

Local Restrictions and Closure Powers: Delegation of Authority

Forward Plan reference number: Not applicable

Report title: Local Restrictions and Closure Powers: Delegation of Authority	
Report to: Councillor David Finch, Leader of the Council	
Report author: Paul Turner, Director, Legal and Assurance	
Date: 20 July 2020	For: Decision
Enquiries to: Paul Turner, Director, Legal and Assurance and Monitoring Officer	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 On 18 July 2020 the Health Protection (Coronavirus, Restrictions) (No 3) Regulations 2020 came into force. This report asks the Leader to agree decision making arrangements for these powers to be exercised within Essex County Council (ECC).
- 1.2 It is proposed that individual closures should be delegated to officers, but any major restrictions, such as the closure of a town centre, would be taken by the Leader

2. Recommendations

- 2.1 Agree to delegate powers to take non-key decisions as set out in appendix 1 for a period of six months.
- 2.2 Note that any key decision or any decision to give a direction to a district council concerning the exercise of its functions would be referred to the relevant member of the Cabinet.

3. Summary of issue

- 3.1 As part of the recovery from the coronavirus outbreak the Government's current strategy is to impose local restrictions (sometimes referred to as 'lockdowns' where there is a local outbreak. In that way, it is hoped, these can be contained and reduce the spread beyond the small localised area. A great deal of work has been done across ECC to set up systems and processes and to engage with our partner organisations such as Essex Police and the twelve district authorities across Essex so that we are ready to act should there be a significant outbreak in Essex.
- 3.2 It is fair to say that the Government thinking on this has been evolving. In most cases of course if the public health advice is that premises should be closed then people will comply voluntarily, however it is possibly the case that not all will, particularly as businesses may be experiencing financial pressures.

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- 3.3 Research has been done on existing legal powers to close premises. These are a patchwork of powers, mainly held by environmental health colleagues in district councils and the Health and Safety Executive. The main legislation for infection control involves district authorities making applications to magistrates with a detailed evidence base. This does not suit the speed to which we are expected to respond and requires the Director of Public Health to influence colleagues in other organisations.
- 3.4 As a result, on 17 July 2020 the Secretary of State for Health and Social Care made the Health Protection (Coronavirus, Restrictions) (No 3) Regulations 2020. These came into force at 0001 hours on 18 July 2020.
- 3.5 Unlike existing powers, these are vested solely in the County Council. ECC has not changed its constitution in response to the previous emergency period. Councillors and officers have worked together to ensure that the required decisions have been able to be taken under our existing arrangements. However, Public Health England has issued advice about the new powers which suggest that they expect the new powers to be taken by officers, albeit they do not appear to have given any consideration as to whether a direction might be sometimes be a key decision.

About the New Powers

- 3.6 The powers are for ECC to give directions. The powers can only be exercised if it considers, after consulting its director of public health that three tests are all met:
- (a) that it is a response to a serious threat to public health;
 - (b) that the direction is needed to prevent, protect against, control or provide a public health response to coronavirus; and
 - (c) that the action is a proportionate way to respond.
- 3.7 If a direction is given then we must:
- (a) notify the Secretary of State as soon as possible;
 - (b) carry out a review at least every seven days and revoke if no longer necessary.

Directions relating to individual premises

- 3.8 A direction can close or restrict access to premises or require facilities to be provided (or not provided). A direction cannot be made with respect to 'essential infrastructure' (a term not defined in the regulations, but which would presumably include, for example, railway stations, sewage works and health related premises), or goods or public transport vehicles. A direction could be made about individual dwellings. We must take account of the need to ensure public access to essential goods and services.

Directions relating to events

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- 3.9 A direction can be given with respect to an individual event or events of a particular description. 'Event' is not described but it must be an organised event. A direction may impose a prohibition, requirement or restriction relating to facilities, information to be given to attendees, or number of attendees.

Directions relating to public outdoor places

- 3.10 A direction can be given with respect to a public outdoor place. This includes public garden or recreation grounds, any highway and public access land or open country or crown land to which the public has access. However, we cannot give a direction applying to crown land (such as the foreshore) without the permission of the relevant Government department.
- 3.11 A direction can close or restrict access to such places either generally or by description. The closure can apply during specific hours or times or all the time. Although the direction can in theory apply to close a residential street, a direction could not prevent access to residential premises by a resident or their visitor, so this is not a power to introduce a local lockdown which requires people to stay at home.

After making a direction

- 3.12 After a direction is made, we must:
- Give notification to people affected (such as landowners or event organisers). We must give advance notice if possible, to those carrying out a business from premises within an affected open space;
 - Allow a right of appeal to the Magistrates' Court (there is no general right of appeal – only premises owners and event organisers can appeal). Note that a pending appeal does not suspend the direction;
 - Notify people that the Secretary of State can direct us to revoke the direction and they can make representations to him if they wish;
 - Publish the direction on our website;
 - Notify all our neighbouring authorities, who must then, as soon as practicable, consider whether or not to exercise their own powers and they must let us, and their districts (if any) know their decision. For ECC our neighbouring authorities are:
 - Thurrock BC
 - Southend on Sea BC
 - Suffolk CC
 - Cambridgeshire CC
 - Hertfordshire CC
 - Enfield LBC
 - Waltham Forest LBC
 - Redbridge LBC
 - Havering LBC
 - Notify all 12 Essex Borough, City and District Councils. We would also notify the police and all members and would need a communication strategy

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- 3.13 After a direction is made ECC is under a legal duty to take reasonable steps to prevent or restrict access to places. The same duty applies to owners and occupiers of affected land.
- 3.14 It is an offence for anyone to enter or remain in a public outdoor place in breach of a direction unless they have a reasonable excuse.
- 3.15 We can designate officers who may take such action as is necessary to enforce a direction. Directions can also be enforced by the police.
- 3.16 Directions create a number of offences which can be prosecuted by the local authority or by the Crown Prosecution Service.

