

Portfolio Holder Decisions/Leader Decisions

Date: Thursday 17 December 2020
Time: 12.00 pm

Membership

Councillor Izzi Seccombe

Items on the agenda: -

1. Coronavirus - Delegated powers

3 - 16

Monica Fogarty
Chief Executive
Warwickshire County Council
Shire Hall, Warwick

Disclaimers

Disclosures of Pecuniary and Non-Pecuniary Interests

Members are required to register their disclosable pecuniary interests within 28 days of their election of appointment to the Council. A member attending a meeting where a matter arises in which s/he has a disclosable pecuniary interest must (unless s/he has a dispensation):

- Declare the interest if s/he has not already registered it
- Not participate in any discussion or vote
- Must leave the meeting room until the matter has been dealt with
- Give written notice of any unregistered interest to the Monitoring Officer within 28 days of the meeting

Non-pecuniary interests must still be declared in accordance with the Code of Conduct.

These should be declared at the commencement of the meeting

The public reports referred to are available on the Warwickshire Web

<https://democracy.warwickshire.gov.uk/uuCoverPage.aspx?bcr=1>

Public Speaking

Any member of the public who is resident or working in Warwickshire, or who is in receipt of services from the Council, may speak at the meeting for up to three minutes on any matter within the remit of the Committee. This can be in the form of a statement or a question. If you wish to speak please notify Democratic Services in writing at least two working days before the meeting. You should give your name and address and the subject upon which you wish to speak. Full details of the public speaking scheme are set out in the Council's Standing Orders.

Proposed Decision to be made by the Leader on or after 17 December 2020 Delegation of Coronavirus Powers

Portfolio Holder	Leader
Date of decision	17 December 2020
	Signed

Decision taken

The Leader is recommended to make the delegations of functions relating to Coronavirus set out in Appendix 1 to this report.

Reasons for decision

This report proposes delegations of functions conferred on the County Council for the purpose of assisting in the public health response to Coronavirus. The proposed delegations consolidate the delegations previously made; make further delegations necessitated by the regulations which came into effect on 2 December 2020 re-introducing a three-tier regime; and provide for the automatic delegation of any future legislation conferring similar functions on the County Council. These delegations are necessary so that our officers can play their part in providing a swift and effective response to the pandemic.

Background information

1.0 Introduction

- 1.1 The Leader has previously delegated functions of the County Council conferred by regulations made under the Public Health (Control of Disease) Act 1984 on three occasions in March, July and October. These delegations dealt with 10 sets of regulations, compounded by various revocations and amendments.
- 1.2 The Government has now issued the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (“the Tier Regulations”) and the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 (“the Enforcement Regulations”). The Tier Regulations impose restrictions and requirements, graded into three tiers, on gatherings of two or more people

and on businesses but have abandoned the restrictions on travelling outside the home which appeared in earlier regulations. The Enforcement Regulations enhance local authority enforcement powers as well as making a number of amendments to update and correct drafting errors in earlier regulations.

- 1.3 The new regulations took effect from 2 December. The Secretary of State must review the allocation of tiers by 16 December and must review the need for the Tier Regulations by 30 December and every 28 days thereafter. The Tier Regulations are due to expire on 2 February 2021 and the Enforcement Regulations are due to expire on 2 June 2021.
- 1.4 Appendix 2 lists all the regulations which continue to have substantive effect and what functions they confer on local authorities. They are all made under powers in the 1984 Act which allow the Secretary of State to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination.
- 1.5 The regulations to date deal with the following matters:
 - the purposes for which a person may leave home
 - gatherings of two or more people
 - the opening of businesses
 - management of customers within businesses
 - collection of contact details by businesses
 - self-isolation following a positive test.
- 1.6 The matters listed in paragraph 1.5 involve restrictions and requirements decided upon by central Government. In addition to these nationally determined restrictions, the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (“the No 3 Regulations”) empower the County Council to give local directions imposing further prohibitions, requirements or restrictions in relation to (a) access to individual premises (b) access to an individual outdoor public place or to types of outdoor public places and (c) in relation to the holding of an individual event or types of event.
- 1.7 The County Council has been given powers to enforce the regulations (with a particular focus on the restrictions and requirements relating to businesses) and any directions. These include:
 - taking reasonable steps to restrict access to places which are subject to a direction
 - taking such action as is necessary to enforce restrictions on businesses
 - issuing prohibition notices to businesses breaching restrictions
 - issuing Coronavirus Improvement and Restriction Notices
 - issuing Fixed Penalty Notices to individuals and people running businesses
 - prosecuting certain offences under the regulations
 - powers of entry under the 1984 Act.
- 1.8 Coronavirus Improvement and Restriction Notices are new powers introduced by the Enforcement Regulations. They can only be issued by a designated local authority officer. They must relate to breaches of restrictions and requirements on businesses and cannot be issued to ordinary members of the public who breach the rules on gatherings. An Improvement Notice requires the recipient to remedy a breach within a set time and, if the recipient does not comply, a Restriction Notice may be served requiring that premises be closed and/or that the breach be remedied. In a more urgent case, an Immediate Restriction Notice can be served without trying an Improvement Notice first. All forms of notice are time limited and there is provision for frequent reviews and appeals to a

