

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

Legal Advice

As detailed in the reasons for the decision, the Health Protection (Coronavirus, Wearing of Face Coverings) (England) Regulations 2021 ("the Regulations") came into force at 04.00hrs on 30.11.2021 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 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.

As detailed above the Regulations contain powers which can be enforced by 'authorised persons', and fixed penalties can be issued by 'authorised persons'. Pursuant to regulation 11(9) of the Regulations 'authorised persons' include a person designated by the relevant local authority for the purposes of this regulation. 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).

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. Although the Secretary of State has made a general designation to Local Authorities pursuant to Designation No 2 under THE HEALTH PROTECTION (CORONAVIRUS, WEARING OF FACE COVERINGS) (ENGLAND) REGULATIONS 2021, the Regulations do not specify which Local Authority officers should be designated to enforce the Regulations. However, whilst at the time of writing no guidance appears to have been published on this point, the identified officer roles above have all been designated under the earlier covid public health legislation in relation to business restrictions.

Should criminal proceedings ultimately be necessary, then as Designation No 2 (noted above) also provides that for the purposes of regulation 14(c) a District and County Council is a specified authority, Nottingham City Council will as a unitary authority be able to bring any such proceedings.

Advice provided by Richard Bines (Solicitor) on 08/12/2021