



14 September 2020

Agenda Item: 4

REPORT OF THE DIRECTOR OF PUBLIC HEALTH

IMPLEMENTATION OF THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO. 3) REGULATIONS 2020

Purpose of the Report

1. To seek approval for the exercise of all powers under The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (the Regulations) to be formally delegated to the Chief Executive, in consultation with the Director of Public Health and, where possible, appropriate elected members.
2. To authorise the Service Director for Place, and the Group Manager for Trading Standards & Communities, to designate officers within Nottinghamshire County Council or other partner agencies to exercise powers under Regulations with regard to notification, management and enforcement.

Information

3. HM Government published a COVID-19 contain framework on 17 July 2020. This summarises how national and local partners will work with the public at a local level to prevent, contain and manage outbreaks.
4. The COVID-19 contain framework intends to support local decision-makers by clarifying their responsibilities and empowering them to take preventative action and make strong decisions locally, supported by mechanisms that safeguard key national assets and interests.
5. The overarching aim is to empower local decision-makers to act at the earliest stage for local incidents, and ensure swift national support is available where needed.
6. As an upper tier local authority, Nottinghamshire County Council is given powers to give a Direction which imposes prohibitions, requirements or restrictions in relation to individual premises, events and public outdoor places. These regulations came into force after midnight on 18 July 2020 and expire at the end of 17 January 2021.
7. The Regulations are accompanied by statutory guidance which refers to the grant of '*new powers to respond to a serious and imminent threat to public health and to prevent COVID-19*

(“coronavirus”) transmission in a local authority’s area where this is necessary and proportionate to manage spread of the coronavirus in the local authority’s area.’

Individual premises (regulation 4)

8. The Council may give a Direction in relation to individual premises, for the purpose of closing the premises, restricting entry to the premises, or securing restrictions in relation to the location of persons in the premises. There is a requirement to have regard to the need to ensure the public has access to essential public services and goods before issuing a Direction and the Council may not give a Direction in relation to premises which form part of essential infrastructure. The statutory guidance contains a non-exhaustive list of a range of infrastructure that provide essential public services and goods as well as various means of transport which are also outside of the scope of the power.
9. The Direction given by the Council may impose a prohibition, requirement or restriction on the number of persons in the premises, the purposes for which a person is in the premises and the facilities in the premises.

Restrictions on events (regulation 5)

10. There is a power for the Council to prohibit certain events (or types of event) from taking place. A Direction under this Regulation may only have the effect of imposing prohibitions, requirements or restrictions on the owner or occupier of premises for an event to which the Direction relates or the organiser (or any person involved in holding such an event). Those simply planning to attend the event do not commit an offence.

Restriction of access to public outdoor places (regulation 6)

11. There is a power for the Council to Direct the closure of, or restrict access to, a public outdoor place (or public outdoor places of a specified description). In assessing the nature and level of the threat to public health, the statutory guidance refers to known planned events or where past experience indicates a high risk that the numbers of people expected to seek to use a space would make it unsafe, including for example a popular beach or an enclosed square in a metropolis. There are additional consultation obligations if the closure will impact on the strategic road network.
12. Once a Direction is made, people will not be allowed to enter or remain in the area without a reasonable excuse. The Regulations provide a non-exhaustive list of reasonable excuses, which include that people may enter the land where it is reasonably necessary for access to their home, for work purposes, etc.
13. The statutory guidance states that *‘we would usually expect that the power would not be exercised so as to restrict social interaction between people living in the area and outside. We would usually expect Directions to be drawn in such a way that visitors from outside the area, such as friends and family, would be able to visit people living within the area, unless the movement of people has been restricted within other Regulations. We would not usually expect Directions to prevent people from travelling within an area if the start and end of their journeys are outside it, for example long distance motorway journeys that pass through the area’*.

14. Where the Council has given a Direction relating to a public open space, the Council must take reasonable steps to prevent or restrict public access to the public outdoor place or places to which the Direction relates in accordance with the Direction.

