

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

3845

Author:

Nancy Barnard

Department:

Commercial and Operations

Contact:

Nancy Barnard

(Job Title: Governance Manager, Email: nancy.barnard@nottinghamcity.gov.uk, Phone: 01158764312)

Subject:

Authorisation under Business Closure Regulations 2020

Total Value:

Nil (Type: Nil)

Decision Being Taken:

Pursuant to the powers conferred by Regulations 8 (12) (a) (iii) and 10 (11) (a) (iv) of The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and any enactment amending or replacing the same ("the Regulations") to designate Principal Trading Standards Officers, Trading Standards Officers, Trading Standards Manager, Environmental Health Officers, Safer Business Manager (Food, Health & Safety, Licensing), Food Safety and Standards Officers, Senior Community Protection Officers, Community Protection Officers and Operations Manager Community Protection as:

- (a) a relevant person for the purposes of Regulations 8 of the Regulations to take such action as is necessary to enforce any restriction or requirement imposed in Regulation 4 or 5 of the Regulations including giving a prohibition notice under Regulation 8(2) of the Regulations and,
- (b) as an authorised person for the purposes of Regulation 10 of the Regulations to issue fixed penalty notices where the alleged offence relates to the contravention of a requirement or restriction in Regulation 4 or 5 of the Regulations.

Reasons for the Decision(s)

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The Government has ordered specific businesses and other venues across the United Kingdom to close from Saturday 21 March 2020. The list of businesses was then extended on the 23rd March. To support and enforce these measures the government introduced emergency legislation the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (as amended) ("the Business Closure Regulations"), which were made on and came into force at 2pm on 21 March 2020. The Business Closure Regulations were revoked on 26 March and replaced with The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the Regulations") which came into force at 1pm on 26 March 2020. The Regulations contain wide ranging powers, including powers to restrict movement and gatherings, but Local Authorities are only able to take enforcement in relation to business restrictions and requirements contained in Regulations 4 and 5 of the Regulations. Businesses that breach the Regulations will be subject to potentially unlimited fines for offences of failing to close/remain closed, or failing to comply with other restrictions imposed by the Regulations. It is also an offence to obstruct officers charged with responsibility for policing adherence to the Regulations. Prohibition Notices are also now available to enforce the requirements contained in the Regulations which are enforceable by Local Authorities, and fixed penalty notices. Officers must be designated by the Council to enforce the powers which relates to business restrictions or requirements contained in Regulation 4 and 5 of the Regulations. When designated, such officers will also be able to issue Prohibition Notices and Fixed Penalty Notices for matters that fall within the Council's remit under the Regulations. 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. The Council hopes that, in these exceptional circumstances, most businesses will voluntarily comply with the relevant requirements in the Regulations, or that businesses will at least respond to 'persuasive' action by officers, and that actual enforcement action will not be necessary in the majority of instances.? However, the Council recognises that some businesses may be tempted to open and or operate in breach of the Regulations, or otherwise breach the restrictions imposed by the Regulations, particularly where financial pressures may have built over time. To enable the Council to take appropriate enforcement action under the Regulations while they remain in force the Council will first need to designate appropriate officers to take such enforcement action. Guidance produced by the Government states that Environmental Health and Trading Standards officers will monitor compliance with the Business Closure Regulations which were in force at the time that the Guidance was written, with support from the police provided if appropriate. It is therefore proposed that ") Principal Trading Standards Officers, Trading Standards Officers, Trading Standards Manager, Environmental Health Officers, Safer Business Manager (Food, Health & Safety, Licensing), Food Safety and Standards Officers, Senior Community Protection Officers, and Operations Manager Community Protection are designated to enforce the Regulations which relate to business restrictions or requirements. It is also proposed that Community Protection Officers are designated. The Regulations also include the power to issue Prohibition Notices and on the spot fixed penalty notices, and the proposed designation includes the power for such officers to issue Prohibition Notices and fixed penalty notices where applicable, with immediate effect for the duration that these powers remain in force. The fixed penalty notices are specified to be £60, or £30 if paid within 14 days. It is also noted that if a person has already received a fixed penalty notice under the Regulations, the next fixed penalty issued will not have a discount for early payment, and the amount specified is doubled to £120, and in the case of the third and subsequent fixed penalty notices received, double the amount specified in the last fixed penalty notice received by that person up to a maximum of £960. Under the designation made by the Secretary of State on 22 March 2020 in exercise of the powers conferred by the Business Closure Regulations it was confirmed that all Local Authorities are designated by the Secretary of State as able to bring proceedings for any offence under the Business Closure Regulations. Under the Regulations this designation remains in force, and therefore the Council has been designated by the Secretary of State under the Regulations and may take proceedings for an offence under the Regulations. Solicitors from the Planning, Environment and Leisure Team in Legal Services along with Governance and Electoral Services are supporting the relevant departments to ensure effective measures are in place to facilitate appointed officers taking enforcement action if necessary.

