



# The Attorney General Falkland Islands

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### The Attorney General's Guidance on the Infectious Diseases Control (Coronavirus) Regulations 2020

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# Contents

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<b>1. Introduction</b> .....	<b>3</b>
<b>2. Transmission Control Period</b> .....	<b>4</b>
<b>3. Definition of Medical Officer</b> .....	<b>5</b>
<b>4. Notices of Direction</b> .....	<b>6</b>
<b>5. Keeping People Pending Screening</b> .....	<b>7</b>
<b>6. Screening and Assessment</b> .....	<b>8</b>
<b>7. Imposing Requirements and Restrictions</b> .....	<b>9</b>
<b>8. Revocation, Variation and Extension</b> .....	<b>11</b>
<b>9. Appeals</b> .....	<b>12</b>
<b>10. Children</b> .....	<b>13</b>
<b>11. Enforcement Powers</b> .....	<b>14</b>

# 1. Introduction

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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 declared it a pandemic.
2. The people of the Falkland Islands are a strong and resilient community with a rich and proven history of caring for the vulnerable and selflessly supporting and encouraging others. The Falkland Islands Government has experienced and highly dedicated medical and emergency service officers. There is no doubt that the people of the Falkland Islands will do everything that they can to limit the rate of coronavirus infection and protect the most vulnerable and those most at risk. There is therefore every reason to believe that the people of the Falkland Islands will follow the guidance and instructions issued by the medical and emergency services properly and carefully.
3. The Falkland Islands Government must, however, plan for all eventualities and the Infectious Diseases Control (Coronavirus) Regulations 2020 ("the Regulations") contain a number of powers to ensure that appropriate steps can be taken to protect people and maintain public health.
4. The Regulations contain powers that allow medical, police and immigration officers to detain, screen and assess people who may potentially be infectious. Where there are grounds to do so people can be made subject to requirements and restrictions including self-isolation. These powers can be enforced, if necessary, by the use of reasonable force and a failure to comply with directions, requirements or restrictions is a criminal offence punishable with a fine of up to £1000.
5. The Regulations contain safeguards and protections, including a right for a person to appeal to a court, to ensure that people are treated fairly and that directions, requirements or restrictions are only imposed where they are necessary and proportionate.
6. The powers contained in the Regulations are intended to be powers of last resort. If people carefully and conscientiously follow the guidance and instructions of medical and emergency service professionals then there will be no need to use the powers. It is important, however, that there should be no misapprehension. The risk to public health posed by coronavirus is so great that it is essential to have available the powers contained in the Regulations and the powers will be used if necessary.
7. The purpose of this document is to provide guidance on the nature of the powers contained in the Regulations, the extent to which they can be used and the safeguards and protections in place.

## 2. Transmission Control Period

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8. The powers contained in the Regulations are only available if the Governor, in consultation with the Chief Medical Officer, is of the view that the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in the Falkland Islands and the powers conferred by these Regulations will be an effective means of preventing significant further transmission of coronavirus.
9. If the Governor is of this view then a declaration will be made. The declaration will be published online and must be published in the Gazette as soon as reasonably practicable.

## 3. Definition of Medical Officer

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10. For the purposes of the Regulations “medical officer” means a registered medical practitioner employed by the Falkland Islands Government. This definition includes the Chief Medical Officer.
11. In addition the Chief Medical Officer may designate any other doctor or healthcare professional to be a “medical officer” for the purposes of the Regulations.

