

## Decision of the Chief Executive

24 July 2020

**Present:** David Stevens – Chief Executive  
Director of Law and Governance & Monitoring Officer

**Officers:** Nicola Plant – Prevention and Protection Directorate

### Declarations of Interest

No declarations of interest were made

### Decision in relation to : The Health Protection (Coronavirus, Restrictions) (No 3) (England) Regulations 2020

The Chief Executive, acting in accordance with his delegated authority **Agreed** that:-

1. That the Director of Prevention and Protection (or his nominee) is granted delegated authority to exercise the statutory provisions of the Health Protection (Coronavirus, Restrictions) (No.3) (England) Regulations 2020.
2. That the Director of Law and Governance and the Monitoring Officer be granted delegated authority to commence any proceedings required in line with the Regulations.

### Reason for Decision

These new powers came into force on the 18th July 2020 as part of the continued national response to the COVID-19 Coronavirus. It is for the Council's Head of Paid Service to authorise officers to act in order that the Council can be compliant with the statutory provisions.

### Alternative Options considered and discounted

None, the Council is required to appoint in accordance with the legislation.

### Signature




Chief Executive

24 July 2020



## DELEGATED DECISION REPORT

**Date of Decision 24 July 2020**

<b>Subject:</b>	The Health Protection (Coronavirus, Restrictions) (No 3) (England) Regulations 2020
<b>Decision to be taken by</b>	David Stevens, Chief Executive
<b>Lead Director:</b>	Director of Prevention and Protection/ Director of Public Health
<b>Date of Decision</b>	24 July 2020
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Nicola Plant
<b>Key Decision</b>	No
<b>Reason for Urgency</b>	To ensure that the Council is able to act in compliance with the latest new regulations
<b>Exempt Information Ref:</b>	
<b>Scrutiny Consultation</b>	Not required
<b>Lead Officer</b>	Nicola Plant

## **DECISION RECOMMENDATIONS**

1. That the Director of Prevention and Protection (or his nominee) is granted delegated authority to exercise the statutory provisions of the Health Protection (Coronavirus, Restrictions) (No.3) (England) Regulations 2020
2. That the Director of Law and Governance and the Monitoring Officer be granted delegated authority to commence any proceedings required in line with the Regulations

### **1 REASONS FOR RECOMMENDATIONS**

These new powers came into force on the 18th July 2020 as part of the continued national response to the COVID-19 Coronavirus. It is for the Council's Head of Paid Service to authorise officers to act in order that the Council can be compliant with the statutory provisions.

### **2 ALTERNATIVE OPTIONS**

None, the Council is required to appoint in accordance with the legislation

### **3 PURPOSE OF THE REPORT**

To seek delegated authority to authorise officers to act in accordance with The Health Protection (Coronavirus, Restrictions) (No 3) (England) Regulations 2020 which came into force on the 18<sup>th</sup> July 2020.

### **4 IMPLICATION FOR VISION 2030**

None associated with this report.

### **5 BACKGROUND AND MAIN CONSIDERATIONS**

These Regulations came into force on the 18<sup>th</sup> July 2020. They do not seek to revoke any previous regulations associated with the coronavirus pandemic but they offer a suite of new powers specifically to enable local authorities to deal with serious and imminent risk to public health by way of orders ("directions") regulating access to and occupation of premises, events and public outdoor places and gives power to prosecute those who do not comply with such orders. The orders can be appealed to the Magistrates Court.

There was doubt expressed as to whether the Government Designations issued under the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 by the Secretary of State for Health and Care on the 16<sup>th</sup> June 2020 covered Metropolitan Borough Councils. It has been established that legally these bodies were created as “Metropolitan District Councils” under the Local Government Act 1972 and legally remain “District Councils” (Metropolitan ones) and are unitary by virtue of the abolition of West Midlands County Council in 1985. Like Borough Councils (also “District Councils”) they became “Boroughs” by Royal Charter. In summary therefore there is no doubt that the Council has the power to enforce these regulations; indeed it is a unitary (ie the only) authority.

