

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4505

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Department:

Resident Services

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Subject:

Authorisation under The Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021

Total Value:

Nil (Type: Nil)

Decision Being Taken:

To designate the following relevant persons pursuant to the powers conferred by Regulation 11 (9) and (11) of The Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021 and any enactment amending or replacing the same - Principal Trading Standards Officers, Trading Standards Officers, Principal Environmental Health Officers, 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.

Reasons for the Decision(s)

Pursuant to the powers conferred by Regulation 11 (9) and (11) of The Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021 and any enactment amending or replacing the same ("the Regulations") to designate Principal Trading Standards Officers, Trading Standards Officers, Principal Environmental Health Officers, 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) an "authorised person" for the purposes of Regulations 11(9)

(e) of the Regulations to take such action as is necessary to enforce any contravention of the requirement imposed in regulation 6 or 7(1) of the Regulations

and,

(b) as an authorised person for the purposes of Regulation 11 of the Regulations to issue fixed penalty notices where the alleged offence relates to-

(a) contravention of the requirements in regulation 6, or

(b) contravention of the prohibition in regulation 7(1).

Reasons for the Decision(s)

The Government made a statutory instrument at 1.35 p.m. on 29th November 2021, that was laid before Parliament at 5.00 p.m. on 29th November 2021 and which came into force at 4.00 a.m. on 30th November 2021, that orders members of the public to wear face coverings indoors in a number of relevant places including whilst inside certain indoor settings including shops, shopping centres, banks, transports hubs, and when using public transport services, in England, except in limited cases.

These Regulations are 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 and the emergence of the Omicron variant of concern (B.1.1.529) first discovered just days ago in South African and which has now appeared in the UK and notably in Nottingham. There is concern that the mutations this variant carries may result in increased transmission and/or result in reduced vaccine efficacy, though due to the emerging nature of this issue, the extent to which these are the case is not yet clear. As a result, the Government has, as a precaution, implemented a range of targeted and proportionate measures to reduce transmission whilst the Omicron variant is investigated, one of which is to reintroduce the mandatory wearing of face coverings in shops and on public transport. Face coverings are a useful measure

to reduce transmission, in addition to vaccination. Evidence demonstrates that face coverings are effective, when worn correctly, at reducing virus transmission. This, in turn, will reduce the number of people requiring hospital treatment for the virus. SAGE has advised that face coverings are likely to reduce transmission of the virus by partially reducing peoples' exposure to virus-carrying droplets. Mandating the use of face coverings in certain indoor public settings, as well as in transport hubs, and on public transport, offers a reasonable protective measure to reduce the risk of infection or contamination by a virus that presents a significant harm to public health. SAGE also advised that mandating the use of face coverings is likely to increase usage.

Mandating face coverings in shops and on public transport and in transport hubs may give members of the public confidence to visit and use these premises despite the emergence of this new variant which may support visitors to these settings, bringing benefit to the business.

Section 45 in Part 2A of the Public Health (Control of Disease) Act 1984 ("the 1984 Act") provides a power for the Government to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination. The threat can come from outside the country. The above regulation is made under section 45C.

The Regulation cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. The Regulations will expire at the end of 20 December 2021.

The regulations include powers to be enforced by the police and local authority authorised officers to a more limited extent. Local Authorities are able to designate officers who are only able to take enforcement in relation to Regulation 6 and Regulation 7(1).

Regulation 6 requires a responsible person to display a notice in a relevant place or public transport vehicle stating that any person present in that setting is required to wear a face covering unless exempt. Alternatively, the responsible person may take other measures to ensure that people entering a relevant place or boarding a public transport vehicle is given this information (e.g. an announcement over the public address system).

Regulation 7 requires that anyone who is required to wear a face covering in a relevant place must not be prevented from doing so by anyone responsible for that setting.

A person who contravenes the requirement in regulations 6 and 7(1), commits an offence, punishable on summary conviction by a fine

(unlimited).

As an alternative to prosecution for an offence an "authorised person" may issue a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction on payment of the penalty to the relevant local authority specified in the notice) to anyone that the authorised person reasonably believes- (a) has committed an offence under these Regulations, and (b) is aged 18 or over.

The relevant local authority may only designate a person for the purposes of this regulation to issue fixed penalty notices where the alleged offence relates to-

(a) contravention of the requirements in regulation 6, or

(b) contravention of the prohibition in regulation 7(1).

Officers must therefore be designated by the Council to be able to enforce the powers which relate to regulation 6 and 7(1).

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 not to comply with the regulations, perhaps because of costs associated with compliance or apathy that has grown through the course of the pandemic, or particularly where financial pressures may have built over time and the very survival of the business may be in question. The Council will follow the regulators code as they have done throughout the COVID-19 outbreak, engaging with business and supporting them to comply with the new rules. They will be reminded of guidance produced by the Government to businesses which will communicate the legal requirement that they must not seek to prevent staff from wearing a face covering if they choose and will reiterate the need for appropriate measures to be taken by the business to raise public awareness of the requirements. However, people can expect the council to take enforcement action where necessary and proportionate.

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.

To monitor compliance and enforce the Regulations it is therefore proposed that Principal Trading

Standards Officers, Trading Standards Officers, Principal Environmental Health Officers, Environmental Health Officers, Safer Business Manager (Food, Health

& Safety, Licensing), Food Safety and Standards Officers, Senior Community Protection Officers, Community Protection Officers and Operations Managers Community Protection are designated.

The Regulations specify the amount of the Fixed Penalty as follows:

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£1,000, where the person has not previously received a 'relevant fixed penalty notice' (but only £500 is payable if paid within 14 days of the date of the notice);

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£2,000, where the person has previously received one 'relevant fixed penalty notice';

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£4,000, where the person has previously received two 'relevant fixed penalty notices';

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£10,000, where the person has previously received three or more 'relevant fixed penalty notices'.

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, Wearing of Face Coverings) (England) Regulations 2021

Affected Wards: Citywide

Colleague / Councillor Interests: None

Consultations:
Date: 03/12/2021
Other: Cllr Neghat Khan
Information to inform the requirement to authorise individuals to enforce regulations.

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 not complying.

Equality: EIA not required. Reasons: Application of national emergency coronavirus laws.

Decision Type: Portfolio Holder

Subject to Call In: Yes

Call In Expiry date: 31/01/2022

Advice Sought: Legal, Finance

Legal Advice:
See the attached word document (Legal Advice - Authorisation under the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021.
Advice provided by Richard Bines (Solicitor) on 08/12/2021.
Advice documents: Legal Advice - Authorisation under The Health Protection Face Covering....docx

Finance Advice:

This decision seeks to designate relevant persons pursuant to the powers conferred by Regulation 11 (9) and (11) of The Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021 and any enactment amending or replacing the same ("the Regulations") to both regulate and enforce the wearing of face coverings including the issuing of PCN's. Therefore there should be no adverse financial impact in relation to this decision.

Advice provided by Susan Turner (Senior Commercial Business Partner) on 22/12/2021.

Signatures

Neghat Khan (PH Neighbourhoods, Safety and Inclusion)

SIGNED and Dated: 21/01/2022

Andrew Errington (Director of Community Protection)

SIGNED and Dated: 21/01/2022