


Proposed Decision to be made by the Leader of the Council on or after 31 July 2020

Delegation of Coronavirus Powers

Portfolio Holder	Leader of the Council
Date of decision	31 July 2020
	Signed 

Decision taken

The Leader is recommended to:

- (1) delegate the functions of the County Council under the Health Protection (Coronavirus, Restrictions) (England) (No. 2) Regulations 2020 (other than any power to prosecute) to the Strategic Director for Communities and his/her nominees and add those functions to paragraph 4 of the entries relating to Trading Standards in Part 2 Section 10 of the Constitution
- (2) delegate the functions of the County Council under the Health Protection (Coronavirus, Restrictions) (No. 3) (England) Regulations 2020 (other than any power to prosecute) to the Chief Executive and his/her nominees and to add those functions to Section 10.2 in Part 2 of the Constitution;
- (4) confirm (for the avoidance of doubt) that the named officers are authorised to exercise the specified functions of the County Council under the relevant Regulations and any future modification or re-enactment thereof and to do so on behalf of the County Council whether in its capacity as a person designated by the Secretary of State or as a local authority within the meaning of the Regulations;
- (5) approve the amendment of paragraph 5 of the entries relating to Rights of Way and Traffic Regulation in Section 10.5 in Part 2 of the Constitution to make explicit the delegation of the power to make temporary traffic orders.

Reasons for decision

This report proposes that powers recently conferred on local authorities to control access to premises and outdoor places and restrict events be delegated to the Chief Executive so that they can be used promptly in the event of a local outbreak of Coronavirus, and also that updates and clarifications be made to existing delegated powers to close business premises and make temporary traffic orders in order to protect people against Coronavirus infection.

Background information

1.0 Introduction

- 1.1 Local authorities have largely relied on existing powers to protect the public against Coronavirus and enable the recovery from lockdown. An example of this is the use of temporary traffic orders, which can be made quickly without any objection procedure to prevent a danger to the public, in order to facilitate social distancing in town centres as non-essential businesses are allowed to re-open. The Government has also legislated to give special temporary powers to local authorities to take measures to control the spread of Coronavirus. An early example of this were the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 which enabled first and second tier authorities to take “such action as is necessary” to enforce any requirement imposed by the Regulations in relation to the closure of business premises, including powers for designated officers to issue prohibition notices and fixed penalty notices to business owners and managers.
- 1.2 Powers to make traffic orders have long been delegated to officers and the functions of the County Council under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 were delegated by the Leader on 31 March 2020 so that their requirements could be enforced by designated trading standards officers.
- 1.3 From 4 July 2020, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 were replaced by the Health Protection (Coronavirus, Restrictions) (England) (No. 2) Regulations 2020. So far as the County Council was concerned, these Regulations substantially reproduced its functions under the original Regulations.
- 1.4 On 18 July 2020, the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 took effect. Their intention was to give relevant bodies a sufficient package of powers to deal with Coronavirus outbreaks like those recently experienced across a wide area in and around Leicester or on an individual farm in Worcestershire. These powers potentially entail significant restrictions upon civil and economic liberties which would need to be clearly justified by public health considerations.

2.0 Temporary Traffic Orders

- 2.1 A number of road traffic orders have been made in order to create more space for pedestrians and cyclists in town centres as businesses re-open after lockdown. This had to be done at short notice following the Government announcement that relaxations would begin in early July. Temporary traffic orders can be made by notice without a procedure for advertisement and objections where that is required to protect the public from danger (other examples are a damaged bridge or emergency works in the road) and this kind of order was used on the basis that rapid action was needed to protect the public from infection. Such orders can last up to 21 days or 18 months. Temporary orders are made under an existing general delegated power but it is proposed to clarify that power to make it explicit that it

includes not only cases where no objections have been made but also cases where there is no procedure for making objections. This would be done by adding the words “To make temporary road traffic orders and” at the beginning of the existing delegation.

3.0 Closure of Business Premises

- 3.1 Regulations were made in late March requiring (in addition to the “stay at home” rules) that most businesses open to the public should be closed. These were the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and they provided for closure to be enforced by the Police and by local authorities and their designated officers. The enforcement powers included a broad power to take “such action as is necessary” and specific powers to issue prohibition notices and fixed penalty notices to any person carrying on a business in contravention of the closure requirements. Prosecution is possible in more serious cases. The enforcement powers were delegated both to districts and boroughs (whose environmental health officers traditionally enforce public health requirements) and to the County Council (in the expectation that trading standards departments would work alongside the Police and the other local authorities).
- 3.2 The enforcement powers by their nature require to be used rapidly if they need to be used. The Leader made an urgent decision on 31 March delegating the powers to the Strategic Director for Communities and designating a list of trading standards officers. Powers to bring legal proceedings are already delegated generally to the Strategic Director for Resources and the Assistant Director of Governance and Policy. It has not so far proven necessary for the County Council to issue any notices under the Regulations.
- 3.3 The Regulations were rapidly amended four times and on 4 July were revoked entirely and replaced by the Health Protection (Coronavirus, Restrictions) (England) (No 2) Regulations 2020. These Regulations substantially reproduce the original enforcement powers. Although restrictions on opening businesses have been considerably relaxed, a number are still required to remain closed such as nightclubs and indoor swimming pools.
- 3.4 It is proposed that the opportunity be taken to update the delegation made in March and include in it the power for the Strategic Director for Communities to designate and undesignate officers in future. The Secretary of State is under a duty to keep the restrictions in the Regulations under review and end them once the emergency no longer justifies them. Therefore, there is a built in mechanism to ensure that the powers and the delegation of them remains proportionate and necessary.