## 4. Notices of Direction

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12. Regulations 5 and 6 allow medical officers, police officers and immigration officers to direct a person to go immediately to a specified place for the purposes of screening and assessment. Where practicable to do so police officers and immigration officers must consult a medical officer before issuing a direction.
13. A direction can be given where there are reasonable grounds to suspect that the person is potentially infectious. The purpose of a notice of direction is to prevent the potential spread of coronavirus by immediately requiring a person to be screened and assessed.
14. In the first instance a person should be asked to immediately attend the specified place on a voluntary basis. Where a person refuses to follow a direction voluntarily or where there are grounds to suspect that they will fail to comply, a formal direction under regulation 5 and 6 should be issued.
15. The protection of public health during a transmission control period is paramount and if there is any doubt as to a person's willingness to comply with a direction on a voluntary basis then a formal direction should be issued so that the powers contained in the Regulations are available to ensure compliance if necessary.
16. A notice of direction should only be given if the medical, police or immigration officer considers that the direction is necessary and proportionate:
  - (a) in the interests of the person being made subject to the direction; or
  - (b) for the protection of other people; or
  - (c) for the maintenance of public health.
17. Where a direction is issued pursuant to regulation 5 or 6 the person subject to the direction must be informed by the issuing officer of the reason for the direction given and that it is a criminal offence to fail to comply with the direction or to abscond from the specified place.
18. **Form IDC1** should be used when issuing a direction under regulation 5 or 6 as it makes clear what is required of the person subject to the direction, sets out the appropriate warnings and contains important information about the screening and assessment process.
19. If it is not practicable to complete Form IDC1 at the time a direction is issued then the direction and appropriate warnings can be given orally. An oral direction must be followed by issuing a completed Form IDC1 as soon as practicable thereafter.

## 5. Keeping People Pending Screening

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20. Regulation 8 allows for police officers and immigration officers to keep a person at a specified place pending screening and assessment. This power can be used where a police officer or immigration officer has reasonable grounds to suspect that the person is potentially infectious.
21. The power to keep a person is intended for use where it is not practicable for a person to be subject immediately to screening and assessment due to the circumstances – such as the availability of medical officers and resources or the location of the person.
22. In the first instance a person should be asked to voluntarily remain at the specified place until screening and assessment can be undertaken. Where a person refuses to remain at the specified place to wait for screening and assessment then they can be kept there by a police officer or immigration officer until a medical officer is able to undertake screening and assessment. **Form IDC2** should be issued to the person.
23. The time periods for which a person may be kept are as follows:
  - (a) A police officer may keep a person for a period not exceeding **24 hours**.
  - (b) An immigration officer may keep a person for a period not exceeding **3 hours**.
24. This period may be extended if it is not reasonably practicable for a medical officer to undertake screening and assessment within the initial time periods. In the case of a police officer the period can be extended by a further 24 hours (total maximum 48 hours). In the case of an immigration officer the period can be extended by a further 9 hours (total maximum 12 hours).
25. An extension must be authorised by an officer of appropriate rank. In the case of a police officer the extension must be authorised by a police officer of the rank of Sergeant or above. In the case of an immigration officer the extension must be authorised by the Principal Immigration Officer or the Collector of Customs.
26. A person should only be kept at a specified place where it is necessary and proportionate:
  - (a) in the interests of the person being made subject to the direction; or
  - (b) for the protection of other people; or
  - (c) for the maintenance of public health.
27. A person who is kept under regulation 8 must be provided with the following information:
  - (a) the reason for keeping them;
  - (b) the maximum period for which they may be required to remain;
  - (c) their right to consult a legal representative; and
  - (d) that it is a criminal offence to abscond.

## 6. Screening and Assessment

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28. Where a person is at a place suitable for screening and assessment and a medical officer has reasonable grounds to suspect that the person is potentially infectious then the medical officer can use the powers set out in regulation 7 to undertake screening and assessment.
29. A person should only be subject to screening and assessment requirements where they are necessary and proportionate:
  - (a) in the interests of the person being made subject to screening and assessment; or
  - (b) for the protection of other people; or
  - (c) for the maintenance of public health.
30. As part of the screening and assessment a medical officer can impose any requirement necessary and proportionate for the purposes of the screening and assessment and can require a person to provide a biological sample or allow an authorised sample officer to take a sample by appropriate means.
31. A person can also be required to provide any information considered necessary for screening and assessment such as their medical history, travel history and history of contact with other people.
32. A person can be required to produce documents and provide contact details so that contact can be maintained once the screening and assessment is completed.
33. A person can also be directed to attend another specified place for the purposes of screening and assessment if necessary.
34. A person can be kept at a specified place for a period not exceeding 48 hours for the purposes of screening and assessment. This is in addition to any period for which they may have been kept by a police officer or immigration officer pending screening and assessment.
35. A person who is required to remain at a specified place for the purposes of screening and assessment under regulation 7 must be provided with the following information:
  - (a) the reason for requiring them to remain;
  - (b) the maximum period for which they may be required to remain;
  - (c) their right to consult a legal representative; and
  - (d) that it is a criminal offence not to comply.
36. If **Form IDC1** or **Form IDC2** has been issued then this information will be contained on the form. If for any reason these forms have yet to be issued then the person must be orally informed of this information and the information should be provided in writing on forms IDC1 and IDC2 as soon as is reasonably practicable.

