



College of
Policing

Working together
to prevent crime

Draft practice advice Coronavirus Act 2020 – Schedule 21

Powers relating to potentially infectious persons

Consultation September 2020

Contents

Introduction	3
Summary	3
Useful definitions	4
Roles and responsibilities	4
Constables	4
Superintendents (consent for extension)	6
Process	7
Powers exercisable after assessment.....	7
Offences	8
Important points to note	8

Introduction

The **Coronavirus Act briefing** covered the police application of powers to **direct and remove a person** to a place, under Schedule 21 of the Coronavirus Act 2020. This document provides clarity on powers to **keep a person** at a place for screening and assessment, under Schedule 21, and sets out what is detailed in the legislation. It acknowledges areas where there is room for interpretation or where there are gaps in terms of practical operational practice, and provides College of Policing advice on how forces may seek to address these areas.

Public Health England has also produced an advice document that may be useful to policing, which you can access [here](#). Extracts from public health documentation that officers may find of interest are set out as indented quotations.

Given the speed of response to the pandemic, it should be acknowledged that this advice is given in the absence of formal evidence but following public consultation.

Summary

Under Schedule 21 of the Coronavirus Act, a constable may – where they have reasonable grounds to suspect that someone is potentially infectious, and where it is necessary and proportionate to do so – direct, remove or keep a person at a place suitable for screening and assessment.

A person is deemed to be potentially infectious if either:

- they are – or may be – infected or contaminated with coronavirus, and there is a risk that they may infect or contaminate others
- they have been in an infected area, as declared by the Secretary of State online and in the London Gazette, within the past 14 days

(Please note that there is no current declared list of infected areas.)

While this is not covered in the legislation, the National Police Chiefs' Council (NPCC) Custody portfolio and Operation Talla have agreed that police custody is **not** a suitable place for screening and assessment in general. If a person is already in police custody and subsequently deemed potentially infectious, we recommend

consulting the PHO for advice on whether they should be removed elsewhere or screened and assessed in situ.

The Schedule states that a constable must consult a public health officer (PHO) ‘to the extent that it is practicable to do so’ prior to exercising these powers (para 7(5) in respect of direction and removal powers, para 13(8) in relation to keeping someone at a place). Advice from the relevant NPCC portfolios and Operation Talla states that these powers are only for use where a PHO has been consulted, or has asked for the assistance of the police. This advice is contained within the coronavirus briefing on the [College COVID-19 Hub](#). Police officers are not medically trained. Officers should only exercise these powers independently of a PHO in the most exceptional of circumstances.

Schedule 21 powers are designed to enable police officers to support PHOs. Partnership arrangements with Public Health England and collaborative decision-making are key to enforcing these provisions. Effective communication channels should be established locally.

Useful definitions

As defined by para 3(1) of Schedule 21 to the Act:

- **Assessment** means assessment of the measures that it would be appropriate to take in relation to the person to mitigate the risk that the person might infect or contaminate others with coronavirus.
- **Screening** means assessing the extent to which a person has been exposed to coronavirus, determining whether the person is infected or contaminated with coronavirus, and assessing the person's symptoms and state of health.

Roles and responsibilities

Constables

Under para 6(2)(c) a PHO can request a constable remove someone to a place suitable for screening and assessment. The PHO can only exercise their powers under this paragraph if they consider it necessary and proportionate to do so:

- in the interests of the person **or**

- for the protection of other people **or**
- for the maintenance of public health

Under para 7 a constable may direct or remove someone they believe to be potentially infectious to a place suitable for screening and assessment. They may only use these powers when they consider it is necessary and proportionate to do so, as above (the same criteria apply as for PHOs). If a constable uses these powers they are under a duty to explain to the person concerned:

- The reason for directing or removing them, and
- That it is an offence:
 - to fail, without reasonable excuse, to comply with a direction, or
 - where they have been removed, to abscond

We advise constables to record the grounds on which they are satisfied that these criteria are met.

