

Title:	The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020	Date:	12 th November 2020
Decision Maker:	Cllr John Lodge, Leader of the Council		
Report Author:	Marcus Watts, Environmental Health Manager - Protection Tel: 01799 510595	Key decision:	No

Summary

1. This report expands on the executive decision granted on 21st May 2020 that sought approval for the use of Fixed Penalty Notices made under The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.
2. As Covid -19 cases continuing to rise across the UK, the government has imposed new measures to reduce transmission rates. District Councils have additional specific responsibilities under the new regulations to impose closures and restrictions on businesses that are not exempt from the regulations. These once again include the issuing of Prohibition Notices and Fixed Penalty Notices as an alternative to more formal legal proceedings.
3. This report seeks to expand on existing delegated responsibilities and seeks consent for the use of Prohibition and Fixed Penalty Notices to allow authorised officers to take prompt action against businesses that refuse to comply with the Regulations.

Recommendations

1. That the Leader:
 - Delegates the exercise of all functions under The Health Protection (Coronavirus, Restrictions) (England) (No 2) Regulations 2020, The Health Protection (Coronavirus, Restrictions) (England) (No 3) Regulations 2020 and The Health Protection (Coronavirus, Restrictions) (England) (No 4) Regulations 2020 to the Assistant Director Housing Health and Communities with immediate effect.

Financial Implications

2. The service is not seeking additional resource and there will be no financial implications on the service.

Background Papers

3. The following papers were referred to by the author in the preparation of this report and are available at the web address stated below:
 - The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020
<https://www.legislation.gov.uk/uksi/2020/1200/regulation/21/made>
 - The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) & (No 3) Regulations 2020

Impact

4.

Communication/Consultation	Legal service, police
Community Safety	There are no direct community safety implications associated with the service of Prohibition and Fixed Penalty Notices
Equalities	There are no Equalities Act implications
Health and Safety	No impact on employee health and safety. Officers authorised to issue Notices will be advised of the risk assessments to protect their own health and safety
Human Rights/Legal Implications	All intervention work will be carried out in accordance with existing legislative framework
Sustainability	The threat of issuing Prohibition and/ or Fixed Penalty Notices will apply pressure to ensure that the business closes, thus reducing the risk of infections.
Ward-specific impacts	No specific impact
Workforce/Workplace	Environmental Health Service – from existing resources

Situation

5. On 5th November 2020 the government adopted measures to prevent the spread of coronavirus (COVID-19) by introducing new Health Protection

(Coronavirus, Restrictions) (England) (No4) Regulations 2020 (“the Regulations”). Amendments are also made to the No 2 and No 3 Regulations.

6. The new regulations impose new national lockdown requirements across England to reduce the spread of the virus and are due to expire in 28 days on 2nd December 2020. There is no provision for extension. If the Government wishes to continue the lockdown for longer it will need to make further or amending regulations.
7. Amongst the requirements to stay at home and further restrictions on meeting people socially, the Regulations provide clarity around the closure of businesses as well as restrictions about how they may provide goods and services. In the main, all hospitality business must close, however some businesses may still supply food or drink for consumption off the premises. Details on business closures, restrictions and exceptions are provided within Part 4 of the Regulations, specifically Regulations 15-18 inclusive. The exceptions and reservations to the requirement to close are set out in Regulations 17 and 18, and the Schedule, which lists hospitality businesses at Part 1 and the other businesses required to close at Part 2.
8. Any person who without reasonable excuse fails to comply with the regulations commits an offence. A relevant person is defined in Regulation 19(11)(b) and includes a person designated by a local authority for the purposes of Part 4 of the Regulations only, may take such action as is necessary to enforce the requirements imposed by the Regulations
9. These actions are set out as follows. Prohibition notices may be issued if necessary and proportionate to do so. These act as formal warnings. Local authority officers may also issue a Fixed Penalty Notice (FPN) in relation to business closures and contraventions of other restriction.
10. The amount of the first FPN is £1000. This amount doubles up to £10,000 for repeated contraventions. There is no discretion as to the amount of a FPN. It must be stressed that a FPN is not a “fine” insofar as there is no obligation to pay it: but non-payment may result in a prosecution for the underlying offence.
11. As stated above, the Regulations define an ‘authorised person’ as a constable, a police community support officer, a person designated by the Secretary of State or a person designated by a local authority. Again a person designated by a local authority can only issue a fixed penalty notice in relation to business restriction offences, and can only be issued within the area of the designating local authority.
12. In order to ensure appropriate operational measures can be put in place to manage enforcement, authority to do so is delegated to the Assistant Director Housing Health and Communities with immediate effect. This will enable the Assistant Director to delegate operational tasks and put in place appropriate enforcement arrangements to implement enforcement powers under the Regulations.

13. A contravention of a restriction, requirement, direction or prohibition notice or obstruction of an officer is a criminal offence punishable with an unlimited fine.
14. The Leader can be assured that Authorised Officers will adopt a graduated approach to enforcement. Business operators will be issued with a warning allowing them to address any non-compliance within a reasonable period of time.
15. Continued non-compliance will result in formal action by way of a Prohibition Notice and/or Fixed Penalty Notice.

Risk Analysis

16.

Risk	Likelihood	Impact	Mitigating actions
There is a reputational risk should the Council choose not to issue Fixed Penalties as a quick way to discharge its regulatory functions. The alternative would be to prosecute. This would be resource intensive and questions and the Council may also be criticised for taking up court time unnecessarily	1. In general, A warning will be given prior to issuing an FPN. Officers will not issue a FPN unless there persons responsible ignor the warning and ensure that sufficient evidence to prove the offence has been committed.	1. No negative impacts of the service	Training for officers prior to authorisation A case review will take place prior to service

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.