## 7. Imposing Requirements and Restrictions

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37. Where a person has been screened and assessed by a medical officer and:
- (a) the screening confirmed that the person is infected or contaminated with coronavirus; or
  - (b) the screening was inconclusive; or
  - (c) a medical officer has reasonable grounds to suspect that the person is potentially infectious-
- requirements and restrictions can be placed on the person by a medical officer in accordance with regulation 9.
38. Requirements and restrictions must only be imposed where it is necessary and proportionate:
- (a) in the interests of the person being made subject to them; or
  - (b) for the protection of other people; or
  - (c) for the maintenance of public health.
39. Requirements may include but are not limited to:
- (a) providing information to the medical officer or to any specified person;
  - (b) providing details by which the person may be contacted during a specified period;
  - (c) attending a specified place for the purpose of screening and assessment;
  - (d) remaining at a specified place for a specified period; and
  - (e) remaining at a specified place in isolation from others for a specified period.
40. Restrictions may include but are not limited to:
- (a) restrictions on movements or travel (within or outside the Falkland Islands);
  - (b) restrictions on activities (including their work or business activities); and
  - (c) restrictions on contact with other persons or with other specified persons.
41. A person who is made subject to requirements or restrictions must be provided with the following information:
- (a) the reason for doing so;
  - (b) their right to consult a legal representative; and
  - (c) that it is a criminal offence to fail to comply.
42. Where a person is required to remain at a specified place or to remain in isolation from others for a specified period then the medical officer must have regard to the person's wellbeing and personal circumstances.

43. Requirements to remain and requirements to isolate will need to be carefully considered and tailored to individual circumstances. For example it is likely that a person will not be able to completely self-isolate due to living in a shared household. A balance must be carefully struck between achieving the public health aims of imposing requirements and ensuring that requirements are not unworkable or disproportionate.
44. There are strict time limits that apply in relation to the imposition of requirements to remain and/or isolate under regulations 9(3)(d) and (e) and restrictions under regulation 9(4). No requirement or restriction under these regulations can be imposed for a period exceeding 14 days. The reason for this is that such requirements and restrictions significantly impact upon the freedom of the person and a careful balance must be struck between the need to protect public health generally and the Constitutional rights of the individual.
45. **Form IDC3** should be used when imposing requirements and restrictions on a person. The form assists medical officers in making the requirements and restrictions clear as well as the time periods for which they are imposed. The form also includes the information that must be given to the person who is having the requirements and restrictions imposed upon them.

## 8. Revocation, Variation and Extension

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46. It is important to keep requirements and restrictions under review and to bring them to an end the moment that they are no longer necessary or proportionate.
47. Where requirements and restrictions have been imposed a medical officer may revoke, vary or extend the requirements and restrictions. Variations and extensions should only be made where it is necessary and proportionate to do so.
48. **Form IDC4** should be used to notify a person of variations and/or extensions.
49. Where a medical officer extends a requirement to remain or isolate imposed under regulation 9(3)(d) or (e), or extends a restriction imposed under regulation 9(4), the extension period must not exceed 14 days and must be reviewed every 24 hours to ensure that it remains reasonable and proportionate.