Under para 13 of Schedule 21, a constable may keep a person at a place for an initial period of up to 24 hours, until a PHO can exercise the screening and assessment functions in paras 9 to 11 in relation to that person, as long as:

- the constable has reasonable grounds to suspect that the person is potentially infectious
- the person is at a place suitable for screening and assessment

Where a person is kept at a place for screening and assessment, a constable must inform them:

- of the reason for keeping them at the relevant place
- of the maximum period for which they may be kept
- that it is an offence to abscond

Constables must confirm that para 13(8) (to keep someone at a place) or para 7(5) (to direct or remove someone) – as quoted below – has been satisfied, either by confirming that a PHO has been consulted or by detailing the reasons why consultation was not practicable.

'An immigration officer or constable must, before exercising the powers conferred by this paragraph, consult a public health officer to the extent that it is practicable to do so.'

Ancillary powers (para 20) give officers the right to **issue reasonable instructions** in connection with a direction given to the person under Part 2 of the Schedule (PHOs, constables and immigration officers), or in connection with removing a person to – or keeping them at – a place that is suitable for screening and assessment. Legislation specifies that an officer must explain the reason for the instruction and that it is an offence to fail to comply with it. The power to **remove a person** to a place includes a power to keep the person there for a reasonable period pending their removal.

A constable may use **reasonable force** in the exercise of a power conferred by Part 2 of Schedule 21 (all of the powers in this advice).

A constable may also **enter any place** for the purpose of exercising any power conferred by Part 2 of Schedule 21 (all powers relating to people who are potentially infectious).

Superintendents - consent for extension

A constable may extend, with the consent of a superintendent or above, the period for which a person is kept at the screening and assessment place for a further 24 hours. A constable may only do this if they believe it is necessary to extend the period because it is not reasonably practicable for a PHO to exercise the functions under para 9 to 11 before the end of that period. The extension must be necessary and proportionate:

- in the interests of the person **or**
- for the protection of other people **or**
- for the maintenance of public health

Where a person is kept at a place for screening and assessment, a constable must inform them:

- of the reason for keeping them at the relevant place
- of the maximum period for which they may be kept

- that it is an offence to abscond

Process

The Schedule does not specify how the process for keeping a person ‘at a place’ etc. should be conducted. We advise a risk-aware approach, ensuring that the person being detained fully understands the reasons and legal basis for their detention. Support of an independent person may be necessary to ensure that the person fully understands the process. If the person requests legal advice the police officers involved should do what they can to facilitate it.

The Act does not specifically state that personal attendance of the Superintendent is necessary for the purpose of issuing an extension. The officer who is keeping the person at a place for screening and assessment at the point where extension is considered necessary should be the one making the decision and requesting consent from the Superintendent. When the officer has consent they can issue the extension and should explain to the person the reasons for the extension.

We advise careful recording of all steps in the process, particularly the grounds on which the PHO and/or officer feels the extension is necessary and proportionate in the circumstances – including why the screening and assessment could not be completed within the first 24 hour period.

Powers exercisable after assessment

Under the Act, the PHO can impose restrictions and requirements on a person if, after screening and assessment:

- the screening confirms that the person is infected or contaminated with coronavirus **or**
- the screening is inconclusive **or**
- the PHO has reasonable grounds after assessment to suspect that the person is potentially infectious

Any requirement to remain at a place (para 14(3)(d) or (e)) may be enforced by a constable. The requirement may be enforced by:

- removing the person to the place

- keeping the person at the place
- taking the person into custody if they abscond, and returning them to that place or another place that a PHO may specify

A person may appeal against a restriction or requirement to a magistrates' court.