Magistrates' Court. Failing to comply with a notice without a reasonable excuse is a criminal offence, putting the offender at risk of higher financial penalties than would otherwise be the case for a breach of the regulations, and gives rise to Police powers of arrest.

- 1.9 The Police have the same enforcement powers as the County Council, except that they cannot make local directions or issue Coronavirus Improvement and Restriction Notices. The Police also have additional powers where the use of force, crowd control or the authority of the uniform may be required and they have particular responsibility for enforcing the rules on gatherings. The boroughs and districts have the same enforcement powers as the County Council, with the same focus on businesses, except that they cannot make or enforce local directions. The Government envisages that county councils in two tier areas will take the lead role through their trading standards services.
- 1.10 The enforcement functions relating to nationally determined restrictions and requirements were delegated to the Strategic Director for Communities and are essentially operational in nature. However, the powers to make directions under the No 3 Regulations were reserved to the Chief Executive because such directions add to the nationally determined restrictions with potentially far-reaching implications for businesses and personal freedoms. It is proposed, however, that the Strategic Director for Communities should also be authorised to enforce any directions made by the Chief Executive.
- 1.11 The functions delegated to the Chief Executive and the Strategic Director for Communities have included the power to designate individuals who can use enforcement powers. They have both designated Trading Standards Officers and Test and Trace Regulatory Services Officers to exercise the enforcement powers under the regulations delegated to them. It is possible to designate people who are not County Council employees or contractors, such as district and borough officers, but that has not proven necessary so far.
- 1.12 Since the first lockdown was introduced on 25 March 2020, the County Council has worked in partnership with the district and borough councils, the Police, and Trading Standards Coventry through twice weekly Intelligence and Tasking Meetings. Within the County Council, Public Health, Trading Standards and the Fire and Rescue Service have taken leading roles.
- 1.13 The Intelligence and Tasking Meetings have been instrumental in interpreting the various regulations and applying them in a consistent approach across the county. In total, the Meetings have received 2,532 referrals including 118 repeat venues.
- 1.14 The Police have found it necessary to issue a number of Fixed Penalty Notices, particularly in relation to social gatherings, but the County Council and its partners have so far been able to achieve compliance by businesses without resorting to the powers granted to them. This includes the successful voluntary closure of a national car wash company; the closure of a major carpet retailer, across Warwickshire and nationally, despite being challenged by their legal representatives; the closure of tanning salons across Warwickshire and Coventry; the closure of a major car sales showroom in the north of the county; and the compliance of a night club in Leamington after consideration of issuing of a direction.
- 1.15 In addition to the above action, the availability of the statutory powers has been highly effective in gaining compliance by major events organisers, particularly in the summer and autumn as the R rate was beginning to rise. This included the Mop Fairs and a number of planned events or festivals which had the potential for attracting thousands of visitors.

