

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4009

Author:

Paul Dales

Department:

Commercial and Operations

Contact:

Paul Dales

(Job Title: Food and Health & Safety Manager, Email: paul.dales@nottinghamcity.gov.uk, Phone: 0115 8761479)

Subject:

Authorisations under Coronavirus Health Protection Regulations UPDATE

Total Value:

Nil (Type: Nil)

Decision Being Taken:

1. Designate relevant persons for the purposes of Regulation 7 of the Principal Regulations and authorised persons for the purposes of Regulation 9 of the Principal Regulations as detailed in paragraphs (a) i) and ii) if the Reasons and circumstances leading to the need for the decision section of this decision
2. Designate authorised persons for the purposes of the Contact Details Regulations as detailed in paragraph (b) of the Reasons and circumstances leading to the need for the decision section of this decision.

DECISION:

(a) Pursuant to the powers conferred by Regulation 9 (13) (a) (iv) of The Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020 and any enactment amending or replacing the same ("the Principal 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:

i) a relevant person for the purposes of Regulation 7 of the Principal Regulations to take such action as is necessary to enforce any restriction or requirement imposed in Regulation 4A or 4B of the Principal Regulations including giving a prohibition notice under Regulation 7(2) of the Principal Regulations and,

ii) an authorised person for the purposes of Regulation 9 of the Principal Regulations to issue fixed penalty notices where the alleged offence relates to the contravention of a requirement or restriction in Regulations 4A and or 4B of the Principal Regulations.

(b) Pursuant to the powers conferred by Regulation 18(11)(iv) of The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 and any enactment amending or replacing the same ("the Contact Details 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 an authorised person for the purposes of Regulation 18 of the Contact Details Regulations to issue fixed penalty notices where the alleged offence relation to the contravention of a requirement or restriction in Regulations 6, 7, 8, 10, 11, 13 and or 15 of the Contact Details Regulations.

Fom March 2020 the Government introduced emergency legislation in response to the ongoing serious and imminent threat to health which is posed by the incidence and spread of acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England.

From 21 March 2020 Local Authorities were given powers by Regulation to take enforcement in relation to various business closures, restrictions and requirements arising from the pandemic and designate officers for the purposes of those powers. On 30 March 2020, 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 which came into force on 26 March 2020 ("the 26 March Regulations") replacing powers contained in an earlier set of Regulations, the Council designated 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 ("the Officers") to enforce powers given to Local Authorities to issue Prohibition Notices and fixed penalty notices for breaches of Regulation 4 and 5 of the 26 March Regulations by Delegated Decision. A copy of the Delegated Decision Reference Number 3843 is attached for information ("the First Decision").

Since the First Decision was made the 26 March Regulations were amended several times as the restrictions and requirements placed on businesses changed over time, eventually being replaced by the Principal Regulations made on 3 July 2020. The authorisations given under the First Decision remain in force for the purposes of the Principal Regulations as they apply to any enactment amending or replacing the 26 March Regulations, and also specifically under Regulation 2(3) of the Principal Regulations which states:

"A designation made in exercise of powers conferred by regulation 8(12)(a). 10(11). of [the 26 March] Regulations is to be treated as if it had been made in exercise of powers conferred by regulations 7(10)(b), 9(3)(b), 9(13) or 10, as appropriate of [the Principal] Regulations."

At the time of writing the Principal Regulations have been amended 5 times, most recently on 23 September 2020 by The Health Protection (Coronavirus, Restrictions)(No.2)(England)(Amendment)(No.5) Regulations 2020 ("the Amendment No 5 Regulations") to add additional powers enforceable by Local Authorities to enforce new closure times and operating requirements. Local Authorities have also been given additional enforcement powers by The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 ("the Contact Details Regulations") and The Health Protection (Coronavirus, Restrictions)(Obligations of Undertakings)(England) Regulations 2020 as amended by the Health Protection (Coronavirus, Restrictions)(Obligations of Undertakings)(England)(Amendment)(Regulations 2020 on the 28 September 2020 ("the Obligations of Undertakings Regulations"). Breach of these new and additional powers is an offence, and a fixed penalty notice can be issued by designated 'authorised officers' of the Council.

