

READING BOROUGH COUNCIL
REPORT BY EXECUTIVE DIRECTOR OF RESOURCES

TO:	POLICY COMMITTEE		
DATE:	24 AUGUST 2020		
TITLE:	CORONAVIRUS PANDEMIC - DELEGATIONS FOR LOCAL LOCKDOWNS		
LEAD COUNCILLOR:	CLLR JASON BROCK	PORTFOLIO:	LEADERSHIP
SERVICE:		WARDS:	BOROUGHWIDE
LEAD OFFICER:	MICHAEL GRAHAM	TEL:	0188 937 3470
JOB TITLE:	ASSISTANT DIRECTOR LEGAL AND DEMOCRATIC SERVICES	E-MAIL:	michael.graham@reading.gov.uk

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report outlines the new powers which have been given to councils to assist with their response to the pandemic.
- 1.2 The [Health Protection \(Coronavirus, Restrictions\) \(England\) \(No.3\) Regulations 2020](#) came into force on 18 July 2020. They grant local authorities new powers to respond to a serious and imminent threat to public health and to prevent COVID-19 transmission where this is necessary. The implementation of measures should be proportionate to mitigate the spread of the coronavirus in the area.
- 1.3 This report explains the powers granted by the new Regulations and makes delegations for their effective operation. In addition to the delegations, the report sets out the approach for wider consultation with relevant lead Councillors where the powers have a wider community impact.

2. RECOMMENDED ACTION

Policy Committee is asked:

- 2.1 To delegate the powers to direct under the Regulations, (including the power to review, revoke or replace the direction as envisaged by the Regulations) as follows:
 - (a) Regulation 4 (directions relating to individual premises) delegation to the Executive Director of Economic Growth and Neighbourhood Services in consultation with the Director for Public Health
 - (b) Regulation 5 (directions relating to events) delegation to the Executive Director of Economic Growth and Neighbourhood Services in consultation with the Director for Public Health
 - (c) Regulation 6 (directions relating to outdoor places) delegation to the Executive Director of Economic Growth and Neighbourhood Services in consultation with the Director for Public Health
 - (d) Regulation 12 (enforcement of requirements), (including (i) the power to designate officers for the purpose of the Regulations and (ii) the power to delegate authority to designated officers to issue prohibition notices) delegation to the Executive Director of Economic Growth and Neighbourhood Services
 - (e) Regulation 14 (power to authorise persons to issue fixed penalty notices) delegation to the Executive Director of Economic Growth and Neighbourhood Services

(f) Regulation 15 (power to instigate prosecutions) delegation to the Assistant Director of Legal and Democratic Services

3. POLICY CONTEXT

3.1 Local authorities already have a number of statutory powers which can assist in response to a public health issue, for example:

- Power to apply to the Magistrates' Court to impose restrictions or requirements to close contaminated premises; close public spaces; detain a conveyance or movable structure; disinfect or decontaminate premises; or order that a building, conveyance or structure be destroyed (Public Health (Control of Disease Act) 1984)
- power to close a food business if there is an imminent risk of injury to health (Food Safety Act 1990)
- power to close a business by way of a Hygiene Emergency Prohibition Notice if the Regulations have not been followed and there is an imminent risk of injury to health (Food Safety and Hygiene (England) Regulations 2013)
- power to request persons to do or refrain from doing anything by serving a notice for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination which presents or could present significant harm to public health (the Health Protection (Local Authority Powers) Regulations 2010)

These powers are exercised by officers and Lead and Ward Councillors are informed as appropriate.

3.2 In addition to the above powers, local authorities may also seek support from ministers to use their powers under the Coronavirus Act 2020 to close schools or limit schools to set year groups' attendance, to cancel or place restrictions on organised events or gatherings, or to close premises.

New powers

3.3 The new Regulations include powers for local authorities to:

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

3.4 To make a direction under the Regulations, a local authority must be satisfied that the following three conditions are met:

1. the direction responds to a serious and imminent threat to public health in their area
2. the direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection of coronavirus
3. the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose

3.5 The powers will only be used following the principles laid out in the Corporate Enforcement Policy. The exercise of these powers is not something which will happen as a matter of course. These are additional tools which will be available to the Council should it need them. The use of the powers will be considered carefully by officers in consultation with the Director of Public Health. In cases where there are significant impacts for the borough, for example the restriction of an event or closure of a public

outdoor place, relevant lead councillors will also be consulted about the use of the powers. The use of the powers is subject to considerations of necessity and proportionality as part of the assessment of regulatory action under the Human Rights Act.

