for two reasons. The first is that what measures are “reasonable” depends in large part on the physical context, in other words the type of premises and the type of activities carried out on the premises. Like in the case of health and safety legislation, what is reasonable will also depend on the cost – and while clearly not the only factor, the economic impact on a business can be taken into account. And the second is that those responsible for premises are to be given some discretion about the particular measures they take where a choice is possible.

Taking reasonable measures is not an absolute rule that has to be applied all of the time in all circumstances – some things may not be required as it would not be reasonable to require them and different things may be required at different times and in different circumstances. In addition a particular measure that may not apply in the same way in all situations.

However, it is an objective test that is intended to be applied consistently – what is “reasonable” is to be assessed not by reference to what any one person thinks it is reasonable to do but by what a rational person faced by similar circumstances thinks is reasonable – and that we are facing a global pandemic is relevant in that context as the expectation of what measures are likely to be reasonable will be high as a result.

In addition the requirements can be categorised in a fairly straightforward way that can be applied regardless of the nature of the premises:

- providing information to help people behave as they should
- ensuring physical distancing;
- improving hygiene;
- adopting other measures to minimise risk of exposure, primarily to avoid close face to face interaction: e.g. changing how people move around premises, improving ventilation, installing screens, using PPE.

Although the requirements generally relate to *how* things are done on premises or in the workplace, there may be circumstances in which *what* is done may need to be considered. If an activity involves a high risk of exposure to coronavirus because of the need for people to be in close proximity, and that can't be satisfactorily mitigated (generally with screens or PPE), it may be reasonable to expect measures to be taken to stop that activity or to close part of a premises. In the case of a workplace, whether that is truly reasonable will depend

in part on the nature of the activity in question and how integral it is to the operation of the business.

The Welsh Government has issued the following guidance on regulation 12, which has to be taken into account:

- [Taking all reasonable measures to minimise the risk of exposure to coronavirus in workplaces and premises open to the public](#)

In addition the Welsh Government has provided more general guidance that is also relevant:

- [Manufacturing: coronavirus guidance](#)
- [Workplace guidance for employers and employees: COVID-19](#)
- [Safety and physical distancing signs for employers: coronavirus](#)

Various sector and industry representative bodies have also produced more detailed guidance on specific types of premises which may be taken into consideration where it is consistent with the regulatory requirements and Welsh Government guidance.

Enforcement powers and principles of enforcement

The Regulations set out a specific and separate system for enforcing regulation 12. This provides that enforcement officers from local authorities can require certain (specified) measures to be taken in relation to premises, and they can if necessary close them. Closure can be required either because specified measures aren't subsequently taken or because the breach of the requirements is sufficiently serious to justify closing a premises immediately or with only very limited notice.

The enforcement system is set out in Schedules 5 and 6 to the Regulations and is based on the issue of a "**Premises Improvement Notice**" or a "**Premises Closure Notice**" or both, depending on the circumstances.

Premises Improvement Notice

Where non-compliance with the requirements under regulation 12(2) is identified at a premises, the enforcement officer should normally seek to remedy the non-compliance by a graduated and proportional approach to enforcement. Where possible, education of responsible persons, giving advice and informal action should be attempted before any other enforcement action. However, when necessary, a Premises Improvement Notice should be issued.

This notice can be served if the enforcement officer considers that the measures specified in the notice are proportionate and necessary in order to ensure that the person complies with those obligations, in order to minimise the risk of exposure to coronavirus. The notice must

specify the measures that must be taken in order to ensure that the person complies with the obligations imposed by regulation 12(2). The notice must specify a time limit for compliance (not less than 48 hours) and set out the right of appeal.

An enforcement officer may terminate a Premises Improvement Notice if satisfied that the person to whom it has been issued has taken the measures specified in the notice or otherwise taken action necessary to ensure that regulation 12(2) can be complied with when the premises are allowed to be open.

