

**Report to:** Leader and Lead Member for Strategic Management and Economic Development

**Date of meeting:** 10 November 2020

**By:** Director of Adult Social Care and Health

**Title:** Delegation of powers to Officers

**Purpose:** To seek delegated powers for officers

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***RECOMMENDATION:*** The Leader is recommended to agree to delegate the functions as set out in paragraph 3.1.

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## **1 Background Information**

1.1 Local authorities have a specific and distinct range of legal powers under public health, environmental health and health and safety laws which allow them to temporarily close individual settings for a specific reason and period. These powers apply under a patchwork of triggers or, in some cases, require an application to a magistrate.

1.2 Government considered that these powers were insufficient to enable local authorities to fully implement the measures potentially needed to prevent, protect against, delay or otherwise control the incidence or spread of coronavirus in their area. New legislation ensures that a uniform suite of powers exists to enable local decision-makers to promptly take action to mitigate local Covid-19 outbreaks through a new and consistent set of regulations.

## **2 The Health Protection (Coronavirus, Restrictions) (No.3) Regulations 2020**

2.1 The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (“the No. 3 Regulations”) form part of that suite of powers and make specific provision for County Councils and London Borough Councils to give Directions relating to premises, events and public outdoor places 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 (which could include a pub, restaurant, shop, factory etc.)
- prohibit a specified event or events of a specified description from taking place (events could include garden shows, festivals, marathons, hospitality attractions, fairgrounds etc.)
- restrict access to, or close, a specific public outdoor place in its area or public outdoor places in its area of a specified description (which could include parks, public toilets, stadiums etc.)

2.2 Anyone can request the County Council to make a Direction. More usually, it is likely to be a District or Borough Council’s Licensing or Environmental Health Officer, the County Council’s Trading Standards/Highways Officer, a Safety Advisory Group Chair, a Councillor/MP or the Police. Partner organisations will be encouraged to submit their

request at the earliest opportunity so as to allow reasonable advance notice to those concerned that a Direction is being considered.

2.3 Once the request has been formally received a County Council must be satisfied and have evidence that all of the following three conditions are met:

<p>The Direction responds to a serious and imminent threat to public health</p>	<p><i>Threats could include localised transmission rate/s or rising local / national alert levels, the possibility of attracting people from areas with a higher prevalence of COVID and/or unsustainable pressures to the health system.</i></p>
<p>The Direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection of coronavirus in the local authority's area</p>	<p><i>Consideration would need to be given to factors that would cause the spread of infection.</i></p>
<p>The prohibitions, requirements or restrictions imposed by the Direction are a proportionate means of achieving that purpose</p>	<p><i>Consideration would need to be given as to whether all alternatives to mitigate risks have been exhausted.</i></p>

2.4 Issuing a Direction is an action of last resort and all other methods to ensure risks are fully mitigated should be explored. However, if these conditions have been met and the County Council has decided to make a Direction it must:

- consult with the Director of Public Health and although it is not in the legislation, it may usually be appropriate to consult the Police if the Direction prohibits, requires or restricts access to premises, an 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. Identifying disproportionate impact would not prohibit a local authority from taking action, but this should be balanced against the wider public health risk in the area, and mitigations should be considered and implemented wherever possible;
- have regard to the need to ensure the public has access to essential public services; and
- be clear about why they are taking action and communicate this clearly to the Secretary of State, the persons to whom the Direction applies (i.e. to a person carrying on a business from premises within a public outdoor place to which the direction relates and any person who owns, occupies or is responsible for any land or premises in a public outdoor place to which the direction relates) and, where appropriate, those impacted by the Direction.

2.5 Once the decision has been made to issue a Direction, it will be served by Trading Standards on the event organiser / business or premises owner with details of the right of

appeal to the Magistrates' Court. A copy of the Direction will be provided to the Secretary of State together with the reasons for that decision.

2.6 Trading Standards will monitor compliance. Contravention of a Direction is a criminal offence and non-compliance may result in either a Fixed Penalty Notice or Police enforcement.

2.7 The Direction must be reviewed every seven days. The County Council will have responsibility for deciding whether the Direction should remain in place or whether any modifications are necessary. This will involve reassessing local risk using updated data sources that provided the initial evidence, any new information, consulting with relevant stakeholders as necessary, and using professional judgement.

### **3 Proposed Delegation**

3.1 It is proposed to authorise the Director of Public Health, the Chief Executive and the Assistant Chief Executive to make a Direction (and review that Direction every seven days) in accordance with the No.3 Regulations and/or any updating legislation.

### **4 Conclusion and Reason for Recommendation**

4.1 It is considered that the amendments proposed will aid in the ability for decisions to be taken in an efficient and timely manner, which is considered particularly important where deadlines need to be met for certain actions to be undertaken.

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