- 1.16 In summary, whilst the County Council has not itself had to use the powers given by the various regulations, they have provided an invaluable tool in gaining compliance particularly in cases when operators or organisers have sought to continue with their activity after being warned.
- 1.17 The Chief Executive has not been asked to exercise her power to make directions so far. This is in part because the Government has chosen to exercise control through regulations which are specific to a local area (Leicester being the first example) or through the three-tier system and in part because of the success of officers in negotiating sensible outcomes where exceptional local risks have arisen. Where the use of a direction has been contemplated, it has been in respect of an individual place or event rather than to impose additional restrictions across an area. The new powers to serve Coronavirus Improvement Notices and Restriction Notices should diminish the need to use directions in relation to individual places or events.
- 1.18 The Tier Regulations and the Enforcement Regulations include provisions that deem officers designated for the purpose of enforcing earlier regulations to be automatically designated for the purpose of the new regulations as well. This means that they could be enforced immediately they came into effect. However, the transitional provisions only preserve designations made in the past and so the list of designated officers from July is effectively frozen unless fresh delegations are made. For this reason, and for simplicity and certainty, this report proposes that all delegations now be consolidated.
- 1.19 Our experience since March has familiarised us with the kinds of functions that we can expect to be conferred on local authorities and knowledge of the context in which they are exercised, the relationships and structures required to do so effectively and the implications of their exercise. We have also learned that the regulatory environment is dynamic and fast-moving and, as a result, this is the fourth report to the Leader on the subject of delegations. Therefore, this report also proposes a broadly worded delegation of any future functions conferred on the County Council in relation to the management of the Coronavirus and its impacts.
- 1.20 Where the power to prosecute has been conferred on the County Council, it is unnecessary to make a delegation because a general power to bring any proceedings is already delegated to the Assistant Director for Governance and Policy.

Financial implications

- 2.1 There will not be any significant financial implications arising from the delegations proposed.

Environmental implications

- 3.1 Delegating the functions with which this report is concerned has no environmental implications. The exercise of powers might have such implications but, if material, these would be considered at the time of any exercise according to the circumstances of the case.

Report Author	Ian Marriott and Jonathon Toy
Assistant Director	Sarah Duxbury
Lead Director	Rob Powell
Lead Member	Leader of the Council

Urgent matter?	No
Confidential or exempt?	No
Is the decision contrary to the budget and policy framework?	No

List of background papers (If applicable)
None

Members and officers consulted and informed
Portfolio Holder – Councillor Caborn
Corporate Board – Monica Fogarty, Rob Powell, Mark Ryder, Nigel Minns
Legal – Nichola Vine, Ann Belcher
Finance – Andrew Felton
Communities – Jonathon Toy
Public Health – Shade Agboola
Democratic Services – Paul Williams

Appendix 1

Delegations to be Added to Section 10, Part 2 of the Constitution

Delegations to the Chief Executive and his or her nominees (Section 10.2)

All the functions of the County Council (other than any power to prosecute) under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020.

Delegations to the Strategic Director of Communities and his or her nominees (Section 10.5)

All the functions of the County Council (other than any power to prosecute) under the:

Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020

Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 with the exception of the powers to give directions under Regulations 4(1), 5(1), 6(1) and 17(1) and to vary or revoke such directions

Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020

Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020

Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020

Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020

and so far as they continue to have effect under the:

Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020
2020/1200

Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020

Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020

Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020.

Delegations to the Chief Executive and the Strategic Director for Communities and their nominees (Sections 10.2 and 10.5)

Any functions (other than any power to conduct legal proceedings) which may be conferred on the County Council at any time by regulations made under the Public Health (Control of Disease) Act 1984 or by any other primary or subordinate legislation or any direction, designation, order or other instrument of government enacted, made or given for the purpose of:

- (a) preventing, protecting against, delaying, controlling or providing a public health response to the incidence or spread of COVID-19 infection or contamination;
- (b) mitigating or managing its effects on infected people;
- (c) enabling or requiring the provision of assistance, equipment or facilities to persons engaged in such activities.

Scope of Delegations

Subject to any express limitation in these delegations the named officers and their nominees are authorised to exercise any of the functions of the County Council hereby delegated:

- (i) in any modification or re-enactment of the regulations specified in these delegations:
- (ii) on behalf of the County Council whether in its capacity as a person designated, appointed or otherwise authorised by a secretary of state or as a local authority within the meaning of any legislation;
- (iii) together with any powers of entry, inspection, seizure or other investigation or to do any other thing which is calculated to facilitate, or is conducive or incidental to, the discharge of any such functions;
- (iv) so as to include any power to designate, appoint or otherwise authorise any other person for the purpose of the exercise of any such functions.

