



# COVID-19– Geldards Public Sector England Update

30<sup>th</sup> July 2020



# Local authorities and local lockdown

Tiffany Cloynes

Clare Hardy

# What we will cover

- Regulations
- Guidance
- Practical issues



# Need for local authority powers

- High levels of infection in some areas
- “Councils know their local communities best and how to address each unique outbreak” – James Jamieson, Chair, Local Government Association

# Regulations

- Health Protection (Coronavirus, Restrictions) (England) (No 3) Regulations 2020
- In force from 18 July 2020 to 17 January 2021

# Powers for directions

- Local authority may give a direction if it considers:
  - Direction responds to serious and imminent threat to public health
  - Direction is necessary to prevent, protecting against, control or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and
  - Actions proposed are proportionate
- Local authority must have regard to advice from director of public health

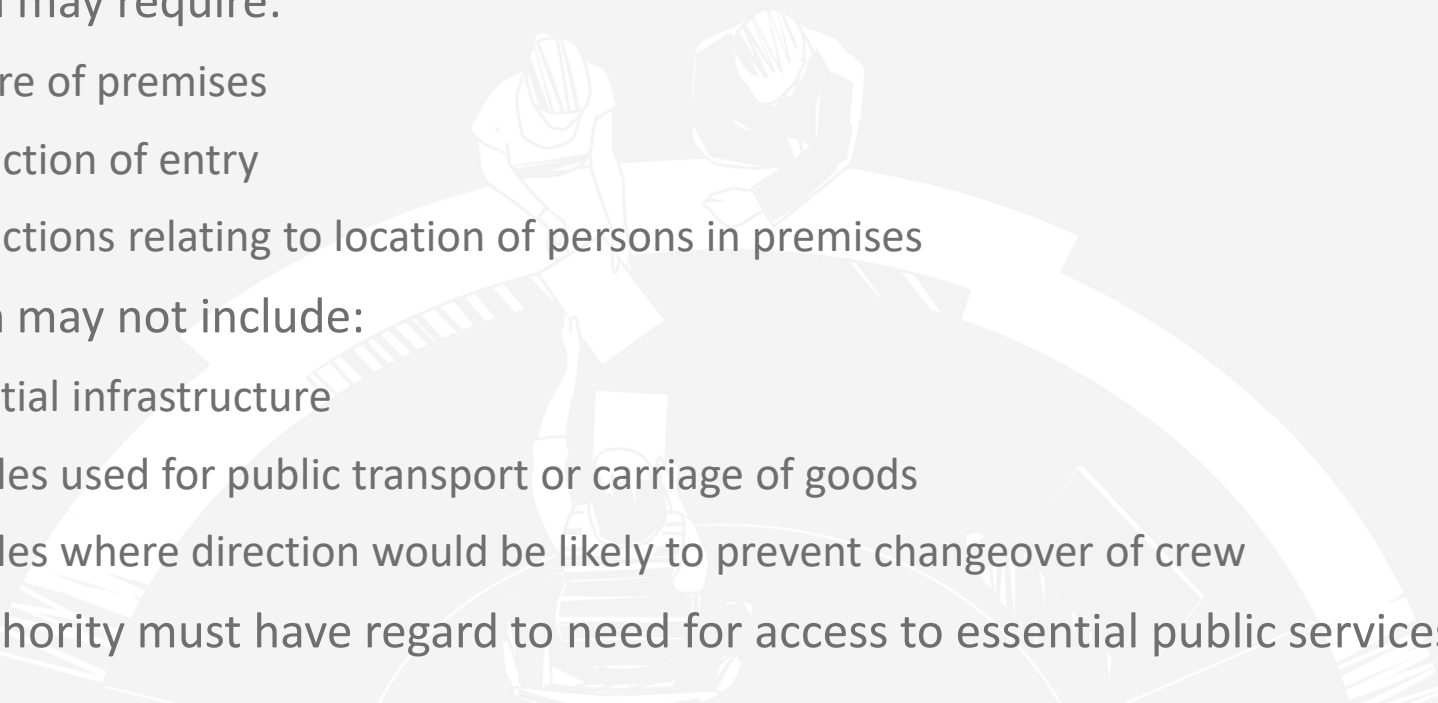
# Types of directions

- Directions may relate to:
  - Premises
  - Events
  - Public outdoor places





# Directions - Premises

- Direction may require:
    - Closure of premises
    - Restriction of entry
    - Restrictions relating to location of persons in premises
  - Direction may not include:
    - Essential infrastructure
    - Vehicles used for public transport or carriage of goods
    - Vehicles where direction would be likely to prevent changeover of crew
  - Local authority must have regard to need for access to essential public services and goods
- 