## 6 THE REGULATIONS

On 18<sup>th</sup> July 2020 regulations came into force to grant local authorities new powers to respond to a serious and imminent threat to public health and to prevent COVID 19 (“Coronavirus”) transmission in a local authority area where this is necessary and proportionate to manage the spread of coronavirus in their area. These powers include the powers to:-

- Restrict access to, or close individual premises
- Prohibit certain events (or types of event) from taking place
- Restrict access to, or close, public outdoor places (or types of outdoor Public places)

To make a direction under these regulations the authority must be satisfied that the following 3 conditions are met:

1. The direction responds to a serious and imminent threat to public health in the local authority's area and

2. The direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in the local authority's area of coronavirus and

3. The prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose .

The local authority must then notify the Secretary of State as soon as is reasonably practicable after the direction is given and keep the decision under review every 7 days with the option to continue, revoke or modify.

At all times the authority must have regard to advice given by its Director of Public health (Regulation 2).

The Secretary of State can effectively assume the above powers and tell the authority to implement them. They must consult with their Chief Medical Officer, or Deputy Chief Medical Officers without prejudice to their powers under Section 71 of the Public Health (Control of Disease) Act 1984. (Regulation 3).

The authority may close, restrict entry to or regulate the location of persons in premises subject to certain restrictions and can include regulating the number of people, the purpose for, and the facilities within the premises the premises. It must give advanced notice to the business and owners/occupiers of the premises of the intention to serve the direction (Regulation 4).

The authority may impose prohibitions, requirements or restrictions on an event with reference to the number of people attending the event, medical or emergency services or any other way on the owner or occupier of the premises, the event organiser or any other person involved in the event. It must give advanced notice to the business and owners/occupiers of the intention to serve the direction (Regulation 5)

The authority may impose prohibitions, requirements or restrictions in relation to access to specific public outdoor places in its area or public outdoor places in its area of a specified description precise enough to enable its boundaries to be determined. It must give advanced notice to the business and owners/occupiers or persons responsible for the outdoor area of the intention to serve the direction (Regulation 6) and must take reasonable steps to prevent or restrict or prevent public access to the above places (Regulation 7) subject to certain exceptions such as eg emergency, access to residence and to fulfil legal obligation or necessity for work

All such directions will need to be drawn up by way of a formal order; All are appealable by those affected to the Magistrates Court. If the authority acts on the order of the Secretary of State, they become joint respondents with the authority before the Magistrate Court (quite possibly a District Judge)

The authority is required to publish notice of its directions directly to those affected as described and publish it on its website and notify neighbouring authorities .(Regulations 10 and 11)

A Constable or authorised Council Officer may take such action “as is necessary” to enforce a direction order. A local authority officer can issue a prohibition notice; A constable can remove persons from events or public places and direct events/gatherings to cease. (Regulation 12).

Regulation 13 creates summary offences punishable by “a fine, (level unspecified) which basically deal with those who fail to comply wholly or partly with the terms of a direction order. Defendants can include Companies and their directors in person. It should be noted that for the purposes of these specific regulations the authority is named with the Crown Prosecution Service as a prosecution authority for the purposes of these regulations. (Regulation 15)

Regulation 14 provides for authorised officers of the authority to deal with the main offences for failing to comply with a premises, event or public space direction order by way of fixed penalty as an alternative to prosecution.

Regulation 16 provides that any person designated by the Secretary of State or Local Authority for the purpose of regulation 9(3) (b) of the Health Protection (Coronavirus, Restrictions) (No 2) (England) Regulations 2020 is to be treated as if they were designated by the Secretary of State or Local Authority respectively under Regulation 14(3) of these regulations.

It should be noted for these purposes that the Director of Prevention and Protection and the Director of Law and Governance and Monitoring officer were granted delegated authority to exercise the statutory provisions of the original Health Protection (Coronavirus, Restrictions) (England) Regulation 2020 on 2<sup>nd</sup> April 2020 by the Chief Executive. A similar recommendation is made in a separate delegated decision report dealing with the recent Health Protection (Coronavirus Restrictions) (No 2) (England) Regulations 2020. So with Regulation 16 in mind it is recommended that those same officers be given identical powers by the Chief Executive as regards these regulations with the requirement that in exercising those powers they must take into account advice given by the Director of Public Health.

By virtue of Regulation 19 these regulations expire at midnight on 17<sup>th</sup> January 2021.