## 9. Appeals

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50. A person on whom a requirement or restriction has been imposed under regulation 9 may appeal to the Magistrates Court against a decision by the medical officer to impose the requirement or restriction or a decision to vary or extend a requirement or restriction.
51. On hearing an appeal the court may confirm the medical officer's decision, modify a requirement or restriction or quash the requirement or restriction.
52. **Form IDC4** sets out the right to appeal and the contact details of the court.

## 10. Children

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53. The powers contained in the Regulations can be used in relation to children as well as adults. For the purposes of the Regulations children are people under the age of 18 years.
54. In relation to children it is important that medical, police and immigration officers attempt to identify an individual who is responsible for the child. An individual has responsibility for a child if:
- (a) the individual has custody or charge of the child for the time being (but is not a person on whom powers are conferred by the Regulations); or
  - (b) if the individual has parental responsibility for the child.
55. People who have responsibility for a child must, so far as reasonably practicable, ensure that the child complies with any direction, instruction, requirement or restriction given to or imposed on the child and must provide to a person exercising a power under the Regulations such information and assistance in relation to the child as is reasonably necessary and practicable in the circumstances.
56. Where a child is made subject to screening and assessment or requirements or restrictions are imposed upon them then these powers may only be exercised in relation to the child in the presence of:
- (a) an individual who has responsibility for the child; or
  - (b) if the child is not accompanied by such an individual an adult (not being a person on whom powers are conferred under these Regulations) that the person exercising the power considers to be appropriate, having regard to any views of the child.
57. Children must be afforded reasonable opportunity to communicate with a parent or guardian. This is a Constitutional right and medical, police and immigration officers must be especially careful in safeguarding the child and promoting their welfare and interests.
58. If a child is not accompanied by an adult then every effort should be made to identify a person responsible for the child before directing a child to a specific place or imposing a restriction or requirement upon them. If such a person cannot be identified then the powers in the Regulations can still be used but all reasonable steps must still be pursued to identify a person responsible for the child as soon as practicable.
59. The right to appeal may be exercised by an individual who has responsibility for the child on the child's behalf.
60. When using powers in relation to children medical, police and immigration officers should make use of the modified versions of **Forms IDC1, IDC2, IDC3** and **IDC4** which contain extra information for people who are responsible for children.

# 11. Enforcement Powers

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61. For a transmission control period to be in force and the powers in the Regulations to be available to medical, police and immigration officers, the Governor must have declared that the coronavirus constitutes a serious and imminent threat to public health.
62. During a transmission control period people will undoubtedly feel scared and vulnerable. It may be the case that their loved ones have died or are seriously ill. Medical, police and immigration officers will have at the forefront of their minds the need to treat people compassionately and gently.
63. Wherever possible every effort should be made to have people comply with directions on a voluntary basis. The use of the powers set out in the Regulations should be a last resort. But it is also the case that medical, police and immigration officers have a duty to safeguard the population in general and to protect others and maintain public health.
64. The Regulations therefore contain powers that can be used to enforce directions, requirements and restrictions.
65. Medical, police and immigration officers can issue reasonable instructions to a person in connection with a power conferred on them by the Regulations. The officer issuing the instruction must give a reason for the instruction and if a person then fails to comply with the instruction they commit a criminal offence.
66. Police and immigration officers can use reasonable force, if necessary, in the exercise of a power conferred on them by the Regulations.
67. A police officer may enter any place for the purposes of exercising a power conferred on them by the Regulations.
68. It is a criminal offence to:
  - (a) Fail, without reasonable excuse, to comply with any direction, reasonable instruction, requirement or restriction.
  - (b) Fail, without reasonable excuse, to comply with a duty in relation to a child.
  - (c) Abscond, or attempt to abscond, from a specified place.
  - (d) Knowingly provide false or misleading information.
  - (e) Obstruct a person who is exercising or attempting to exercise a power conferred on them by the Regulations.
69. A person who commits a criminal offence under the Regulations can be prosecuted and if convicted they can be fined up to £1000 (level 3 on the standard scale).

# Document Control

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