# Directions - Events

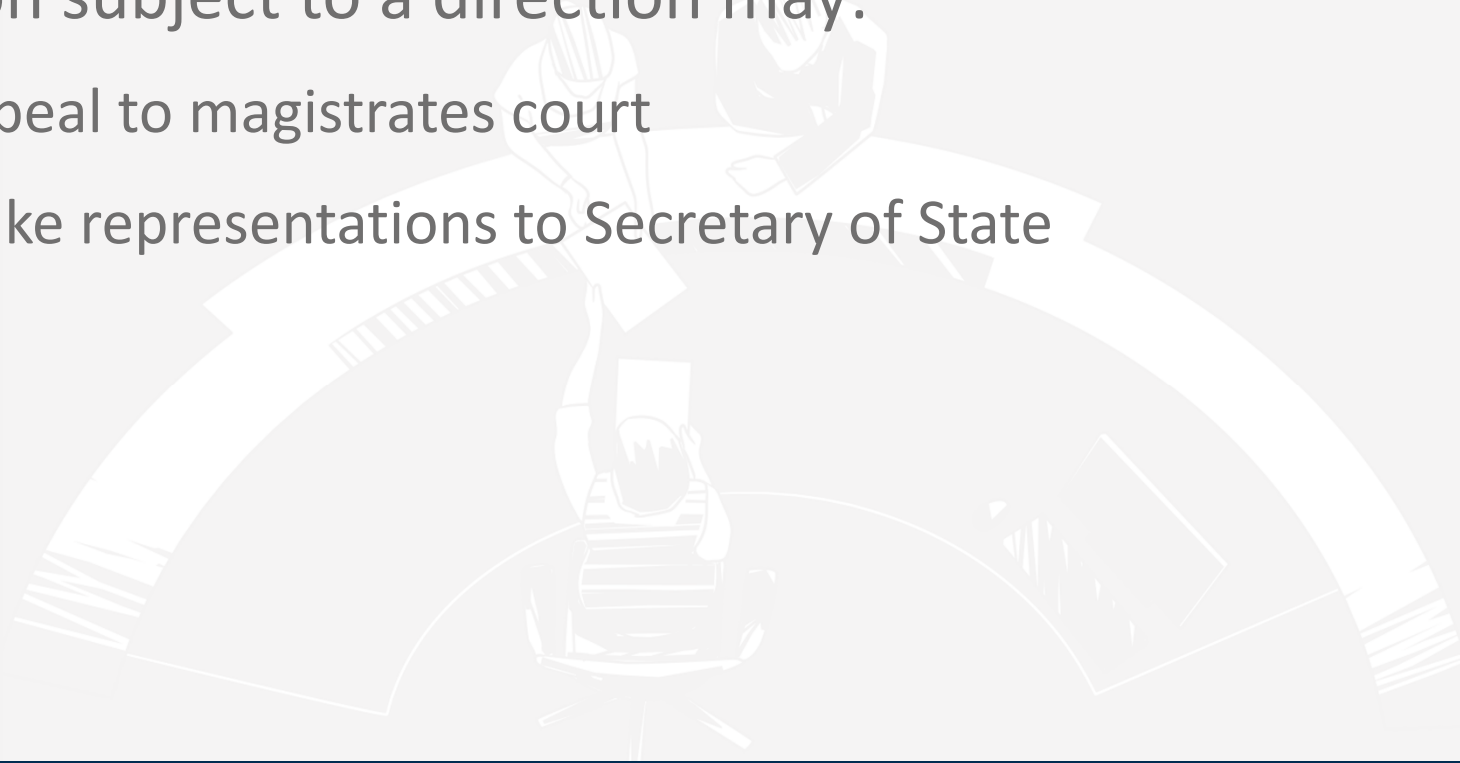
- Direction may impose prohibitions, requirements or restrictions relating to holding events
- Directions may describe events by reference to:
  - Number of people attending;
  - Requirement for medical or emergency services to attend;
  - In any other way

# Directions – Public outdoor places

- Direction may restrict access to specified public outdoor places or public outdoor places of specified descriptions
- Agreement of appropriate authority required for direction relating to a public outdoor place which forms part of Crown land and includes property to which section 73 of the Public Health (Control of Disease) Act 1984 applies
- Local authority and land owner and occupier must take reasonable steps to restrict access