Directions to district authorities

- 3.17 If ECC considers that it is necessary and proportionate to do so, in order to prevent, protect against, delay or otherwise control the incidence or spread of coronavirus, it can direct a district council to exercise any of the district's function in a specified way.

The Contain Framework

- 3.18 The contain framework published by central government suggests that decisions may be taken 'by the Chief Executive, Director of Public Health or Head of Environmental Health'. However, under part 1A of the Local Government Act 2000 the allocation of decision-making responsibilities is for the Leader of the Council to decide.
- 3.19 The current delegations to the Executive Director, Place and Public Health include:
 - (ix) To exercise the Council's powers to improve the health of the public.
- 3.20 The new powers are to *protect* public health, and to prevent a deterioration in the health and they could far more impact on residents than any other public health power we have had. It is therefore appropriate that we decide where decision making should sit within the local authority.
- 3.21 Very unusually for a public health power, a direction could, individually or cumulatively have a significant impact on people living or working in two electoral divisions, meaning that a decision to give a direction would be a key decision. A decision to close individual premises is unlikely to be a key decision. However, a decision to close a major location widely used for leisure or a town centre for an period of time would be a key decision.
- 3.22 Under the Local Authorities (Executive Arrangements) (Meetings and access to information) (England) Regulations 2012, a key decision must be taken following prior notification via the forward plan or agreed as urgent by the Chairman of the Corporate Policy and Scrutiny Committee. ECC has chosen

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not to delegate key decisions to officers. The Chairman of that committee has been willing to agree such decisions quickly during the pandemic period.

3.23 It is proposed that a scheme of delegation relating to these and any future regulations as in appendix 1 be adopted. The delegation only applies to non-key decisions and it does not apply to directions concerning the functions of district councils. It is proposed that any direction would need to be the subject of consultation with the Leader, or another cabinet member in his absence.

4. Options

4.1 Option 1: Agree the scheme of delegation for the regulations. This will allow speedy decision making for non-key decisions.

4.2 Option 2: Do not give specific delegated powers. This means that any decision with respect to the regulations will have to be approved by the Leader or a Cabinet Member and will be subject to call in or an exemption process. This is likely to make decision making less agile. If we need to make decisions under these regulations, the requirement to make a decision is likely to arise quickly. However, it is not proposed to delegate key decisions as these would need to be approved by councillors in any event.

5. Issues for consideration

This section should briefly outline any relevant issues for consideration. Only include those elements that are relevant. For example, you may need to consider and include:

5.1 Financial implications

5.1.1 This report relates to decision making framework of the Council and has no direct financial implications. Decision makers are required to have a budget in place for the financial consequences of their decisions.

5.1.2 ECC would not be liable for any costs or compensation as a result of imposing closures or restrictions. At present businesses affected can use the national compensation but there is no enhanced co-operation for being subject to a local closure

5.2 Legal implications

5.2.1 The legal implications of this report are set out in the main body of the report.

6. Equality and Diversity implications

6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

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- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

6.3 This report introduces the new powers and decides how they are to be exercised. Since it relates to decision making and the powers are only usable where necessary and proportionate in the interests of public health, it is unlikely to have a disproportionate adverse impact on any groups with protected characteristics. If we have to use the powers, it is unlikely that there will be time to do an equality impact assessment. The impact on specific groups will need to be monitored as part of the implementation of any restrictions

7. List of appendices

Appendix 1 – Proposed scheme of delegation

8. List of Background papers

None – all papers relied upon in writing this report are published.

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor David Finch, Leader of the Council	20 July 2020

In consultation with:

Role	Date
Chief Executive	20 July 2020
Gavin Jones Executive Director, Place and Public Health	20 July 2020
Mark Carroll	

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Director, Public Health, Well-being and Communities Mike Gogarty	20 July 2020
Executive Director for Finance and Technology (S151 Officer) Nicole Wood	20 July 2020
Director, Legal and Assurance (Monitoring Officer) Paul Turner	20 July 202

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Appendix 1

Scheme of delegation for local closure and restriction powers

1. The Chief Executive, the Executive Director, Place and Public Health and the Director, Public Health, Well-being and Communities are each authorised to:
 - (a) Give any direction under any legislation relating to the Coronavirus outbreak
 - (b) Review any such direction
 - (c) Revoke any such direction
 - (d) Consider any notification from a neighbouring authority concerning the exercise of their powers.

Provided that

- (1) Where possible the Leader of the Council or in his absence the Deputy Leader or in the absence of both the Cabinet Member for Health and Adult Social Care shall be consulted before making any direction
 - (2) No direction may be given under this delegation if the decision to give that direction is a decision to close a town centre or otherwise make a key decision
 - (3) No direction may be given or revoked under this delegation without taking advice from the Director, Public Health, Well-being and Communities
 - (4) No direction may be given without taking appropriate legal advice
 - (5) Any direction given must be notified to all members of the council
2. The Chief Executive, the Executive Director, Place and Public Health, the Director, Public Health, Well-being and Communities, the Director, Highways and Transportation and the Trading Standards Manager are each authorised to appoint local authority designated officers and authorised persons for the purpose of enforcing any direction within the scope of paragraph 2.