

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Policy and Resources and Leader of the County Council
Date:	29 July 2020
Title:	Designation of Appropriate Officers under the Health Protection (Coronavirus, Restrictions) (No 2) (England) Regulations 2020 and Health Protection (Coronavirus, Restrictions) (England) (No 3) Regulations 2020
Report From:	Chief Executive

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Purpose of this Report

1. The purpose of this Report is to delegate the necessary authority and to designate functions to appropriate officers to enable the County Council to effectively exercise its powers under the Health Protection (Coronavirus, Restrictions) (No 2) (England) Regulations 2020) and the Health Protection (Coronavirus, Restrictions) (England) (No 3) Regulations 2020.

Recommendations

2. That the Director of Public Health (including in his absence the Deputy Director of Public Health) is designated as the County Council's 'Relevant Person' for the purposes of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020.
3. That the Head of Law and Governance and Monitoring Officer (including in her absence the Head of Legal Services and Deputy Monitoring Officer) be designated the County Council's 'Authorised Person' for the purposes of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020.
4. That the Head of Law and Governance and Monitoring Officer (including in her absence the Head of Legal Services and Deputy Monitoring Officer) be given delegated authority to undertake any prosecutions required by the County Council under the Health Protection (Coronavirus, Restrictions) (No.

2) (England) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020.

5. That the Chief Executive (including in his absence the Deputy Chief Executive) be given delegated authority, in consultation with the Director of Public Health, be authorised to exercise the County Council's powers to give Directions under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020.
6. That the Director of Public Health (including in his absence the Deputy Director of Public Health) be designated as County Council's 'Designated Officer' for the purposes of the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020.

Executive Summary

7. This Report seeks to put in place the necessary designations and delegations to enable the County Council to exercise its powers under the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 ('the No 2 Regulations) and the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 ('the No 3 Regulations').

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

8. The No 2 Regulations came into force on 4 July 2020. Regulation 4 of the No 2 Regulations re-states the requirement to close certain premises and businesses during the emergency. An ever-diminishing list of those premises and business specifically still affected by lockdown as at 4 July is contained at Schedule 2 to the No 2 Regulations.
9. However, while the list is now small, and likely to be reduced further shortly, there is always the possibility the list might be increased in the event of a more general lockdown in the event of a second wave of the virus.
10. Provisions regarding enforcement of requirements relating to the closure of specific businesses and premises (Regulation 4), gatherings (Regulation 5), and local lockdowns (Regulation 6 – requirement to take reasonable steps to restrict public access to restricted area, and not to without reasonable excuse enter or remain in a restricted area) are contained at Regulation 7).
11. By virtue of Regulation 7 a 'Relevant Person' may take such action as is necessary to enforce any requirement of the Regulations. 'Relevant Person' includes someone designated by a local authority, but only in respect of enforcing Regulation 4 (closure of specific businesses and premises). In

respect of all other requirements in the No 2 Regulations the powers of enforcement are limited to the police or person designated by the Secretary of State for this purpose. So far as enforcement of Regulation 4 goes, in the case of a local authority this must be done by a person designated by the local authority for this purpose. It is therefore recommended that the Director of Public Health be designated as the County Council's Relevant Person for these purposes.

12. Enforcement will normally be by way of fixed penalty notice payable within 28 days. Regulation 8 provides details of amounts – £100 for a 'first' offence, rising to £3,200 in the case of sixth and subsequent offences. If the £100 for a 'first' offence only is paid within 14 days this reduces to £50. Fixed penalty notices may be issued by an 'Authorised Person'. So far as a local authority is concerned a fixed penalty notice can only be issued where the alleged offence relates to contravention of Regulation 4 (closure of specific businesses and premises) and obstruction of a person carrying out a function under Regulation 7. Any fixed penalty notice needs to be issued by an 'Authorised Person', designated by the local authority as such. It is therefore recommended that the Head of Law and Governance and Monitoring Officer be formally designated the County Council's Authorised Person for these purposes.
13. If a fixed penalty notice is not paid within the prescribed period, then summary (magistrates court) proceedings may be instigated. By virtue of Regulation 10 proceedings would need to be brought by the CPS or by the County Council (as a body designated by the Secretary of State). Should this happen then a certificate signed by the Chief Finance Officer is evidence of the facts stated. It is therefore recommended that the Head of Law and Governance and Monitoring Officer is formally given delegated authority to undertake any necessary prosecutions on behalf of the County Council