This Decision is required to designate appropriate officers for the purpose of the additional powers inserted into the Principal Regulations by the Amendment No 5 Regulations which are not already covered by the First Decision and the new powers contained in the Contact Details Regulations. It should be noted that under Regulation 8 of the Obligations of Undertakings Regulations there is a saving provision similar to Regulation 2(3) of the Principal Regulations which states:

"a person who is designated for the purposes of regulation 9(13) or 10 of the Principal Regulations is to be treated as if they were designated for the purposes of [the Obligations of Undertakings Regulations].."

Therefore, the designations made by the First Decision will apply for the purposes of the Obligations of Undertakings Regulations and those officers designated by the First Decision are also treated as persons designated for the purposes of the Obligations of Undertakings Regulations. No further designations are currently required under the Obligations of Undertakings Regulations.

The Principal Regulations

As stated above, the Amendment No 5 Regulations amended the Principal Regulations to add a new Regulation 4A and Regulation 4B into the Principal Regulations. Regulation 4A requires that businesses and services specified in Schedule 3 of the Principal Regulations must not carry on that business or service during the period that the Principal Regulations remain in force between the hours of 22:00 and 05:00 (subject to exceptions). The businesses and services include restaurants, cafes, bars and public houses. Regulation 4B places restrictions on service of food and drink for consumption on the premises of businesses and services specified in Schedule 3 including a table service requirement. A Prohibition Notice may also be issued under an amended Regulation 7 of the Principal Regulations in relation to a breach of Regulation 4A and or Regulation 4B. A fixed penalty notice is also available for breach of Regulations 4A and 4B which can be issued by authorised officers designated by the Council. The amount of the first fixed penalty for an offence under Regulation 4A or 4B is £1,000 with no discount for early payment, in the case of a second fixed penalty the amount is £2,000, in the case of a third, £4,000 with fourth and the amount of subsequent fixed penalties being £10,000.

The Amendment No 5 Regulations also increased the amount of fixed penalty notices available for other breaches of the Principal Regulations. The amount of the first fixed penalty for an offence under the Principal Regulations enforceable by the Council other than for breach of Regulation 4A or 4B is now £200, reduced to £100 if paid within 14 days of a notice being issued. The amount then doubles for each subsequent penalty notice, up to a maximum of £6,400.

To enable the Council to take appropriate enforcement action for breaches of Regulations 4A and 4B of the Principal Regulations officers of the Council will need to be designated as authorised officers to issue a fixed penalty notice for such breaches and to serve a Prohibition Notice for such breaches under Regulation 7 of the Principal Regulations as amended while they remain in force. It is proposed that the same officers designated under the First Decision are designated to enforce these requirements, with support from the police where appropriate as these are officers who are already familiar with the enforcement of similar restrictions and have a front line enforcement role with the Council.

The Contact Details Regulations

The Contact Details Regulations introduce a statutory requirement that designated venues collect certain contact details mainly from customers, visitors and staff (as set out in the Contact Details Regulations), store this information for 21 days, and share it with NHS Test and Trace or local public health officials, if requested.

The Contact Details Regulations also impose requirements to facilitate contact tracing such that NHS Test and Trace can more easily contact individuals who may have been exposed to the virus and provide them with appropriate advice, requiring persons to display a QR code and which will log the person's entry to the premises on their phone.

While the information collected and retained in accordance with the Contact Details Regulations is only required to be disclosed to the Secretary of State or Public Health Officer (meaning a registered public health consultant designated for the purposes of Schedule 21 of the Coronavirus Act 2020) as specified, failure to comply with the collection requirements are offences that are enforceable by the Council and fixed penalty notices are available for breach.

