

Urgent Decision made by the Leader of the Council on 21 October 2020

Delegation of Coronavirus Powers

| | |
|-------------------------|---|
| Portfolio Holder | Councillor Izzi Seccombe Leader of the Council |
| Date of decision | 21 October 2020 |
| | Signed |

Decision taken

That the Leader:

- (1) delegates the functions of the County Council under the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (other than any power to prosecute) to the Strategic Director for Communities and his nominees and add those functions to paragraph 4 of the entries relating to Trading Standards in Part 2 Section 10 of the Constitution;
- (2) confirms (for the avoidance of doubt) that the Strategic Director for Communities is authorised to exercise the functions of the County Council under the above 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.

Reasons for decision

This report proposes that powers recently conferred on local authorities to enforce statutory requirements on service providers to collect and manage contact details be delegated to the Strategic Director for Communities so that officers can be authorised to issue fixed penalty notices.

Background information

1.0 Introduction

- 1.1 On 31 July, the Leader delegated the functions of the County Council under the Health Protection (Coronavirus, Restrictions) (England) (No. 2) Regulations 2020 ("the No 2

Regulations”) to the Strategic Director for Communities. These functions related to enforcement of national requirements as to the closure and operation of businesses.

- 1.2 The Leader also delegated the functions of the County Council under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (“the No 3 Regulations”) to the Chief Executive. These Regulations empower the County Council to give directions imposing prohibitions, requirements or restrictions in relation to access to premises or outdoor public places and to the holding of events.
- 1.3 These delegations replaced earlier delegations under the initial “lockdown” Regulations made by the Leader on 31 March and they remain in effect. The Strategic Director for Communities and the Chief Executive have both designated Trading Standards Officers and Test and Trace Regulatory Services Officers to exercise enforcement powers including issuing prohibition notices and fixed penalty notices.
- 1.4 Since then, six more sets of Regulations have conferred Coronavirus-related functions on the County Council including three sets of Regulations introducing the three tier system announced on 12 October. Through a combination of the way in which the delegations were made in July and transitional and savings provisions in the subsequent Regulations, the officers who were designated under the No 2 and No 3 Regulations are also deemed to be designated for the purpose of enforcing five of the six subsequent sets of Regulations. The exception is the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations (“the Contacts Regulations”), which are not within the scope of the July delegations and (possibly as a result of a drafting oversight by the Government) do not contain any transitional or savings provisions.
- 1.5 The Contact Regulations impose requirements on people providing specified services or activities:
 - (a) to make available a QR Code at their premises or to collect contact details from people entering the premises;
 - (b) as to the keeping, making, disclosure and destruction of contact details;
 - (c) to refuse entry to a person failing to supply details; and
 - (d) to supply details when requested by the Secretary of State (NHS) or a designated public health consultant.

Specified services and activities encompass 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. The role of local authorities is to enforce these requirements through issuing fixed penalty notices or prosecuting offenders. Although this role is shared with district and borough councils, the Government has assigned the lead role in Warwickshire to the County Council.

- 1.6 The result is that there are designated officers able to enforce seven of the eight sets of Regulations but not the Contacts Regulations. The only way to remedy that problem is to delegate the Regulations to an officer who can either issue fixed penalty notices or designate appropriate officers to do so. It is intended to bring a report to the Leader to consolidate delegations for all the Regulations and to “future-proof” delegations so that any further legislation conferring functions on the County Council in relation to the management of Coronavirus will be automatically delegated to officers without waiting for a Leader decision. However, under the ordinary processes, and allowing for the call in period, any delegation

made by means of that report could not come into effect before the start of November. In light of ongoing enforcement work, it is necessary for designated officers to be in a position to issue fixed penalty notices before the latter part of the week commencing 19 October. Given the importance of effective enforcement during the current emergency, any delay beyond then is likely to seriously prejudice the public interest. Therefore, the Chair of the Adult Social Care and Health Overview and Scrutiny Committee has given his agreement to this report being dealt with under the urgency procedure in accordance with Standing Order 18. The report to consolidate delegations will follow in the ordinary course.

- 1.7 It is proposed to make the delegation to the Strategic Director for Communities. The No 3 Regulations were delegated to the Chief Executive because they conferred powers to impose local restrictions with potentially far-reaching implications for businesses and personal freedoms. However, the functions under the Contact Regulations involve enforcing restrictions that have already been determined at a national level and are more operational in nature.

Financial implications

- 6.1 There will not be any significant financial implications arising from the delegation proposed.

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.

| | |
|---------------------------|-----------------------|
| Report Author | Ian Marriott |
| Assistant Director | Sarah Duxbury |
| Lead Director | Rob Powell |
| Lead Member | Leader of the Council |

| | |
|---|-----|
| Urgent matter? | Yes |
| 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, Stuart Bird

Public Health – Shade Agboola

Democratic Services – Paul Williams