The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020

14. The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 came into force on 18 July 2020. The powers contained in the Regulations are available to 'upper tier' authorities, and thus may be exercised by the County Council. It is anticipated that given the fast moving nature of the Covid-19 emergency any use of powers under the No 3 Regulations to make a Direction may need to be exercised at short notice, thus agility and the ability to act at pace is key. It is therefore recommended that as 'Proper Officer' for the County Council that the Chief Executive (including in his absence the Deputy Chief Executive) be authorised to give any Directions under the No 3 Regulations.
15. The No 3 Regulations grant the County Council new powers to respond to a serious and imminent threat to public health, and to prevent COVID-19

(“coronavirus”) transmission in its area. The No 3 Regulations include powers for the County Council to make a Direction to:

- restrict access to, or close, individual premises (Regulation 4)
- prohibit certain events (or types of event) from taking place (Regulation 5)
- restrict access to, or close, public outdoor places (or types of outdoor public places) (Regulation 6).

16. **Making a Direction**

To make a Direction under the No 3 Regulations the County Council must be satisfied that the following 3 conditions are met:

- the Direction responds to a serious and imminent threat to public health in the local authority’s area
- 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 by coronavirus
- the prohibitions, requirements or restrictions imposed by the Direction are a proportionate means of achieving that purpose

17. Before making a Direction, the County Council 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 County Council from local experts, through the Local Resilience Forum, from NHS Test and Trace (including the Joint Biosecurity Centre (JBC)), from Public Health England (PHE) and from other sources. The County Council must also consult with its Director of Public Health and assess whether the conditions for taking action have been met. The County Council is required under the No 3 Regulations to have regard to any advice given to by its Director of Public Health prior to issuing a Direction, or revoking such a Direction.

18. The County Council should also consult 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 place that is situated against a Local Resilience Forum boundary. The County Council should be clear about why it is taking directive action and communicate this clearly to the person(s) to whom the Direction applies and, where appropriate, those impacted by the Direction.

19. Prior to issuing a direction, the County Council must have due regard to the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 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 the County Council from taking action. This should be balanced against the wider public health risk in the County Council's area, and that mitigations should be considered and implemented wherever possible.

20. The County Council must review a Direction it has issued under the Regulations at least every seven days and determine whether the three conditions for making the Direction continue to be met. If at any stage the threshold for restrictions is no longer met (there is no longer a serious and imminent threat to public health, or the measures are not deemed to be necessary and proportionate to prevent or control the incidence or spread of infection in the local authority's area), the Direction should be immediately revoked or replaced with a Direction which meets the threshold set out above.

Notification of Direction

21. When the County Council issues a Direction, it should notify the Secretary of State as soon as reasonably practicable after making the Direction. The Secretary of State may also, should he consider the conditions(s) for a Direction are met, require the County Council to make a Direction. The County Council is also required to notify any County Council or Unitary Council whose area is adjacent to the County Council's area, and also any District Council within the area of the Direction.
22. Additionally the County Council is required to notify those directly impacted by any Direction under these Regulations, including the owner or occupier of premises or event organiser against whom a Direction applies, who have the right of appeal to a local magistrate and may make representations to the Secretary of State. Any Direction issued must include details of the right to appeal to a magistrates' court and the time within which such an appeal may be brought. A Direction must also be published on the County Council's website.

Contravention of Direction

23. Where the County Council's Designated Officer reasonably believes that a person is in contravention of a Direction, and it is necessary and proportionate to prevent a person from doing so prohibition, the Designated Officer may take such action as is necessary and proportionate to enforce the Direction.
24. The Designated Officer may issue a prohibition notice to a person who contravenes a direction, for example by failing to close a premise or event that has had a direction placed upon it to restrict or prohibit access.

25. Where an Authorised Person reasonably believes that a person aged 18 or over has committed an offence under the Regulations in respect of breach of a Direction relating to premises under Regulation 4, events under Regulation 5, or failure of an owner or occupier of land in a public outdoor space to which a Direction under Regulation 6 applies to take reasonable steps to restrict access to that land, or obstruction of a local authority officer, may the Authorised Person may issue a Fixed Penalty Notice (FPN). If paid within 28 days beginning from the day after the date of the notice no proceedings may be taken in respect of the offence.
26. The amount of the FPN will be £100 for a first offence (reduced to £50 if paid within 14 days), doubling upon further offences up to a maximum of £3,200.
27. It is therefore recommended that the Director of Public Health be designated as the County Council's Designated Officer for these purposes and that the Head of Law and Governance and Monitoring Officer be designated as the County Council's Authorised Person for these purposes. It is further recommended that the Head of Law and Governance and Monitoring Officer be given delegated authority to undertake any necessary prosecutions on behalf of the County Council.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	yes

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

There are no equality impacts arising from the Recommendations in this Report.