Grounds and procedural requirements

15. The Council has to satisfy itself that three conditions are all met before it can give a Direction under the powers referred to above. The conditions are that:

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

16. There is a requirement to gather sufficient evidence to demonstrate the three tests above are met. The statutory guidance suggests evidence may be required from experts, NHS Test & Trace (including the Joint Biosecurity Centre), Public Health England, through the Local Resilience Forum, and from other sources.

17. There is a requirement to consult with the Director of Public Health and assess whether the conditions for taking action have been met, and to have regard to any advice given to it prior to issuing a Direction, or to revoke such a Direction. The statutory guidance indicates that the Council should also consult the Police prior to issuing a Direction. In relation to the closure of a public outdoor space, the guidance indicates that the Council would be expected to consult lower tier local authorities and neighbouring local authorities about proposals to exercise the power, and to engage with partners through the Local Resilience Forum (LRF) to ensure emergency services are aware of proposals and manage risk, including the risk that people may travel to other local spaces.

18. Consideration will be given to whether an equality impact assessment is required prior to issuing a Direction and the Council will have to have regard to its Public Sector Equality Duty during the decision-making process.

19. A local authority must take reasonable steps to give advance notice of the Direction to those affected by it, which predominantly includes businesses, land owners and occupiers and organisers of events, etc.).

20. The Council must specify the date and time on which the prohibition / requirement / restriction in the Direction comes into effect, and the date and time on which it will end. The notice must also include the basis on which all three conditions are met and why a specific prohibition, requirement or restriction is necessary. The Council must notify the Secretary of State for Health & Social Care that it has exercised these powers and must review their decision at least once every 7 days, to see if all three conditions still apply.

21. There are rights of appeal to the Magistrates' Court, and the right to make representations to the Secretary of State.

Additional powers

22. The County Council may direct the district / borough council to exercise any of its functions in a specified way if that is considered to be necessary and proportionate (having regard to the advice of the Director of Public Health) to prevent, protect against, delay or control the spread of coronavirus infection in the district / borough council's area.

Powers of the Secretary of State

23. The Regulations (i.e. Regulation 3) also enable the Secretary of State to direct the Council to issue a Direction under these powers if he is satisfied that the conditions above have been met.

Notification requirements

24. If the Council issues a Direction, there is an obligation to notify the Secretary of State as soon as possible (within 24 hours maximum) via NHS Test & Trace. There is also an obligation to notify any neighbouring local authorities that may be affected. Where notification is given, that local authority must consider, as soon as may be reasonably practicable, whether to exercise its own powers under these Regulations and must notify the initiating local authority of what it has decided to do. There is also an obligation to notify the district / borough council. Consequently, the Council will need to be ready to respond to notification from neighbouring Councils as well as the potential for issuing its own Directions.

Appeals, enforcement and offences

25. The recipient of a Direction has the right of appeal through the Magistrates' Courts and may make representations to the Secretary of State. Where a Direction is made, the event organiser and / or owner or occupier of a premises must fulfil the requirement of the Direction until the appeal is resolved. Both the Council and the Police are given powers to enforce a Direction once issued but the mechanisms are different. It is an offence to contravene the Direction without a reasonable excuse and this is punishable by a fine. A fixed penalty notice can be given to a person who commits an offence and is aged 18 or over by someone who has been designated to issue them by the Council or a police constable.

26. County Councils are also given the power of giving Directions if they are in an area where there is also a district / borough council. The County Council may direct the district / borough council to exercise any of the district / borough council's functions in a specified way, but only if the County Council considers that it is necessary and proportionate to do so to prevent / protect against / delay / control the spread of coronavirus infection in the district / borough council's area.

The Council's approach

27. Use of the Regulations should not be viewed as the default response to an outbreak. Other enforcement powers not specifically related to COVID-19 are available to district / borough councils and the County Council under various legislation and these may be deemed more appropriate. An assessment will be made by the County Council and appropriate partners as to which enforcement power is most suitable for use on a case by case basis.