Appendix 2

Coronavirus Functions

Summary of Provisions	Local Authority Functions	Proposed Delegations
Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 2020/684		
<p>Power of SoS to make direction restricting access to public outdoor places.</p> <p>Local authority is county, district or borough.</p>	R6(9)(a): local authority must take reasonable steps to publicise direction of SoS restricting access to public outdoor places.	SDC.
	R6(9)(b): local authority must take reasonable steps to prevent or restrict access to places which are the subject of an SoS direction.	SDC.
	R9(1): person designated by local authority may issue fixed penalty notice in respect of an offence under R8(2) of obstructing a constable, a police community support officer, or a person designated by the Secretary of State who is carrying out a function of enforcing a direction of SoS under R7.	SDC.
Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 2020/750		
<p>Power of local authority to give directions imposing prohibitions, requirements or restrictions in relation to premises, events and public outdoor places.</p> <p>SoS may direct local authority to give directions.</p> <p>Local authority is county only.</p>	R4(1): local authority may give directions in relation to the entry into, departure from, or location of persons in, specified premises.	CEx
	R5(1): local authority may give directions in relation to the holding of a specified event or type of event.	CEx
	R6(1): local authority may give directions in relation to access to any specified public outdoor place or type of public outdoor space.	CEx
	R2(3): local authority must regularly review and revoke and/or replace direction as appropriate.	CEx
	R3: SoS may direct local authority to give or revoke directions.	None is required.
	R3(7): a non-unitary county is to be regarded with respect to its functions under these Regulations as a relevant health protection authority for the purposes of the Public Health (Control of Disease) Act 1984 including power to enter premises and authorise persons to	CEx and SDC.

	enter premises (section 61); immunity from personal liability (section 69); and power to authenticate documents (section 59).	
	R2(2), 4(8), 5(8), 6(4), 10 and 11(1): duties of local authority to notify SoS, persons affected and other local authorities of and to publicise directions.	CEx and SDC
	R7(1): local authority must take reasonable steps to prevent or restrict access to outdoor public place in respect of which a direction has been made.	CEx and SDC.
	R11(2): duty to consider making direction when notified by another local authority that it has made a direction and to notify other authorities of its conclusions.	CEx and SDC.
	R12(1): person designated by a local authority may take such action as is necessary to enforce a direction.	CEx and SDC.
	R12(2): person designated by a local authority may give a prohibition notice to a person breaching a direction relating to premises or events.	CEx and SDC.
	R14(1): person designated by local authority may issue fixed penalty notice to a person committing certain offences under R13(1) (breaching directions relating to premises or events given under R4 or 5, failing as an owner or occupier to prevent or restrict access to a public outdoor place in breach of R7(2) or obstructing a local authority designated person carrying out functions under R12).	CEx and SDC.
	R15: local authority may prosecute for an offence under R13(1) or (2) (breaching a direction relating to premises or events given under R4 or 5; failing as an owner or occupier to prevent or restrict access to a public outdoor place in breach of R7(2); entering or remaining in a public outdoor place in breach of R7(3); breaching a prohibition notice given under R12(2); failing to comply with a direction or instruction given by a constable under R12; or obstructing a person carrying out any functions under the Regs).	None is required.
Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 2020/1005		

<p>Requirements for persons providing specified services or activities to: make available a QR Code or to collect contact details; as to the keeping, making, disclosure and destruction of contact details; to refuse entry to a person failing to supply details; and to supply details when requested by the SoS or a Public Health Officer.</p> <p>Specified services and activities cover hospitality in pubs, restaurants, etc; leisure and tourism services; close physical contact services such as hairdressing, tattooists, etc; and social, cultural and recreational services in communal venues.</p> <p>A Public Health Officer is a registered public health consultant so designated by the SoS.</p> <p>Local authority is county, district or borough.</p>	<p>R18(1): person designated by local authority may issue fixed penalty notice for an offence under R17(1) (breaching any of the requirements of the Regs).</p>	SDC.
	<p>R19: local authority may prosecute for an offence under R17(1) (breaching any of the requirements of the Regs).</p>	None is required.
<p>Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 2020/1008</p>		
<p>Requirements (which vary for Tier 1, 2 and 3) for persons operating or occupying specified premises (the specified premises are the same as for Contacts Regs) to manage bookings, admissions and the size of groups within premises and to prevent behaviour which would breach requirements of applicable Tier</p>	<p>R4(1): person designated by local authority may issue a fixed penalty notice to a person committing an offence under R3(1) (breaching requirements of the Regs).</p>	SDC.