4.0 Local Outbreaks

- 4.1 When the outbreak occurred in Leicester, regulations were made specifically for the Leicester area to reintroduce lockdown. These essentially restored the lockdown restrictions as they had stood in March but with adaptations. However, on 18 July 2020, the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 introduced new and wider powers for local authorities across the country. Unlike earlier Regulations, these give enforcement powers in two tier areas to county councils and not districts and boroughs.
- 4.2 The new Regulations empower the County Council to give directions imposing prohibitions, requirements or restrictions in relation to:
 - the entry into, departure from, or location of persons in, specified premises
 - the holding of a specified event or type of event
 - access to any public outdoor place.

- 4.3 These are very wide powers. Premises and events are not defined, and so have their ordinary unrestricted meaning, except that essential infrastructure and public transport vehicles are excluded from the definition of premises. Premises can be closed or restricted whether or not they are business premises, although a direction must specify individual premises and cannot target whole classes of premises. A public outdoor place means any outdoor place to which the public have or are permitted access, whether on payment or otherwise, and this would include (for example) areas such as highways and parks. However, a direction cannot be made in respect of an outdoor place which is Crown land without the agreement of the authority responsible for that land.
- 4.4 These powers can only be exercised if the County Council considers that the following conditions are met:
- (a) that giving such a direction responds to a serious and imminent threat to public health;
 - (b) that the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by Coronavirus in the local authority's area; and
 - (c) that the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.
- 4.5 When these powers are exercised, the County Council must notify its districts and boroughs and any adjacent local authority and the adjacent authorities must then consider whether to exercise their own powers under the Regulations. Within Warwickshire, the County Council can also direct any of the district and borough councils to “exercise any of [their] functions in a specified way” if it considers that it is necessary and proportionate to do so in order to prevent, protect against, delay or otherwise control the incidence or spread of Coronavirus. These provisions are anticipated by the sub-regional partnerships that have already been developed to respond to an outbreak.
- 4.6 The Police and designated officers of the County Council are given the power to “take such action as is necessary to enforce a direction” and to issue fixed penalty notices. Designated County Council officers can also issue prohibition notices. If a direction is made in relation to a public outdoor place, the County Council and the owner must take reasonable steps to prevent or restrict public access to it in accordance with the direction. The Police are given additional powers to give on the spot directions to individuals at events and in public outdoor places which are the subject of a County Council direction and can use reasonable force to remove individuals from such an event or place. Breach of directions, prohibition notices and reasonable instructions and obstruction of the Police or a designated County Council officer can be prosecuted and the County Council is authorised to bring such prosecutions along with the Crown Prosecution Service.
- 4.7 Given the potentially far reaching impacts of these powers on the freedoms and livelihoods of citizens, any decision to make a direction or use enforcement powers would have to take into account the human rights of those affected and this is already written into our Constitution. In addition, the Regulations include a number of procedural protections:
- any direction must be reviewed at least once every seven days and terminated or modified if the three conditions in paragraph 4.4 above cease to be met
 - regard must be had to the advice of the Director of Public Health before making and when reviewing a direction
 - the Secretary of State must be notified of a direction and he or she has supervisory

powers including the power to order that a direction be made or revoked

- a person affected by a direction has a right of appeal to the Magistrates' Court and the right to make representations to the Secretary of State
- directions must be published generally as well as served on responsible individuals
- there is a "reasonable excuse" defence to any prosecution.

4.8 Because the powers and duties under the Regulations may have to be exercised at very short notice in any emergency, it is proposed that they be delegated in their entirety. Given the range and importance of the powers, it is proposed that they be delegated to the Chief Executive (who would be required by law to act in consultation with the Director of Public Health in relation to directions). The delegation includes the power to designate officers to use enforcement powers. As previously mentioned, the power to bring any legal proceedings is already delegated to the Strategic Director for Resources and the Assistant Director of Governance and Policy. The Regulations are time limited and come to an end on 17 January 2021 (unless the Government and Parliament decide to extend them).

4.9 Government guidance on the Regulations is appended to this report.

5.0 Designations and Future-proofing

5.1 In addition to naming county councils in the No 2 and No 3 Regulations as authorities empowered by them, the Secretary of State has issued a designation letter which designates them for the purpose of enforcing the Regulations. The reason for this is not entirely clear but, to avoid any possibility of a technical challenge, the proposed delegations are expressed to be made on behalf of the County Council as a named body and as a designated body. The recommendations also make clear that the delegations apply to any replacement or modification of either set of Regulations.

Financial implications

6.1 It is currently envisaged that there will not be any significant financial implications arising from enforcement of the Regulations relating to the closure of business premises and that any minor financial implications can be managed within the Trading Standards Service revenue budget. If the Government provide additional funding to the County Council for the enforcement of the Regulations then that funding can be provided to the Trading Standards Service if it is deemed appropriate.

6.2 If a local outbreak requires the implementation of measures to restrict access to premises and outdoor places or to restrict events, the cost of making and reviewing the directions would be met from within existing resources but enforcement could potentially give rise to additional costs. However, these additional costs are at this stage unpredictable. Any significant and appropriate costs arising from the need to enforce Coronavirus measures, beyond existing budgets, will be set against any Government Covid-19 funding available in the first instance and met from general contingency and reserves where Government funding is insufficient to cover all costs.

Environmental implications

7.1 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.

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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 – Nigel Minns
Legal – Nichola Vine, Ann Belcher
Finance – Andrew Felton
Communities – Mark Ryder, Jonathan Toy
Public Health – Shade Agboola
Democratic Services – Paul Williams