Premises Closure Notice

An enforcement officer may issue a “Premises Closure Notice” to a person responsible for premises referred to in regulation 12(1) requiring the premises, or part of the premises, to be closed for up to 336 hours (14 days) at a time. This can be done if either one of two conditions are met:

- (1) Where a Premises Improvement Notice has been issued to the person and the enforcement officer considers—
 - that the person has failed to take the measures specified in notice within the specified time, and
 - that the closure of the premises or part of the premises is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.
- (2) Where the enforcement officer considers—
 - that the person is not complying with the obligations imposed by regulation 12(2), and
 - the closure of the premises or part of the premises (without a Premises Improvement Notice having been issued) is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.

Where a Premises Improvement Notice has been issued, the Premises Closure Notice must set out the measures that the enforcement officer considers—

- have not been taken, and
- must be taken in order to ensure that the responsible person complies with the obligations imposed by regulation 12(2).

Where a Premises Improvement Notice has not been issued, the Premises Closure Notice must set out the reasons why the enforcement officer considers that the responsible person is failing to comply with regulation 12(2).

In both cases, the Premises Closure Notice must also give the reasons why the enforcement officer considers that closure of the premises is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus. The notice must specify the period for which the notice has effect and give details of the right of appeal.

A Premises Closure Notice has effect from the time at which it is issued or from a later time specified in the notice.

Limitations

A Premises Closure Notice may not be issued in relation to premises which form part of critical infrastructure (for example, premises used to generate electricity or supply water) or which are used to provide essential public services.

Termination

An enforcement officer may terminate a Premises Closure Notice if satisfied that the person to whom it has been issued has taken the measures or otherwise taken action necessary to ensure that regulation 12(2) can be complied with when the premises are allowed to be open. This will mean that the requirement to close the premises no longer applies.

Appeals

A person to whom a Premises Improvement Notice or Premises Closure Notice is issued may appeal, within 7 days, to a Magistrates' Court against the notice. A Magistrates' Court has discretion to suspend the effect of a Premises Improvement Notice or Premises Closure Notice pending the determination of an appeal but unless the Court does so, the notice under appeal continues to have effect and must be complied with. On an appeal against a Premises Improvement Notice or Premises Closure Notice, a Magistrates' Court may—

- confirm the decision to issue the notice;
- direct that the notice is to cease to have effect;
- modify the notice;
- make such other order as the court considers appropriate.

If the Magistrates' court directs that a notice is to cease to have effect or modifies a notice, it may order the local authority for the area in which the premises in question are situated to compensate the person responsible for the premises for loss suffered as the result of the issue of the notice.

An appeal by either party against the decision of a Magistrates' Court on an appeal under this section may be brought to the Crown Court.

Issuing Premises Improvement and Closure Notices and terminations

A Premises Improvement Notice, Premises Closure Notice or a termination of either notice is issued to the person to whom it relates by giving a copy of it in writing to that person. But where that person is not on the premises to which the notice or termination relates, a copy should be given to a person on the premises who appears to be responsible for any business or service being carried out on the premises, or if there is no such person on the premises when the notice is to be issued, a copy of the notice can be placed in a prominent position on the premises.

Publicising Premises Improvement and Closure Notices

Where a Premises improvement Notice or a Premises Closure Notice has been served, as soon as reasonably practicable after issuing the notice, the enforcement officer must—

- display a copy of the Notice and of a corresponding sign in the form set out below (prescribed in Schedule 6 to the Regulations), in a prominent place near every entrance to the premises and
- arrange for the notice to be published on the website of the local authority for the area in which the premises are located.

The notice and sign required to be displayed and published must continue to be displayed and published for as long as they have effect. The sign should be printed in colour in A4 size.

 <p>IECHYD Y CYHOEDD Y CORONAFEIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p> <p>ANGEN GWELLA</p> <p>IMPROVEMENT NEEDED</p> <p>Diogelu Cymru gyda'n gilydd Together we'll keep Wales safe</p>	 <p>IECHYD Y CYHOEDD Y CORONAFEIRWS</p> <p>Gofyniad i leihau'r risg o ddod i gysylltiad â'r coronafeirws mewn mangre:</p> <p>CAEWDYD Y FANGRE HON</p> <p>PREMISES CLOSED</p> <p>Diogelu Cymru gyda'n gilydd Together we'll keep Wales safe</p>
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General principles and practical aid to assessment

The general principles for enforcing regulation 12 are set out in Annex 1 and a list of practical question to aid enforcement officers to assess whether a breach of regulation 12 has taken place can be found at Annex 2.

