

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	4085
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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 the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020
Total Value:	None (Type: Nil)
Decision Being Taken:	Decision is to designate defined categories of officers to enforce health protection coronavirus regulations commensurate with their qualifications and role, the details of which are included in the Reasons and Circumstances box. The regulations are; Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 and any enactment amending or replacing the same ("the LA Powers Regulations").

Details of the decision to designate categories of officers;

i) Pursuant to the powers conferred by

Regulations 3, 4, 5 and 8 of the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 and any enactment amending or replacing the same ("the LA Powers Regulations") to designate Environmental Health Officers, Principal Environmental Health Officers, Safer Business Operations Manager and Food Safety and Standards Officers as local authority designated officers for the purposes of Regulations 3, 4, 5 and 8 of the LA Powers Regulations.

ii) Pursuant to the powers conferred by Regulation 8 of

the LA Powers Regulations to designate Community Protection Officers, Senior Community Protection Officers and Operations Manager Community Protection as local authority designated officers for the purposes of Regulation 8 of the LA Powers Regulations.

The LA Powers Regulations, made on 30 November 2020 and coming into force on 2 December 2020, enable 'local authority designated officers' to issue Coronavirus Improvement Notices ('CIN') under Regulation 3, Coronavirus Immediate Restriction Notices ('CIRN') under Regulation 4 and Coronavirus Restriction Notices ('CRN') under Regulation 5 to people who are contravening or have contravened various statutory provisions in place to minimise exposure to Coronavirus. A fixed penalty may also be issued under the LA Powers Regulations by a 'local authority designated officer' for failure to comply with a CIN, CIRN or CRN.

The decision seeks to designate appropriate officers of Nottingham City Council detailed in decision number (i) above as local authority designated officers to enable them to use the additional enforcement powers under the LA Powers Regulations where the test for those powers is met. This will include the power to issue, review, and where appropriate withdraw CINs, CIRNs and CRNs and in the case of CIRNs and CRNs amend them. The decision also seeks to designate appropriate officers of Nottingham City Council who may issue a fixed penalty notice pursuant to Regulation 8 of the LA Powers Regulations where a person has failed to comply with a CIN, CIRN or CRN. It is therefore proposed that, in addition to the officers detailed in decision number (i) above, the officers detailed in decision (ii) above will be designated as local authority designated officers for the purposes of Regulation 8 of the LA Powers Regulations.

Regulation 2 of the LA Powers Regulations lists the statutory provisions contravention of which may lead to the serving of a notice under these Regulations ("the Statutory Provisions"). At the time of drafting these are:

(a) regulation 1A (size of bookings) of the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 ("the Obligations of Undertakings Regulations");

(b) regulation 2(1)(d) (appropriate distance between tables) of the Obligations of Undertakings Regulations;

(c) regulation 2A (signage and information relating to face covering requirements) of the Obligations of Undertakings Regulations;

(d) regulation 2B (prohibition on preventing a person from wearing a face covering) of the Obligations of Undertakings Regulations;

(e) paragraph 5 (requirement to close premises and businesses) of Schedule 1 to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ("the All Tiers Regulations"), but only in relation to a business mentioned in paragraph 6(1)(g) of that Schedule;

(f) paragraph 8 (restrictions on opening hours of businesses and services) of Schedule 1 to the All Tiers Regulations;

- (g) paragraph 10 (restrictions on service of food and drink for consumption on the premises) of Schedule 1 to the All Tiers Regulations;**
- (h) paragraph 8 (requirement to close premises and businesses) of Schedule 2 to the All Tiers Regulations, but only in relation to a business mentioned in paragraph 9(1)(g) of that Schedule;**
- (i) paragraph 11 (restrictions on opening hours of businesses and services) of Schedule 2 to the All Tiers Regulations;**
- (j) paragraph 13 (restrictions on service of food and drink for consumption on the premises) of Schedule 2 to the All Tiers Regulations;**
- (k) paragraph 14 (requirement to close businesses selling alcohol for consumption on the premises) of Schedule 2 to the All Tiers Regulations;**
- (l) paragraph 8 (requirement to close premises and businesses) of Schedule 3 to the All Tiers Regulations, but only in relation to a business mentioned in paragraph 13(2)(g) of that Schedule;**
- (m) paragraph 9 (restrictions on service of food and drink for consumption on the premises) of Schedule 3 to the All Tiers Regulations;**
- (n) paragraph 14 (restrictions on opening hours of businesses and services) of Schedule 3 to the All Tiers Regulations;**
- (o) regulation 6 (requirement to display QR code) of the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 ("the Collection of Contact Details Regulations");**
- (p) regulation 7 (requirement to request certain details of individuals) of the Collection of Contact Details Regulations;**
- (q) regulation 8 (requirement to request certain details of those in a group) of the Collection of Contact Details Regulations;**
- (r) regulation 11 (additional details to be recorded by a relevant person) of the Collection of Contact Details Regulations;**
- (s) regulation 13 (requirement to retain details) of the Collection of Contact Details Regulations;**
- (t) regulation 14 (requirement to disclose details upon request) of the Collection of Contact Details Regulations;**
- (u) regulation 16 (requirement to refuse entry) of the Collection of Contact Details Regulations;**
- (v) regulation 7 (requirement on employers of workers required to self-isolate) of the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 ("the Self-Isolation Regulations").**