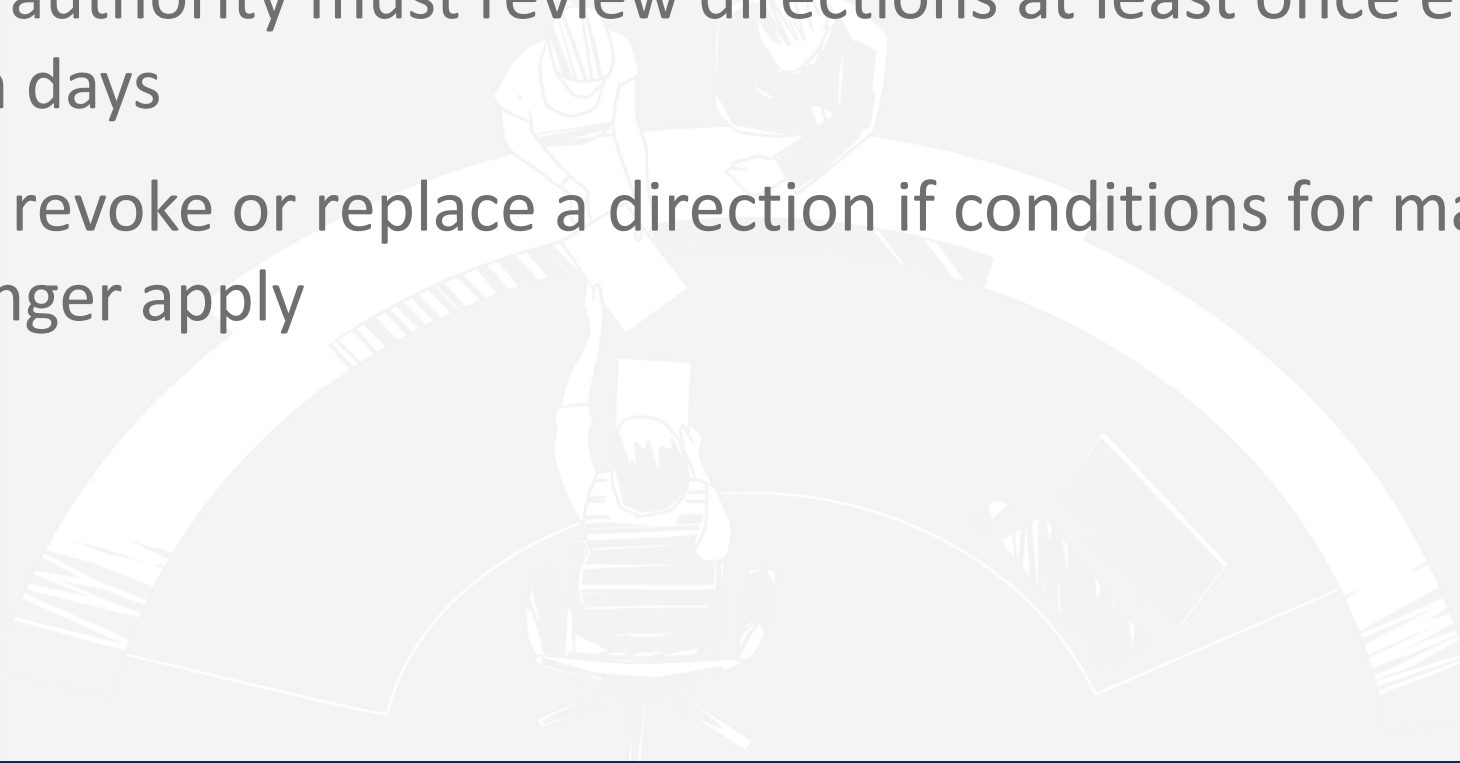
# Rights of appeal

- Person subject to a direction may:
  - Appeal to magistrates court
  - Make representations to Secretary of State



# Review of directions

- Local authority must review directions at least once every seven days
- Must revoke or replace a direction if conditions for making it no longer apply



# Notification of directions

- If a direction imposes a restriction, prohibition or restriction on person specified by name, local authority must:
  - Give notice in writing to that person and
  - Publish it as the local authority considers appropriate to bring it to the attention of other persons who may be affected
- Local authority must publish other notices:
  - On local authority's website and
  - As the local authority considers appropriate to bring it to the attention of other persons who may be affected