ANNEX 1

Principles of enforcement

The following principles should be applied when exercising powers to enforce regulation 12:

- proportionality in application
- targeting of enforcement action;
- consistency in approach;
- transparency about how enforcement officers operate and what can be expected, and
- accountability for actions taken.

These principles apply both to enforcement itself and to the management of enforcement activities as a whole. They are not applied in isolation but are informed by an understanding of the risk of exposure to coronavirus.

Proportionality

Numerous things have to be weighed up when considering what action to take and whether it is proportionate – the seriousness of the breach, the cost of compliance, the effectiveness of the enforcement action, and the time given to comply. This should all be assessed in light of the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales and to the seriousness of any breach of the law.

Applying the principle of proportionality means that enforcement officers should take account of how far responsible persons have fallen short of the requirements in regulation 12 and the extent of the risk of exposure to coronavirus, and therefore of the risk or spread of coronavirus, that has ensued.

The Regulations are based on the notion of taking “*all reasonable measures*” which should itself ensure a proportionate approach. The established concept of taking action “*so far as it is reasonably practicable*” is relevant. The decision as to what is reasonably practicable to control the infection risk associated with coronavirus, involves the exercise of judgement in the light of current public health advice.

Enforcement officers, when considering the adequacy of the protective measures taken, will balance the degree of risk against the cost, time or complexity of the measures needed to minimise that risk. But unless it can be shown that the risk of exposure to coronavirus is insignificant in comparison to the cost, a responsible person must take measures (and incur costs) to minimise the risk.

Enforcement officers will also consider whether it is appropriate, taking into account the extent to which regulation 12 has not been complied with and the degree of risk of exposure of coronavirus that is caused by that non-compliance, to give an opportunity to remedy the situation before formal action is taken. This should, however, only be done

where the breach is minor, and the opportunity to remedy the situation should be short in duration.

Targeted enforcement

A targeted approach should be applied when deciding which premises and activities to proactively monitor and inspect, taking into account factors such as size, type of activities, industry sector, the population at risk, the associated coronavirus infection risks and complaints of non-compliance received.

Inspection and investigation resources should be focused primarily on those activities, industries and sectors that are giving rise to the most serious risk of exposure, where and when the coronavirus hazards are least well controlled, or where competence to manage the risk of exposure is in doubt.

Low risk activities, for example activities taking place outdoors and in a controlled environment, will not, in general, be a priority.

Consistency

A consistent approach should be adopted to enforcement of the Regulations across different premises, settings and activities, recognising the importance of fair treatment to all. However consistency of approach does not necessarily mean uniformity. It means taking a similar approach in similar circumstances to achieve compliance with the law, while recognising that it may not be appropriate to insist on the same measures in every case.

Ensuring consistency can be difficult. Every situation is different – by virtue of the type of business activity, the premises where that activity is undertaken, the industry, the characteristics of the population at risk and the risks presented by coronavirus. An element of discretion is afforded to persons responsible to decide what reasonable measures should be taken in each case.

Any enforcement decision therefore requires the appropriate exercise of individual discretion and professional judgement.

Transparency

Enforcement action should clearly outline to a responsible person not only what they have to do but, where relevant, what they don't.

Where non-compliance has been identified, enforcement officers should clearly and promptly explain the decision taken, their reasons, the actions required to achieve compliance and explain what will happen if a person fails to comply.

Enforcement officers will differentiate between the actions required to comply with the law, and any advice given to achieve good practice. This will ensure that unnecessary economic burdens are not imposed on businesses.

ANNEX 2

Practical assessment of the legal requirements

Assessing non-compliance

In deciding whether, or which particular, enforcement action to take, enforcement officers will need take into account a number of factors and exercise their judgement accordingly.

These may include:

- the risk that the non-compliance poses to the spread of coronavirus;
- the extent to which it is reasonable to believe that a person responsible is unaware of the requirements and should be given an opportunity to comply;
- any evidence that suggests that there was pre-meditation or recklessness in the failure to comply or whether false information has been supplied wilfully, or there has been an intent to deceive;
- whether a warning has been given;
- whether the failure to comply is a one-off or has been repeated;
- aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public;
- how others in a similar position have been treated.