A CIN issued by a local authority designated officer under Regulation 3 of the LA Powers Regulations can require a person who is breaching, or has breached, one of the Statutory Provisions to end that breach and ensure it will not be repeated. A CIN is not to be issued in relation to 'essential infrastructure', which is not defined in the LA Powers Regulations, but would, for example, include power stations, hospitals, Town Halls, doctor's surgeries etc.. The regulation lists what the CIN must include and provides for review of the notice which may lead to withdrawal of the notice or the issue of a further notice under the LA Powers Regulations.

Regulation 4 of the LA Powers Regulations enables a local authority designated officer to issue a CIRN to a person the officer believes is breaching, or has breached, one of the Statutory Provisions and there is a future risk of exposure to coronavirus. Such a notice is not to be issued in relation to essential infrastructure. The notice is to require either closure or part-closure of the premises and/or the breach to be stopped. Any requirement must be necessary and proportionate for the purpose of minimising the risk of exposure to Coronavirus. The notice has effect for 48 hours. Regulation 4 lists what the notice must include and provides for review of the notice which may lead to amendment or withdrawal of the notice or the issue of a further notice under the LA Powers Regulations.

Regulation 5 of the LA Powers Regulations enables a local authority designated officer to issue a CRN to a person the officer believes has not complied with a CIN and that non-compliance involves a risk of exposure to coronavirus. Such a notice is not to be issued in relation to essential infrastructure. The notice is to require either closure or part-closure of the premises and/or the breach to be stopped. Any requirement must be necessary and proportionate for the purpose of minimising the risk of exposure to Coronavirus. The notice has effect for 7 days. The regulation lists what the notice must include and provides for review of the notice which may lead to amendment or withdrawal of the notice or the issue of a further notice under these Regulations. It should be noted that this review must be carried out by a local authority designated officer.

A person on whom a CIN CRN or CIRN is issued may appeal to a magistrates' court within 28 days of the notice. A notice is not suspended during an appeal. When the appeal is heard, the Magistrates' Court may confirm, cancel or vary the notice.

Regulation 8 of the LA Powers Regulations provides that a local authority designated officer may issue a fixed penalty notice to a person the officer reasonably believes has committed an offence under Regulation 6. Payment of that fixed penalty discharges liability to conviction for the offence. It provides that proceedings for the offence cannot be brought until 28 days after the date of the notice. It lists the details that such a notice must include and how payment can be made. The amount of the fixed penalty is specified in the LA Powers Regulations and at the time of writing a fixed penalty for breach of a CIN is £2000, and a fixed penalty for breach of a CIRN or CRN is £4,000. Only one fixed penalty per CIN CIRN or CRN may be issued.

Background

From March 2020 the Government introduced emergency legislation in response to the ongoing serious and imminent threat to health which was posed by the incidence and spread Coronavirus, which included Local Authority powers to take enforcement in relation to various business closures, restrictions and requirements arising from the pandemic and to enable Local Authorities to designate officers for the purposes of those powers. On 30 March 2020 by Delegated Decision Reference Number 3843 ("the First Decision") the Council designated officers for the purpose of those powers, and any powers amending or replacing the same. A further Delegated Decision was made on 6 October 2020 Reference Number 4009 ("the Second Decision") for the purposes of additional Coronavirus Restriction powers made since the 30 March 2020 in so far that they were not already covered by the First Decision.

It is noted that Regulation 10 of the LA Powers Regulations includes 'continuity of designation' provisions, which state that: "A designation made, or treated as made, in exercise of the powers conferred by the following provisions is to be treated as if it had been made in exercise of the powers conferred by Regulations 3, 4, 5, 7 or 8, as appropriate, of the LA Powers Regulations-

- regulation 9(9)(b), 11(3)(b), 11(9)(a) or 13, as appropriate, of the All Tiers Regulations;
- regulation 8 of the Obligations of Undertakings Regulations;
- regulation 18(11) of the Collection of Contact Details Regulations;
- regulation 12(12) of the Self-Isolation Regulations.