## **7 ROLE OF THE LOCAL AUTHORITY**

On the 18<sup>th</sup> March 2020 the Emergency Committee Council Function enabled the Chief Executive in consultation with the Chair of the Emergency Committee (or nominees in their absence) to amend the scheme of delegation to officers in response to the Coronavirus Pandemic. In response delegations as outlined above were made on 2<sup>nd</sup> April by the Chief Executive under delegated powers. It is recommended those same delegations remain for The Health Protection (Coronavirus, Restrictions) (England) (No 2) Regulations and (No 3) Regulations. The authority is centrally involved in implementation of the latest regulations.

It is proposed that identical authority be given in relation to these regulations to facilitate enforcement, and for such authority to cover for future substantially similar regulations should these regulations be amended or revoked.

## 8 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

Attention should be paid to the Department of Health and Social Care Statutory Guidance published on 17<sup>th</sup> July 2020 the day before the regulations came into force. It very much focuses on consultation and says “before making a direction, local authorities will need to gather sufficient evidence to demonstrate that these tests have been met. This evidence may come from a range of sources , including information provided to the local authority from local experts, through the Local Resilience Forum,from NHS Test and Trace (including the Joint Biosecurity Centre (JBC) ,from Public Health England and other sources.A local authority must consult with the director of public health ,and assess whether the condotions for taking action have been met. It must have regard to any advice given to it prior to issuing a direction ,or to revoke such a direction.”It continues

“A local authority shall also consult with the Police prior to issuing a direction and any neighbouring police forces if the direction prohibits ,requires or restricts access to a premise,event or public outdoor space that is sited against a Local Resilience Forum boundary.Local Authorities should be clear about why they are taking directive action and communicate the reasons to all concerned,including the secretary of state”

## 9 STRATEGIC RESOURCE IMPLIATIONS

None associated with this report

## 10 LEGAL AND GOVERNANCE CONSIDERATIONS

As an operational issue the officer(s) with delegated authority can authorise others to carry out the requirements of the regulations. Some legal practicalities need to be noted. If the authority issues a direction it can be challenged in the Magistrates Court. The authority are at risk on costs if they are in any way deemed to have acted unreasonably. So whilst the seriousness of the pandemic is clearly the driver for the introduction of these regulations a degree of circumspection in implementing the powers is advisable. Businesses who are closed may have business interruption insurance products. Who might fund legal advice. We will be required to demonstrate the quite exacting tests in regulation 2 on the balance of probabilities. We might be expected to issue a direction order as a last resort when other attempts at resolution have failed.

The information gathering exercise might involve the sharing of sensitive information. The GDPR implications should be checked.

The closure of a business is a considerable step and possibly consideration might be given as to whether this is a step to be taken under delegated powers. For example in “normal times” no officer is currently permitted to revoke a Private Hire Operators Licence. It is understood that remains the case due to possible impact on economic wellbeing.

## **11 EQUALITY IMPACT ASSESSMENT**

The establishment of processes and procedures in accordance with the regulations, will ensure the equitable application of all any associated powers.

Specifically the guidance referred to above comments “prior to issuing a direction local authorities must have regard to the Public Sector Equality Duty (PSED) as set out in the Equalities Act 2010 Section 149 and should consider carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics. Identifying disproportionate impact would not prohibit a local authority from taking action ,but this should be balanced the wider public health risk in the local authority`s area,and mitigations should be considered and implemented wherever possible”.

## **12 DATA PROTECTION IMPACT ASSESSMENT**

The Data Protection Act 2018 and the General Data Protection Regulations 2018 should be given consideration in the context of sharing what might be sensitive information , along with any information sharing protocols.

## **13 CRIME AND DISORDER RISK ASSESSMENT**

None associated with this report

## **14 SUSTAINABILITY OF PROPOSALS**

These measures are proposed to be implemented until 17<sup>th</sup> January 2021 as things stand



**15 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)**

Non-compliance with all government guidance and legislation in relation to the coronavirus has significant damaging ramifications for the health and wellbeing of the local population. It is appropriate for the council to act in the best interests of its citizens

**16 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND**

The Council is a landowner but as a matter of law cannot serve a directions order on itself .As the authority responsible for enforcing these regulations it need not be said that we would of our own volition be responsible for circumstances leading to the need for a directions order to be served.

**17. BACKGROUND PAPERS**

<https://www.legislation.gov.uk/uksi/2020/750/made> (For Regulations)  
<https://www.legislation.gov.uk/uksi/coronavirus-taxon> (for Guidance)

**18. APPENDICES**

None

**Neil Cox**  
**Prevention and Protection**