Offences

Under paragraph 23(1), a person commits an offence if the person:

- fails without reasonable excuse to comply with any direction, reasonable instruction, requirement or restriction given under Part 2 of the Schedule
- has responsibility for a child and fails, without reasonable excuse, to comply with a duty under paragraph 18(1) or (2)
- absconds or attempts to abscond while being removed to or kept at a place under Part 2 of the Schedule
- knowingly provides false or misleading information in response to a requirement to provide information under Part 2 of the Schedule
- obstructs a person who is exercising, or attempting to exercise, a power conferred under Part 2 of the Schedule

A person guilty of an offence under paragraph 23(1) is liable on summary conviction to a fine.

Important points to note

- The person being kept at a relevant place is **not** under arrest, so the Police and Criminal Evidence Act 1984 (PACE) does not apply.
- If the person is already under arrest and at a police station and is subsequently deemed potentially infectious, consult with a PHO regarding the best course of action. If it is necessary for them to be removed to a place suitable for assessment and screening, in the absence of specific instruction within the Schedule itself, we suggest applying the normal PACE rules regarding removal to hospital. (Note – the slight difference in terminology, as 'a place' may not necessarily be a hospital or medical facility).

- The ability of a person to understand what is happening, and what they are being told, will depend on the person's individual needs and any safeguarding requirements. The constable may need support to ensure that the person understands what is happening. We recommend documenting any steps that are taken to assist the person.
- The legislation does not specify when the period that a person is being kept for will start. We advise policing to adopt the following approach, given in Public Health England's advice to PHOs.

'The 48-hour period starts from the time the person is removed to, or arrives at, a place suitable for screening and assessment.'

- Para 20(4) provides that a constable may use reasonable force, if necessary, in the exercise of a power conferred by Part 2 of Schedule 21.
- Arrangements for accessing local public health teams are available from the gov.uk website [here](#).
- Definitions of proportionate and necessary.

The Act does not define these terms. Under Schedule 21 'proportionality' and 'necessity' need to be considered in a medical context and from the perspective of protecting the public. It is not directly comparable to the usual police application of necessity and proportionality. It may assist policing to note that Public Health England and the Department for Health and Social Care in their advice to PHOs have attempted to define the 'Proportionality Principle' as follows:

'9.3 The specific paragraphs of the guidance above explain the importance of and need to take a proportionate approach in decisions made under Schedule 21, Parts 1 and 2. In particular, when exercising these powers, consideration should be given to whether less invasive means could be used to secure the desired outcome, whether the restriction or requirement has any counterproductive outcomes, and whether it is necessary given the wider context of public health guidance. A PHO should ask themselves whether the same advice would be given to all individuals presenting with a similar risk profile. If not, they

should question whether an approach should be taken which is in line with those other cases.’

This further highlights the importance of officers engaging with PHO’s prior to exercising these powers. We advise police officers fully document these interactions.

See: **Guidance for public health officers – potentially infectious persons**

- We recommend agreeing and documenting, at the outset, who is primarily in charge of keeping someone at the place for screening and assessment. The Home Office has suggested that when a police constable is supporting a PHO or enforcing requirements made by a PHO, the PHO would be in charge.

In the exceptional circumstance where a constable is in a situation where they make the decision to exercise the powers, pending the arrival of a PHO, then the constable would be in charge until a PHO arrives.

If there is any doubt, we recommend agreeing the lead agency with the PHO – as well as who the primary agency is in terms of welfare and the management of vulnerabilities – when making the initial referral. Constables are encouraged to document these discussions and their decision-making process.

- Special provisions have been made for children (para 18). The power to direct a child to go to a place may also be exercised by directing a person with responsibility for the child to take them.

We cannot impress on officers strongly enough that these powers are for use in conjunction with Public Health Officers. If police officers come across someone in the community who is suspected to have coronavirus, a PHO should either be directing officers or giving them advice before action. We do not envisage officers acting without their express request or advice unless absolutely necessary.

About the College

We're the professional body for the police service in England and Wales.

Working together with everyone in policing, we share the skills and knowledge officers and staff need to prevent crime and keep people safe.

We set the standards in policing to build and preserve public trust and we help those in policing develop the expertise needed to meet the demands of today and prepare for the challenges of the future.

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