

<b>Title:</b>	Post lockdown restrictions and enforcement powers	<b>Date:</b>	14 <sup>th</sup> April 2021
<b>Decision Maker:</b>	Cllr John Lodge, Leader of the Council		
<b>Report Author:</b>	Marcus Watts, Environmental Health Manager - Protection Tel: 01799 510595	<b>Key decision:</b>	No

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## Summary

1. This report expands on the executive decisions granted on 21st May 2020, 16<sup>th</sup> November 2020 and 14<sup>th</sup> December 2020 that sought approval for the use of Fixed Penalty Notices made under The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.
2. Following the most recent lockdown period commencing at the beginning of January 2021 new regulations have been brought into force, namely The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021. (The “Steps Regulations”) They came into effect as of 29<sup>th</sup> March 2021 and supersede The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020. They also amend a number of the Regulations listed in paragraph 11 of this report which for ease of reference are marked \*\*
3. The Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 set out the powers of local authorities generally with regard to enforcement. Regulation 10(14) of the Steps Regulations gives District Councils further additional powers to maintain Covid – Secure environments within businesses that are not exempt from the regulations. These powers include the service of new Notices, being the Coronavirus Improvement Notice, Coronavirus Immediate prohibition Notice and Coronavirus Prohibition Notice.
4. This report seeks to expand on existing delegated responsibilities already granted and asks for the Council to delegate powers to authorised officers to enforce under The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 and The Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 and all those Regulations listed under paragraph 11.

## Recommendations

1. That the Leader:

- Delegates the exercise all functions under regulations listed under para 11 of this report to 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) (Steps) (England) Regulations 2021
  - The Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020
  - The Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021

## Impact

4.

Communication/Consultation	Legal service, police
Community Safety	There are no direct community safety implications associated with the issue of the following notices Prohibition Notice Fixed Penalty Notice Coronavirus Improvement Notice Coronavirus Restriction Notice Coronavirus Immediate Restriction Notice
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	All intervention work will be carried out in

Implications	accordance with existing legislative framework
Sustainability	The threat of issuing 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. As recovery from the coronavirus outbreak progresses, the Council is increasingly expected to enforce emergency legislation relating to the virus, principally with respect to premises which are not complying with the law or to assist others with respect to the law. Our roles range from taking direct action, issuing fixed penalty notices and serving notices which can:
  - (a) require premises which are breaching legal restrictions to improve
  - (b) temporarily close premises which are breaching legal restrictions for a period of up to seven days.
  
6. The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (Steps Regulations) came into force on 29<sup>th</sup> March and provides a framework for the easing of the lockdown restrictions. These regulations revoke The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, which implemented the second and third lockdown.
  
7. On 12<sup>th</sup> April 2021 The Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 also came into force. The amendments moved all of England from the Step 1 area to the Step 2 area, in effect opening up the High Street. They also make some minor changes to the Steps Regulations.
  
8. The legal situation continues to change at pace. A review of the legislation shows that the council now has a role in enforcing eight sets of regulations. These are listed within Para 11.
  
9. Delegated authority will enable officers to take action where a person commits an offence. Officers will also work closely with Essex County Council's Director of Public Health and to allow prompt action to be taken against premises which are operating in an unsafe way.
  
10. The Council will always seek to persuade, education and inform people before serving notices. This is successful in most cases, but it is clear that a

small number of businesses do not respond to informal methods. It should be noted that to date it has been necessary to service notice on one occasion.

11. In this authorisation 'the Coronavirus Restrictions Regulations' means:

- a. The Health Protection (Coronavirus, Restrictions) (England) (No 2) Regulations 2020
- b. The Health Protection (Coronavirus, Restrictions) (England) (No 3) Regulations 2020\*\*
- c. Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020/791
- d. Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020/1008\*\*
- e. Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020/1045\*\*
- f. The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020\*\*
- g. The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021
- h. The Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020\*\*

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. The officers authorised by the Assistant Director Housing Health and Communities are entitled to exercise the following powers under the Coronavirus Legislation:

- a. Act as a designated officer
- b. Issue of a prohibition notice
- c. Issue of a fixed penalty notice
- d. Issue of a coronavirus improvement notice
- e. Issue of a coronavirus restriction notice
- f. Issue of a coronavirus immediate restriction notice
- g. Taking any necessary action which the Council is authorised to take in order to enforce the provisions of Coronavirus Legislation.

14. A contravention of a restriction, requirement, direction, notice or obstruction of an officer is a criminal offence, however, in many cases this can be discharged by issuing a fixed penalty notice.
15. Members can be assured that Authorised Officers are sympathetic to the pressures place on businesses and will adopt a graduated approach to enforcement. Officers will only act formally in response to blatant disregard of the legislation and/or with continued non-compliance.

## Risk Analysis

16.

Risk	Likelihood	Impact	Mitigating actions
There is a public health and reputational risk should the Council choose not to issue Notices	1. In general, A warning will be given prior to issuing an formal notice or FPN. Officers will not issue a FPN unless there persons responsible ignore 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.