While designations made or treated as made by the First Decision and or the Second Decision do extend to designations made under the above powers, the LA Powers Regulations introduce three completely new types of enforcement notice provisions which provide extensive new powers, that were not envisaged under the First or Second decisions. This decision therefore seeks to ensure that appropriate officers are designated to use the new LA Powers Regulations enforcement powers.

It is also noted that the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ("the All Tiers Regulations") were made on 30 November 2020 and came into force on 2 December 2020. The All Tiers Regulations impose restrictions on gathering and on businesses in England and create three different tiers which are subject to different restrictions and specify the areas which are within each of these tiers. Regulation 17(2) and paragraph 5 of Part 2 of Schedule 5 of the All Tiers Regulations contains transitional and savings provisions. This states that:

5.-(1) A designation made, or treated as made, in exercise of the powers conferred by the following provisions is to be treated as if it had been made in exercise of the powers conferred by regulations 9(9)(b), 11(3)(b), 11(9)(a) or 13, as appropriate, of [the All Tiers] Regulations-

(a) regulation 7(10)(b), 9(3)(b), 9(13) or 10 of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 ("the Principal Regulations");..

Authorisations in the First Decision remain in force for the purpose of the Principal Regulations pursuant to Regulation 2(3) of the Principal Regulations, as extended by the authorisations in the Second Decision which stated:

"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 by 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 or 4B of the Principal Regulations"

In view of the above, the designations made by the First Decision as extended by the Second Decision under the Principal Regulations will apply for the purposes of the All Tiers Regulations and those officers designated by the First Decision and the Second Decision are also treated as persons designated for the purposes of the All Tiers Regulations. No further designations are therefore currently required under the All Tiers Regulations.

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: **Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020**

Affected Wards: **Citywide**

Colleague / Councillor Interests: **None**

Consultations:
Date: 11/12/2020
Ward Councillors: Sam Webster
Briefing on necessity to designate officers to ensure coronavirus health protection measures can be enforced by the appropriate officers.

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: Reasons: EIA not required**

Decision Type: **Portfolio Holder**

Subject to Call In: **Yes**

Call In Expiry date: **18/01/2021**

Advice Sought: **Legal, Finance**

Legal Advice:

As detailed in the reasons for the decision, for the period that they remain in force, the LA Powers Regulations contain powers for officers designated for the purpose to serve CINs, CIRNs and or CRNs to a person who is contravening or has contravened various statutory provisions in place to minimise exposure to Coronavirus (as detailed in the decision) where the respective tests for these notices are met. Fixed Penalty notices can also be issued by designated officers where these notices are not complied with.

The Council has already designated certain officers for the purposes of a number of regulations made in response to the imminent threat to public health posed by the incidence and spread of Coronavirus ('Coronavirus Restriction Regulations') by the First Decision and the Second Decision as detailed in the decision. While designations made or treated as made by the First Decision and or the Second Decision do extend to the LA Powers Regulations, the LA Powers Regulations introduce three completely new types of enforcement notice which provide extensive new powers that were not envisaged under the First or Second Decision. The designations proposed in this decision are therefore advisable to ensure that appropriate officers are designated for the purposes of the LA Powers Regulations to use the new powers detailed in the decision where it is necessary and proportionate to do so, and so that the extent of their designations are clear.

The decision therefore appears to accord with the requirements of the LA Powers Regulations. The LA Powers Regulations do not specify which Council officers should be designated for the purposes of the new enforcement powers, but Guidance published by the Government in relation to earlier Coronavirus Restriction Regulations states that: "Environmental Health and Trading Standards officers will monitor compliance with these regulations, with police support provided if necessary", and it is anticipated that it would be appropriate for such officers to be designated for the purposes of the LA Powers Regulations. 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.

As noted in the decision, designations which have already been made by the Council will apply to the All Tiers Regulations, and no further designations are therefore currently required in relation to those. Advice provided by Tamazin Wilson (Solicitor) on 11/12/2020.

Finance Advice:

This decision seeks approval to designate Council Officers to enforce health protection coronavirus regulations. Once designated, the Council Officers will be able to issue Improvement Notices and Restriction Notices as outlined in the decision. Fixed Penalty Notices (FPM's) may also be issued where there is failure to comply with the improvement and restriction notices.

As a result of this decision, there is no impact on the Medium Term Financial Plan. Where applicable, designated Officers will be able to issue FPN's which would be additional income to the Council, though the value of these is unknown. Any income received will be allocated to the specific Covid code set up in the Council's financial systems (analysis 012), and this will support the assessment of the financial impact of Covid-19, and any statutory reporting requirements.

Advice provided by Maria Balchin (Finance Analyst) on 23/12/2020.

Signatures

Sam Webster (PH Finance, Growth and City Centre)
SIGNED and Dated: 05/01/2021
Andrew Errington (Strategic Director, Community Protection)
SIGNED and Dated: 05/01/2021