In addition the following more specific questions should be considered when assessing whether all reasonable measures have been taken, and information provided, in accordance with regulation 12.

<i>Ensuring 2 metre distancing</i>
Have options to reduce the number of people physically present on the premises (or waiting to enter the premises) been considered and (if applicable) implemented? This may include:
<ul style="list-style-type: none">• enabling staff to work from home;
<ul style="list-style-type: none">• arranging shift work so as to reduce the number of staff present on premises at any one time;
<ul style="list-style-type: none">• providing delivery services or a click and collect service from a dedicated part of the premises;

<ul style="list-style-type: none"> • providing services or arranging meetings remotely;
<ul style="list-style-type: none"> • doing any other thing previously or normally done on the premises remotely.
Is there a system in place for knowing how many people are on the premises?
Has a safe maximum number of people been calculated that ensures 2 metre distancing is feasible on the premises?
Is there a control mechanism in place to ensure that the safe maximum is not exceeded?
Is there a need to routinely limit the number of people on the premises?
If so how is that done? Is there a queuing system?
Is there a system for maintaining 2 metre distancing among those queuing, either in outdoor areas of the premises or off the premises?
Can an appointment system be put in place?
Are entry and exit points controlled so as to avoid congestion or close interaction? Can two different points be used to enable entry in place and exit elsewhere?
Are passageways and stairways controlled so as to avoid congestion or close interaction? Should one way systems be adopted or furniture rearranged to facilitate this?
How is access to lifts controlled? Can access to lifts be limited?
Can the location in which people work (if fixed) be set further apart? Can zones be adopted to reduce or prevent interaction?
Can furniture or labels on furniture be used to demarcate where people should work?
Can unnecessary furniture or other fittings be removed to provide more space and to prevent people from using it inappropriately?
What steps can be taken to keep any employees who routinely have physical interaction with the public 2 metres away from them?
Should entry to any part of the premises prone to congestion or close interaction be limited or stopped?

Adopting other measures to minimise risk of exposure to coronavirus

Where close interaction (within 2 metres) between people is unavoidable—

- can its duration be limited?
- can close face to face interaction be stopped?
- can the duration of close face to face interaction be limited?
- can the closeness of the face to face interaction be reduced?
- can screens be put in place?
- would wearing PPE be feasible and effective?
- can activities be done, or services provided, outdoors instead of indoors?

To what extent do any activities undertaken on the premises involve high levels of exertion (for example people being out of breath due to exercise)? Has this been taken into account? Is the area well ventilated? Is ventilation (or cooling devices such as fans) used appropriately?

Should certain activities on the premises be stopped if the risk of exposure to coronavirus due to close interaction can't be mitigated?

What systems are in place to ensure that coronavirus restrictions, such as not gathering indoors with those not in a person's household, are not breached on the premises?

Improving hygiene

Have additional hand washing facilities been put in place?

Is hand sanitiser available in convenient places?

Is use of shared facilities such as toilets as kitchens controlled? Is hand sanitiser available to people prior to the use of shared facilities?

Can the number of people entering shared facilities be limited?

Are shared facilities frequently cleaned? (The appropriate frequency depending on the extent of use).

Are there systems in place to stop or limit people touching objects or surfaces, or sharing objects?

Can pre-payment or cashless payment be adopted (where relevant)?

Providing information to help people behave appropriately

Is there signage clearly visible reminding those on the premises to maintain 2 metre distancing and maintain good hygiene?

Is there signage or markers in place to help people to maintain 2 metre distancing?

Is there signage clearly visible explaining systems put in place for—

- entry and exit;
- navigating passageways and stairways (including one way systems);
- using shared facilities;
- using lifts.

If use of face coverings or other PPE is required is there signage in place reminding people of the need to do this?

Is furniture clearly labelled as being appropriate for use or not for use (if it can't be removed)?

Are zones used for maintaining 2 metre distancing clearly marked?

Are there signs in place pointing out handwashing facilities or hand sanitiser, and reminding people to wash their hands frequently?