28. The powers contained within the Regulations are designed to manage the impact of the coronavirus for the benefit of the public health of people within the County. As such any decision to issue a Direction must be led from a public health perspective, having consulted the relevant agencies and gathered the necessary evidence to justify the actions as being necessary and proportionate. Once a Direction is made, the powers of management and enforcement sit more appropriately alongside services that already exercise enforcement powers, which within the County Council is the Trading Standards service and within our District and Borough Council partners is the Environmental Health Officer (EHO) network.
29. Since their enactment, these powers have been available for exercise by the Chief Executive in accordance with the Council's urgency procedures, with any exercise of such powers to be reported to Adult Social Care & Public Health Committee and as necessary to the Policy Committee. To date the powers have not been exercised.
30. The proposal now is to formally delegate authority to exercise all powers under these Regulations (which includes the power to issue Directions and to designate officers as appropriate) to the Chief Executive. That way the Council will be able to respond promptly where necessary, having taken all relevant advice and following the procedural guidelines, to issue a direction as a proportionate measure for the protection of people within the Council's area.
31. It is also proposed to formally authorise additional post holders within the Council to designate officers within any relevant services of the Council or within partner agencies such as District and Borough Councils with the authority to enforce the requirements of any Direction, once made. This will enable the Council to work closely with Local Resilience Forum partner agencies and the local Police to ensure that the machinery necessary to operate and enforce these powers effectively is available in the event that a Direction becomes necessary.
32. In order to progress the preparations for the above, a 'Task & Finish' group comprising the Director of Public Health, Chief Executive, Monitoring Officer, and Group Managers responsible for Legal Services and Trading Standards has been established to review arrangements for giving effect to the powers vested in the Council outlined above.
33. Arrangements have also been considered by the chief executives of Nottinghamshire County Council and the district / borough councils during a meeting on Tuesday 18 August. At the request of this meeting, an exercise took place on Thursday 27 August to test the documentation and decision-making processes for these Regulations and other legislation related to the enforcement of COVID-19 local outbreak control. Participants included Nottinghamshire County Council (Trading Standards, Legal Services, Public Health, Emergency Planning), four district / borough councils (Environmental Health, Legal Services), Nottinghamshire Police, and the Health & Safety Executive.
34. The exercise demonstrated the importance of having a suitable assessment process and audit trail for any decision-making related to local outbreak control enforcement. A summary of other legislation that could potentially be used for local outbreak control enforcement will also be developed, with support from the district / borough councils, Nottinghamshire Police, and the Health & Safety Executive.
35. Work developing the necessary operational arrangements after a Direction has been made, is being led by colleagues from Trading Standards in liaison with district / borough councils,

whose network of local environmental health officers are considered a vital component in the ability to manage effective liaison with local businesses and premises given their existing statutory functions. Ongoing management and implementation will be the responsibility of Trading Standards drawing support and expertise from colleagues in other internal services and external agencies as necessary.

Related developments

36. A report summarising the latest situation in regard to COVID-19 is due to be provided to the COVID-19 Recovery, Renewal & Resilience Committee on 15 September 2020.

Other Options Considered

37. An alternative option is for these powers to continue to be exercised by the Chief Executive (in accordance with the Council's urgency procedures), with the exercise of such powers to be reported to Adult Social Care & Public Health Committee and as necessary to the Policy Committee. However, it is considered more appropriate for the work to be undertaken under specific delegations for transparency.

Reason/s for Recommendations

38. The powers of the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 came into force at midnight on 18 July 2020. It is recommended that use of the Council's urgency procedures should only take place until such time as authority can be formally delegated.

Statutory and Policy Implications

39. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Crime and Disorder Implications

40. The Regulations provide additional powers to the Council which are designed to protect the public health of the people of its area. Exercise and enforcement of these powers includes the potential for offences to be identified and managed locally, either by officers designated by the Council or the Police.