3.6 Before making a direction, local authorities must:

- gather sufficient evidence to demonstrate that these tests have been met
- consult with the director of public health and the police (if the direction prohibits, requires or restricts access to a premise, event or public outdoor place)
- have due regard to the Public Sector Equality Duty (s.149 of the Equality Act 2010) and consider carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics
- have regard to the need to ensure the public has access to essential public services
- be clear about why they are taking directive action and communicate this clearly to the Secretary of State, the persons to whom the direction applies and, where appropriate, those impacted by the direction

3.7 The Secretary of State may direct a local authority to issue a direction where he considers the conditions above have been met and can also direct a local authority to revoke an existing direction (with or without a replacement direction) where the above conditions are no longer met.

3.8 A local authority must review a direction 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, the direction should be immediately revoked or replaced with a direction which meets the threshold.

3.9 Those directly impacted by any direction under these Regulations have the right of appeal to a local magistrate and may make representations to the Secretary of State.

Closure of premises

3.10 Regulation 4 provides a power for local authorities to make directions about individual premises, for the purpose of:

- closing the premises
- restricting entry to the premises
- securing restrictions in relation to the location of persons in the premises

3.11 Directions may not be made in relation to premises which form part of essential infrastructure. [Government guidance](#) details categories of essential infrastructure that may not be closed. However, the list is not exhaustive, and local authorities should use their discretion to consider whether premises could be considered essential local or national infrastructure before using the power. While public transport is included in the list of essential infrastructure, this doesn't include taxis or private hire vehicles. In deciding whether to close or restrict transport services, local authorities should be mindful of their duty under the Education Act 1996 to facilitate home to school transport for eligible children.

Restrictions on events

3.12 Certain events (or types of event) may be prohibited from taking place, e.g. a planned event at which the numbers of people expected to seek to use a space, or the nature of a particular event, would make it unsafe due to the risk of coronavirus transmission.

- 3.13 A direction may only have the effect of imposing prohibitions, requirements or restrictions on the owner, occupier or organiser of premises for an event. This does not include people planning to attend the event.

Closure of a public outdoor place

- 3.14 The closure of, or restriction of access to, a public outdoor place may be directed, e.g. a planned event, 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 open space.
- 3.15 Once a direction is made, people will not be allowed to enter or remain in the area, subject to the terms of the direction, 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 work purposes.

Enforcement of requirements

- 3.16 Where a local authority designated officer or a police officer or PCSO reasonably believes that a person is in contravention of a prohibition, requirement or restriction as set out in the Regulations, they may take such action as is necessary and proportionate to enforce a direction. A local authority designated officer may issue a prohibition notice to a person who contravenes a direction. Where the police consider that an event is being held in contravention of a direction, they may direct the event to stop, direct a person to leave the event, or remove a person from the event. Where the police consider that a person is, without reasonable excuse, in a public outdoor place that has been closed or where access has been restricted under a direction, they may direct that person to leave the place immediately and/or remove the person from the place.

Offences

- 3.17 Where it is reasonably believed that a person aged 18 or over has committed an offence under these Regulations, an authorised person - a local authority designated officer or a police officer or PCSO 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. 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.

Reading Borough Council Policy

- 3.18 During the initial Response phase of the pandemic the Council identified a strategic framework for the duration of the emergency and Recovery period during which its priority objectives are to:
- Support and protect vulnerable children and adults by ensuring the social care system continues to function effectively
 - Support the people who are most vulnerable and isolated in our communities
 - Support businesses and the local economy, and secure Reading's economic recovery
- 3.19 As the Council approached the Recovery phase, it reviewed its priorities in order that it could respond to the challenges brought by the pandemic.
- 3.20 The overall vision for the Recovery phase is: To ensure Reading can be a thriving, virus-resilient community.
- 3.21 To achieve this there are three strategic objectives:
- 1) To ensure the Council itself is resilient and fit for the future:
 - 2) To help people be safe and communities thrive:

3) To secure the economic future of Reading:

Further details are contained in the 22 June 2020 [Policy Committee report](#).

3.22 These strategic objectives sit alongside the Council's Corporate Plan 2018-2021 (which was refreshed in Spring 2019) and which sets out the following six priorities:

- Securing the economic success of Reading
- Improving access to decent housing to meet local needs
- Protecting and enhancing the lives of vulnerable adults and children
- Keeping Reading's environment clean, green and safe
- Promoting health, education, culture & wellbeing
- Ensuring the Council is fit for the future

3.23 Full details of the Council's Corporate Plan and the actions which will deliver the priorities are published on the [Council's website](#) and demonstrate how the Council meets its legal obligation to be efficient, effective and economical.

3.24 Responding to rising rates of infection in the Borough is a key function of the Council to ensure the health, safety and well-being of the population. Utilising these new powers effectively is essential to ensuring the residents of the Borough are safe and that Reading is a thriving, virus-resilient place.

4. THE PROPOSAL

4.1 The powers which are to be exercised by the Council should be delegated according to the following table. In each case, the power to give a direction, also includes the power to review, revoke or replace the direction as envisaged by the Regulations. In cases where there are significant impacts for the borough, the relevant lead councillors will also be consulted about the use of the powers.