The Contact Details Regulations apply to a Relevant Person, namely a company etc. or person who has overall responsibility for the provision of a service or activity listed in the Schedule to the Contact Details Regulations, and in relation to a Relevant Premises, namely a premises (indoors or outdoors) that are operated wholly or partly for the purpose of providing a service or activity listed in that Schedule. The obligations included the requirement to display a QR Code requesting certain information. Relevant Premises must request certain details where an individual seeks to enter, and the QR code hasn't been used, and where a group enters details must be sought from each member of that group (subject to exemptions). The Contact Details Regulations specify how details collected must be stored, disposed of or disclosed. Breach of any of these requirements is an offence, and a fixed penalty notice is available.

The amount of the first fixed penalty for an offence under the Contact Details Regulations is £100, reduced to £50 if paid within 14 days of a notice being issued. The amount then doubles for each subsequent penalty notice, up to a maximum of £3200.

To enable the Council to take appropriate enforcement action under the Contact Details Regulations while they remain in force the Council will also need to designate appropriate officers to take such enforcement action. It is proposed that the same officers designated under the First Decision are designated to issue fixed penalty notices for breaches of the Contact Details Regulations, also with support from the police where appropriate.

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 under all of the applicable Regulations arising from the Coronavirus pandemic where necessary.

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

Background Papers: Delegated decision 3845 (dated 30/03/2020)

Published Works: The Health Protection (Coronavirus, Restrictions)(No.2)(England)Regulations 2020 and The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

Affected Wards: Citywide

Colleague / Councillor Interests: None

Consultations:
Date: 28/09/2020
Other:Cllr Sam Webster
Other:Councillor Sam Webster - Portfolio Holder for Finance, Growth and the City Centre (including responsibility for Environmental Health and Community Protection

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. Application of national emergency laws.

Decision Type: Portfolio Holder

Subject to Call In: Yes

Call In Expiry date: 13/10/2020

Advice Sought: Legal, Finance

Legal Advice:

As detailed in the reasons for the decision, the Principal Regulations (as amended), the Contact Details Regulations and the Obligations of Undertakings Regulations 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. The powers in these Regulations come into force on various dates (all appear to be in force at the time of writing this advice) and as detailed in the reasons for the decision, for the period that they remain in force, the Principal Regulations contain powers which can be enforced by 'relevant persons' and fixed penalties which can be issued by 'authorised persons' designated by the Council, and under the Contact Details Regulations and the Obligations of Undertakings Regulations, fixed penalty notices can be issued by officers designated as authorised officers by the Council. The Council has already designated certain powers under the Principal Regulations by the First Decision. These designations still apply and extend to the powers contained in the Obligations of Undertakings Regulations, but they do not extend to the the new powers contained in Regulations 4A and 4B of the Principal Regulations as amended, or the powers under the Contact Details Regulations. This decision should ensure that the officers specified in the decision are authorised under the new powers contained in Regulations 4A and 4B of the Principal Regulations as amended and the Contact Details Regulations.

The decision appears to accord with the requirements in the above mentioned Regulations, and should ensure that officers of the Council which are specified in this decision are appropriately designated for the purposes listed in the decision and background to the decision for the period that such powers remain in force. The above mentioned Regulations do not specify which Council officers should be designated to enforce them, but Guidance published by the Government in relation to the closure of certain businesses and venues in England has been updated to cover the restrictions contained in the above mentioned Regulations and states that "Environmental Health and Trading Standards officers will monitor compliance with these regulations, with police support provided if necessary". The Council must be satisfied that officers designated for the purposes specified in the decision are competent to exercise those powers and are properly supported to do so.

Advice provided by Tamazin Wilson (Solicitor) on 30/09/2020. Advice provided by Mark Leavesley (Governance Officer) on 05/10/2020.

Finance Advice:

This decision seeks approval to designate officers within the Council to enforce additional and new powers to that of a previous approved DDM (3843) which relate to business restrictions or requirements contained within 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 further 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 Claire Gavagan (Strategic Business Partner Commercial & Operations) on 01/10/2020. Advice provided by Mark Leavesley (Governance Officer) on 05/10/2020.

Signatures

David Mellen (Leader/ PH Regeneration, Schools, Communications)
SIGNED and Dated: 06/10/2020

Andrew Errington (Strategic Director, Community Protection)

SIGNED and Dated: 06/10/2020