Data Protection and Information Governance

41. In managing its enforcement activities under these Regulations, the Council may process sensitive personal data and potentially, law enforcement data. The processing of such data will be managed by services within the Council which are already familiar with the relevant Data Protection Act requirements and will follow their normal procedures and protocols to maintain compliance.

Financial Implications

42. In June 2020, HM Government confirmed that upper tier local authorities would be allocated a Local Authority Test & Trace Grant. Nottinghamshire County Council has received £3,802,915. The grant is ring-fenced based on expenditure in relation to the mitigation against and management of local outbreaks of COVID-19.
43. An allocation of £350,000 has been identified for 'District / Borough Councils - contact tracing & implementation of measures'.
44. It is envisaged the majority of work undertaken by Nottinghamshire County Council will be managed within existing resources. However, it may be possible for part of the grant's 'Contingency' allocation (£594,163) to be used for any unforeseen costs.
45. These figures are subject to approval by this Committee under a separate agenda item at this meeting. Further information is available in the Adult Social Care & Public Health Committee report on the [Local Authority Test & Trace Grant Resource Plan](#) (14 September 2020).

Human Rights Implications

46. The regulations have the potential to engage a number of rights under the Human Rights Act including the right to life, the right to respect for a private and family life, Right to freedom of assembly and association and the right to peaceful enjoyment of property and possessions. Any interference with these rights which may be impacted by the issue of a Direction must be carefully considered and are likely to involve the need to balance the rights of one person against those of another person or group and they must be exercised proportionately and in accordance with the law.

Public Sector Equality Duty implications

47. In exercising its powers under the Regulations, the Council must have regard to the Public Sector Equality Duty (PSED) and will need to consider whether it is necessary to undertake an Equalities Impact Assessment to assess the potential impact of any Direction on people with protected characteristics. However, the guidance makes clear that if a disproportionate impact is identified this should be balanced against the wider public health risk in a local authority's area and mitigations should be considered and implemented wherever possible.

RECOMMENDATIONS

- 1) That the Adult Social Care & Public Health Committee formally delegates authority for the exercise of all powers under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 to the Chief Executive, such powers to be exercised following consultation with the Director of Public Health and where possible, having sought the views of the Leader of the Council, the Chairman and Vice Chairman of Adult Social Care & Public Health Committee, and the Leaders of the opposition groups of the Council. For the avoidance of doubt, Committee also approves that this delegation of authority may be exercised by either the Deputy Chief Executive or the Corporate Director for Adult Social Care & Health in the absence of the Chief Executive.

- 2) In addition to the delegation to the Chief Executive above, to authorise the Service Director for Place, and the Group Manager for Trading Standards & Communities, to designate officers within Nottinghamshire County Council or other partner agencies to exercise powers under the Regulations with regard to notification, management and enforcement of the requirements, including but not limited to the issue of prohibition notices and fixed penalty notices. Such designation to include authority for designated officers to designate additional officers within their partner agencies, as they deem appropriate, in order to effectively manage the control of outbreaks and the enforcement of any Directions.

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Constitutional Comments (HD – 31/7/2020)

48. The proposals within the report fall within the delegation to this Committee by virtue of its terms of reference which includes specific responsibility for public health functions.

Financial Comments (DG194 – 02/09/2020)

49. The financial implications are contained in paragraph 42-45 of this report. £3.8m has been received from the Government for test and trace, and the allocation is subject to committee approval as a separate agenda item.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- [COVID-19 situational update](#) (15 September 2020)
- [Local Authority Test & Trace Grant Resource Plan](#) (14 September 2020)
- [COVID-19 contain framework](#) (17 July 2020)
- [Nottinghamshire County Local Outbreak Control Plan](#) (June 2020)
- [Nottinghamshire County COVID-19 Weekly Surveillance Reports](#) (July – September 2020)

Electoral Division(s) and Member(s) Affected

- All