Power	Delegation to
Regulation 4 - directions relating to individual premises	Executive Director of Economic Growth and Neighbourhood Services in consultation with the Director for Public Health
Regulation 5 - directions relating to events	Executive Director of Economic Growth and Neighbourhood Services in consultation with the Director for Public Health
Regulation 6 - directions relating to outdoor places	Executive Director of Economic Growth and Neighbourhood Services in consultation with the Director for Public Health
Regulation 12 - enforcement of requirements - (a) power to designate officers for the purpose of the Regulations (b) power to delegate authority to designated officers to issue prohibition notices	Executive Director of Economic Growth and Neighbourhood Services
Regulation 14 - fixed penalty notices - power to authorise persons to issue fixed penalty notices	Executive Director of Economic Growth and Neighbourhood Services

Regulation 15 - power to instigate prosecutions	Assistant Director of Legal and Democratic Services
--	---

4.2 The Director of Public Health has been consulted about the operation of these powers across Berkshire, as have neighbouring councils.

5. CONTRIBUTION TO STRATEGIC AIMS

5.1 Members will note that these powers correlate with the Council's Strategic Priorities for managing the Pandemic and Recovery Programme as well as the Council's Corporate Plan and support all three strategic frameworks.

6. ENVIRONMENTAL AND CLIMATE IMPLICATIONS

6.1 The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers). There are no climate emergency implications arising from this report or the implementation of the new powers.

7. COMMUNITY ENGAGEMENT AND INFORMATION

7.1 Section 138 of the Local Government and Public Involvement in Health Act 2007 places a duty on local authorities to involve local representatives when carrying out "any of its functions" by providing information, consulting or "involving in another way".

7.2 At the Policy Committee on 3 August 2020, members approved the establishment of an [Outbreak Engagement Board](#) with the purpose of increasing democratic oversight over future measures which need to be taken to respond to the pandemic. The operation and use of these powers is a matter which could be referred to this Board in its review of any response to an increase of the virus in Reading. Members should note that the Board's role would be confined to a review of the use of the powers and their efficacy in reducing the spread of the virus. The Board does not have a decision-making role in the use of the powers.

7.3 Before a direction is made, there is a statutory requirement for the local authority to consult with the Director of Public Health. In Berkshire there is a shared public health function across the six unitary councils and the Director of Public Health has been consulted in the preparation of this report.

7.4 If a direction is made then the local authority is under a duty to give notice in writing to the persons affected by it, bring it to the attention of neighbouring councils and publish the notice on the Council's website. A person who is affected by the notice has got the right of appeal to the Magistrates' Court.

8. EQUALITY IMPACT ASSESSMENT

8.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

8.2 The use of these powers on a case by case basis will require officers to consider the Public Sector Equality Duty and implications of the Human Rights Act. It is not possible

at this stage to narrow down the wide range of factors that would have to be considered, but officers will work with neighbouring councils and professional associations to make sure that assessments of these issues are consistent with emerging best practice in other parts of the country that exercise the powers.

9. LEGAL IMPLICATIONS

- 9.1 Covered in the main body of the report. There are no other legal issues arising directly from this report.

10. FINANCIAL IMPLICATIONS

- 10.1 There have been significant financial implications for the Council in responding to this emergency both in terms of additional costs as well as reduced income levels and officers have put in place procedures to record and track both.

- 10.2 There are no additional financial implications arising from this report. However, the operation of the power to close premises etc may well involve additional staff time and additional expense which is part and parcel of the Council's statutory obligations. There is no way of accurately assessing what the financial implications could be at this time.

- 10.3 However, to support its overall COVID-19 control activity, Reading Borough Council has received a one-off grant of £901k. This is ring-fenced for the following purpose "*to provide support to local authorities in England towards expenditure lawfully incurred or to be incurred in relation to the mitigation against and management of local outbreaks of COVID-19*". To support the response work occurring at a Berkshire wide and at a Berkshire West level, the Council has committed to contributing £386k of this money to the Berkshire Shared Team to support the following roles and functions:

- Deputy Director of Public Health
- Covid Surveillance Specialist
- Analytical capacity
- Health protection cell project management support
- Public Health Expertise - capacity for Health Protection Cells
- Capacity for out of hours triage of notifications and response to organisational queries
- Specialist public health communications & engagement
- Social media management and delivery of campaign work
- Communications and engagement budget

- 10.4 That leaves a further £515k for Reading Borough Council to use at its discretion, within the conditions of the grant, to support local COVID-19 response and outbreak control. Further work will be undertaken to determine the most cost-effective use of these monies on local priorities.

- 10.5 Officers have checked with the Council's insurers that the operation of these powers will fall within the Council's ordinary cover.

11. BACKGROUND PAPERS

- 11.1 There are none.