# Notification of directions

- Local authority must notify
  - Secretary of State
  - Local authorities for adjacent areas
  - London borough councils must notify all other London borough councils
  - County councils must notify district councils in their areas.
  - Local authorities whose area is adjacent to the area of a council in Scotland or a county or county borough council in Wales must notify those councils

# Powers of Secretary of State

- Secretary of State may require local authority to make a direction if Secretary of State considers:
  - Direction responds to serious and imminent threat to public health
  - Direction is necessary to prevent, protecting against, control or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and
  - Actions proposed are proportionate
- Secretary of State must direct local authority to revoke or replace a direction if conditions for making it no longer apply
- Secretary of State must consult Chief Medical Officer before giving or revoking direction



# Powers of County Councils

- County council may direct district council to exercise district council's functions in a specified way
- County council must consider this necessary and proportionate to prevent, protect against, delay or otherwise control incidence or spread of infection by coronavirus in district council's area
- County council must have regard to advice from director of public health

# Enforcement

- Local authority designated officers and police constables have enforcement powers
- Local authority designated officer may give prohibition notice if officer reasonably believes:
  - Person is contravening direction relating to premises or events and
  - Prohibition notice is necessary and proportionate

# Enforcement

- Constable who considers event is being held in contravention of a direction may:
  - Direct event to stop
  - Direct person to leave event
  - Remove person from event
  - Direct person to remove child
- Constable who considers person is in a public place in contravention of a direction may:
  - Direct person to leave
  - Remove person
  - Direct person to remove child
- Constable must consider action necessary and proportionate

# Offences

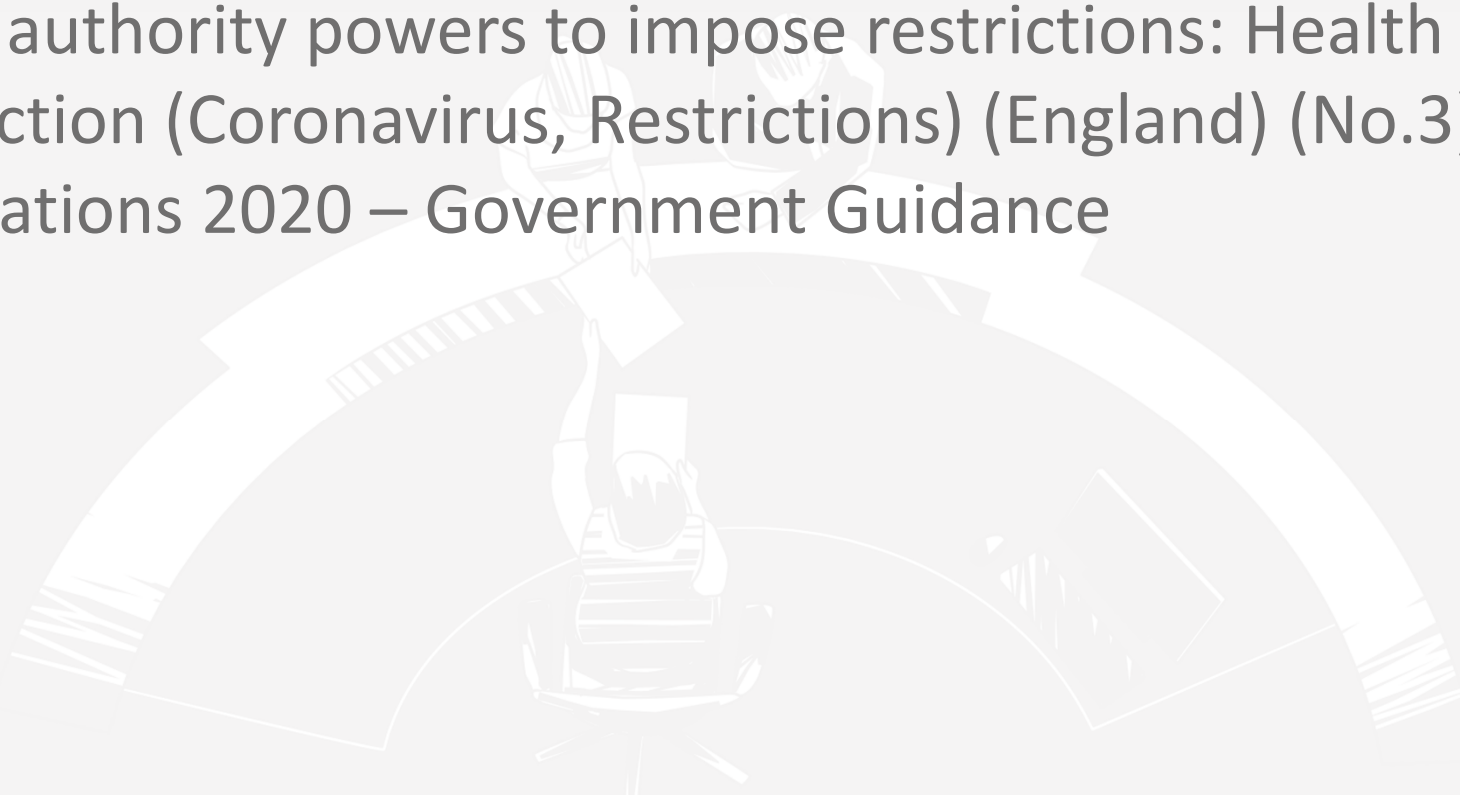
- Contravention of a direction
- Contravention of duty to take reasonable steps to prevent access to land in a public outdoor place subject to a direction
- Obstruction of a person carrying out a function under the regulations
- Contravention of enforcement direction, instruction or prohibition notice

