

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

<b>Portfolio Holder</b>	<b>Leader</b>
<b>Date of decision</b>	<b>17 December 2020</b>
	<b>Signed</b>  

### 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.

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

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

<b>List of background papers (If applicable)</b>
None

<b>Members and officers consulted and informed</b>
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