

Cabinet Meeting on Wednesday 19 August 2020

Delegation of authority to issue Directions under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020



Cllr Johnny McMahon, Cabinet Member for Health, Care and Wellbeing said,

“Everyone has a part to play in halting the spread of Covid-19. Whilst the vast majority of businesses are complying with the guidance, we have been made aware of a number of premises that aren’t following it, and potentially putting the people who use them at risk.

This paper details how we are stepping up our powers to ensure businesses, premises, events and activities are following the guidance to keep people safe. Any potential closure will be a last resort—we

will continue to work with businesses to help them comply with the regulations, but the safety of the public has to come first”

Report Summary:

The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (The Regulations) came into force on 18th July 2020 and expire on 17th January 2021. The regulations grant upper tier local authorities power to give specific directions which have the effect of imposing prohibitions, requirements or restrictions.

Recommendations

I recommend that:

- a. The process for the issuing of direction notices under the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 by Staffordshire Council is approved.
- b. That authority to issue direction notices, restricted to direction notices that do not constitute key decisions, as well as the review of those direction notices, be delegated to the Chief Executive, in consultation with the Director for Health and Care in his capacity as director of Public Health.
- c. That in the event of the Chief Executive not being available for any reason, authority to issue and review direction notices, may be exercised by the Deputy Chief Executive and Director for Children’s Services or the Director for Environment, Infrastructure and Skills, in consultation with the Director for Health and Care in his capacity as director of Public Health.

d. That in the event of the Director of Public Health not being available, for any reason, the consultation for the issue of the direction shall be deputised to a Consultant in Public Health in accordance with his sub scheme of delegation.

Local Members Interest
N/A

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Recommendations of the Cabinet Member for Health, Care and Wellbeing

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Report of the Director of Corporate Services

Reasons for Recommendations:

1. The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (The Regulations) came into force on 18th July 2020 and expire on 17th January 2021. The regulations grant upper tier local authorities power to give specific directions which have the effect of imposing prohibitions, requirements or restrictions.
2. The Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England.
3. The Regulations allow Staffordshire County Council to issue directions imposing prohibitions, or restrictions in relation to premises, events, activities or open spaces without needing to apply to the Court. In the most serious of cases, the county council will have the ability to close business who are deemed to be

posting a risk to public health. To make a direction under the regulations, a local authority needs to be satisfied that all of the following three conditions are met:

- a. That giving direction responds to a serious and imminent threat to public health in the local authority's area (regulation 2(1)(a)), and;
 - b. That the direction is necessary to prevent, protect against, control or provide a public health response to the spread of infection in the local authority's area of coronavirus (regulation 2(1)(b)), and;
 - c. That the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose (regulation 2(1)(c))
4. There are currently a number of premises in the Staffordshire area where concerns have been escalated to the County Council by partners (such as the Police, District and Borough Environmental Health Officers) alleging that those premises are not complying with Public Health Guidance in relation to the safe operation of their premises and businesses. Under the regulations the county council can take measures to act to protect public health. A process is required to ensure that strong evidence and good governance underpins the decision-making process.
 5. A process has been drafted, which includes the issue of a non statutory warning letter. Although not a requirement of the Regulations the warning letter is intended to give businesses an opportunity to immediately rectify any identified concerns, or access further support that could potentially avoid closure.
 6. Legal review has been built in from the outset of the process to ensure that scrutiny is in place to reduce the risk of successful legal challenge to the decisions made.
 7. The warning letter is not a statutory part of the legislative provisions or statutory guidance and so if required a direction could and would be issued immediately and without warning. Equally, where a warning letter is issued we must review the compliance required in a timely fashion in order to ensure that a decision to issue a direction can be made without undermining the grounds for immediacy of action.
 8. If a direction is issued then the need for the continuance of the direction must be reviewed every 7 days.

Who makes the decision?

9. Our governance arrangements require that our Cabinet must take key decisions.
10. Decisions which are not key may be delegated to Executive Officers under the scheme of delegation. Any of the powers that are delegated to Offices are recorded in the Scheme of Delegation to Officers in s11 of the Constitution.

11. The recommendation is that where the issue of decisions do not fall within the category of key decisions that they are delegated to the Chief Executive, or another member of SLT in his absence.
12. Where any individual decision in respect of a Direction is classified as a key decision it will be brought to Cabinet for a decision.
13. For information it should be noted that the Secretary of State also has powers with the Regulations to direct Staffordshire County Council to issue a direction under the Regulations. In the event that the Secretary of State exercises his powers in this way then the County Council do not have to determine whether or not there are evidential grounds for the issue of a direction and they do not have consult with the Director of Public Health. The Secretary of State must however have consulted with the Chief Medical Officer or one of the Deputy Chief Medical Offices of the Department of Health and Social Care.

Legal Implications/Risks

14. The process has been developed in co-operative working between the Director of Public Health and Legal Services Unit. The following risks have been identified:
 - a. Decisions are subject to appeal by application to the Magistrates Court.
 - b. Decisions are also subject to review by means of an affected party making representations to the Secretary of State
 - c. There is a risk of judicial review or claims by businesses being made against the County Council for loss of income arising if decisions are made without following due process.
 - d. There is a risk of reputational damage arising from any successful challenge.

Financial Implications

15. The work required and cost of legal officer time and disbursements (such as any Court or Counsel fee) in supporting the issue of the directions and incurred as a result of defending any challenges to the process has not been factored into budgets within legal services.
16. There is a potential risk of cost orders being made against the County Council should a decision be made that does not follow due process.
17. The work required in the role of coordinating the Localised Lockdown process by a Trading Standards Manager has not been factored in to the Trading Standards budget. Furthermore there is an expectation that trading standards officers will be required to provide mutual aid to support the work of environmental health in the districts and boroughs. The costs incurred in delivering the support have not been factored on to the Trading Standards budget.

List of Background Documents/Appendices:

- Appendix 1 – Written Process
- Appendix 2 – Warning Letter

Appendix 3 – Direction Notice
Appendix 4 – Report Template
Appendix 5 – Flowchart

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