# Offences

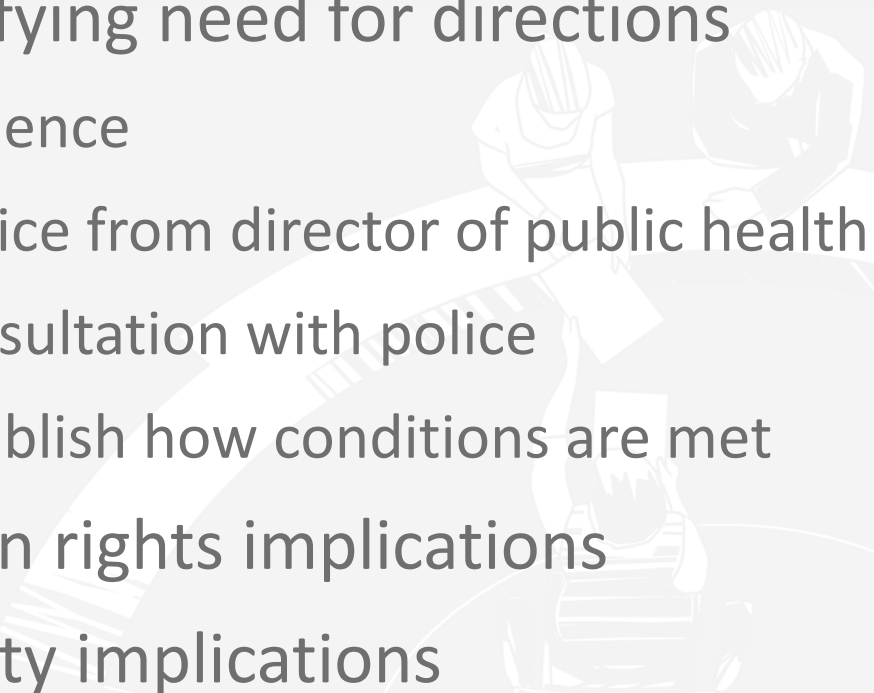
- Officer as well as body corporate may be convicted of offence if:
  - Offence committed with consent or connivance of officer or
  - Offence attributable to neglect by officer

# Guidance

- Local authority powers to impose restrictions: Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 – Government Guidance



# Practical issues

- Identifying need for directions
    - Evidence
    - Advice from director of public health
    - Consultation with police
    - Establish how conditions are met
  - Human rights implications
  - Equality implications
- 



# Practical Issues

- Regular review of directions
- Resources to monitor and enforce directions
- Designation of enforcement officers
- Impact of directions on local authority decisions, policies and strategies
- Impact of directions of other local authorities

# Contact details



**Tiffany Cloynes**  
Partner

+44 01332 378302  
Tiffany.cloynes@geldards.com



**Clare Hardy**  
Senior Associate

+44 029 2039 1766  
clare.hardy@geldards.com

**“First-class practice, known for its ‘stunning advice’”**

Client quote, Legal 500 – the world’s largest legal referral guide

# Any questions