Other Options Considered: Not to designate individuals - this would leave the Council unable to enforce the regulations and protect the public.

Background Papers: None

Published Works: The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

Affected Wards: Citywide

Colleague / Councillor Interests: None

Consultations:
Date: 27/03/2020
Other: Councillor Sam Webster - Portfolio Holder for Finance, Growth and the City Centre (including responsibility for Environmental Health)
TBC

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications: This decision enables specified Council officers to take enforcement action against businesses operating illegally.

Equality: EIA not required. Reasons: EIA not required

Regard for NHS Constitution: Local authorities have a statutory duty to have regard to the NHS Constitution when exercising their public health functions under the NHS Act 2006. In making this decision relating to public health functions, we have properly considered the NHS Constitution where applicable and have taken into account how it can be applied in order to commission services to improve the health of the local community.

Decision Type: Portfolio Holder

Subject to Call In: No
The call-in procedure does not apply to the proposed decision because the delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The Chair of the Overview and Scrutiny Committee (or Vice-Chair) in his/her absence has been consulted and agreed both that the decision proposed is reasonable in all circumstances and that it should be treated as a matter of urgency.

Person Consulted: Chair of Overview and Scrutiny

Consultation Date: 30/03/2020

To enable enforcement action to begin as soon as possible to protect public health

Advice Sought:

Legal, Finance

Legal Advice:

As detailed in the reasons for the decision, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the Regulations") came into force on 26 March 2020 and contain various emergency powers in response to the imminent threat to public health posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England. As detailed in the reasons for the decision the Regulations contain powers which can be enforced by 'relevant persons', and fixed penalties can be issued by 'authorised persons'. Pursuant to regulation 8 of the Regulations 'relevant persons' include persons designated by the Council for the purposes of regulation 8 and 'authorised persons' include persons designated by the Council for the purposes of regulation 10 respectively, but only in relation to a requirement under regulation 4 or 5 of the Regulations. As stated in the reasons for the decision, regulations 4 and 5 relate to requirements to close businesses and premises during the emergency and further restrictions and closures relating to such businesses and premises. The decision appears to accord with the requirements in the Regulations, and should ensure that officers of the Council which are included in the decision are appropriately authorised to take enforcement action under the Regulations where this is necessary and in accordance with the Regulations and any associated Guidance. The Regulations do not specify which Local Authority officers should be designated to enforce the Regulations. Guidance published in relation to the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020, which were revoked by the Regulations, indicated that those regulations would be enforced by Environmental Health and Trading Standards Officers. At the time of writing no updated Guidance appears to have been published. Advice provided by Tamazin Wilson (Solicitor) on 27/03/2020.

Finance Advice:

This decision seeks approval to designate Officers within the Council to enforce powers which relate to business restrictions or requirements contained in Regulation 4 and 5 of the Regulations detailed by the author. When designated, such officers will also be able to issue Prohibition Notices and Fixed Penalty Notices for matters that fall within the Council's remit under the Regulations.

There is no financial impact in terms of cost to the Council in implementing this decision however there is potential to receive income via any fines given to those businesses in breach of the regulations. This potential income would be received within Community Protection but is unknown at present however it will be monitored closely over this period of uncertainty. Any income received should be coded to the Covid-19 analysis code "012" to aid monitoring and assessing the financial impact of Covid-19.

Advice provided by Philip Gretton (Finance Analyst) on 28/03/2020.

Signatures

David Mellen (Leader/ PH Regeneration, Safety and Communications)

SIGNED and Dated: 30/03/2020

Andy Vaughan (Corporate Director Commercial and Operations)

SIGNED and Dated: 30/03/2020