<p>Regulations (e.g. size of gatherings).</p> <p>Requirement for persons responsible for carrying on the business of a hospitality venue to ensure prescribed distances between tables.</p> <p>Requirement for persons carrying on any business to provide signage and information about face coverings and to allow any person to wear face coverings.</p> <p>Local authority is county, district or borough.</p>		
Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 2020/1045		
<p>Requirements as to isolation of adults and children with positive Coronavirus test and notification by positive person or responsible adult of details to SoS.</p>	<p>R2(1) and (5): refers to notification of a positive test or its withdrawal by a person employed or engaged by a local authority. A notification triggers self-isolation requirements.</p>	<p>None is required.</p>
<p>Requirements of workers required to self-isolate and their employers.</p>	<p>R14(1): allows a person employed or engaged by a local authority to disclose information notified under R2.</p>	<p>None is required.</p>
<p>Authority for persons employed or engaged by a local authority to disclose information.</p>	<p>R10(1)(a), (3) and (4): person designated by a local authority may direct an adult or a responsible person accompanying a child who is away from their place of isolation in breach of R2 to return or return the child to their place of isolation and may direct a responsible adult to ensure that a child who repeatedly breaches R2 complies with R2.</p>	<p>SDC</p>
<p>Local authority is county, district or borough.</p>	<p>R10(1)(a) and (2): person designated by a local authority may remove an adult who is away from their place of isolation in breach of R2 to their place of isolation and may use reasonable force, if necessary, to do so.</p>	<p>SDC</p>

	R12(1): person designated by a local authority may issue a fixed penalty notice to a person committing an offence under R11(1)-(4) and (7) (breach of requirements as to isolation and notifications; failing to comply with a direction under R10; obstructing a person carrying out functions under the Regs; and providing false information).	SDC
	R14: local authority or CPS may prosecute for offences under R11(1)-(4) and (7) (breach of requirements as to isolation and notifications; failing to comply with a direction under R10; obstructing a person carrying out functions under the Regs; and providing false information).	None is required.
Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 2020/1374		
Restrictions (varying according to three tier system) on indoor and outdoor gatherings of two or more people and on the opening and operation of businesses. Local authority is county, district or borough.	R2(6)(d): a non-unitary county is to be regarded with respect to its functions under these Regulations as a relevant health protection authority for the purposes of the Public Health (Control of Disease) Act 1984 including power to enter premises and authorise persons to enter premises (section 61); immunity from personal liability (section 69); and power to authenticate documents (section 59).	SDC
	R9(1): person designated by a local authority may take such action as is necessary to enforce restrictions on businesses in Pts 2 and 3 of Sch 1 and 2 and Pt 2 of Sch 3.	SDC
	R9(2): person designated by local authority may give prohibition notice to person breaching restrictions or requirements on businesses in Pts 2 and 3 of Sch 1 and 2 and Pt 2 of Sch 3.	SDC
	R11(1): person designated by local authority may issue fixed penalty notice in respect of an offence under R10(1) involving a person breaching restrictions on businesses in Pts 2 and 3 of Sch 1 and 2 and Pt 2 of Sch 3; a prohibition notice issued by a person designated by the same authority; or obstructing a person carrying out functions under R9 to enforce those restrictions or the restrictions on gatherings.	SDC

	Para 12(2)(i), Sch 3: holiday accommodation may be kept open in a Tier 3 Area for any purpose requested by a local authority.	None is required.
Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 2020/1375		
<p>Power for local authority to issue to a person:</p> <p>(a) a Coronavirus Improvement Notice requiring that a breach be remedied;</p> <p>(b) a Coronavirus Immediate Restriction Notice requiring that premises be closed and/or that a breach be remedied;</p> <p>(c) where a Coronavirus Improvement Notice has been breached, a Coronavirus Restriction Notice requiring that premises be closed and/or that a breach be remedied.</p> <p>Notices must relate to breaches of “relevant statutory provisions” listed in R2, which are all the restrictions and requirements relating to businesses.</p> <p>Breach of a notice is a criminal offence and the Police have a power of arrest.</p> <p>The Schedule to the Regs makes numerous amendments to earlier Regs.</p> <p>Local authority is county, district or borough.</p>	R1(5): a non-unitary county council is to be regarded with respect to its functions under these Regulations as a relevant health protection authority for the purposes of the Public Health (Control of Disease) Act 1984 including power to enter premises and authorise persons to enter premises (section 61); immunity from personal liability (section 69); and power to authenticate documents (section 59).	SDC
	R3(1): officer designated by local authority may issue a Coronavirus Improvement Notice.	SDC
	R4(1): officer designated by local authority may issue a Coronavirus Immediate Restriction Notice.	SDC
	R5(1): officer designated by local authority may issue a Coronavirus Restriction Notice.	SDC
	R7: local authority may prosecute for an offence under R6(1) of failing to comply with any of the three kinds of notice.	SDC
	R8(1): an officer designated by local authority may issue fixed penalty notice in respect of an offence under R6(1) of failing to comply with a notice.	SDC

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