

# **POLICY & RESOURCES COMMITTEE ADDENDUM TWO**

**4.00PM, THURSDAY, 3 DECEMBER 2020**

**VIRTUAL**

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# ADDENDUM

**ITEM**

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**COVID-19**

**95 (A) COVID 19: UDATE ON NEW LEGISLATION**

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Report of the Executive Lead Officer for Strategy, Governance & Law.

<b>Subject:</b>	<b>Covid 19: Update on new legislation and temporary Covid Information Officer service</b>		
<b>Date of Meeting:</b>	<b>3 December 2020</b>		
<b>Report of:</b>	<b>Executive Lead Officer for Strategy, Governance &amp; Law (Monitoring Officer)</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Elizabeth Culbert</b>	<b>Tel: 01273 291515</b>
	<b>Email:</b>	<b>elizabeth.culbert@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

## **FOR GENERAL RELEASE**

By reason of the special circumstances, and in accordance with section 100B(4)(b) of the 1972 Act, the Chair of the meeting has been consulted and is of the opinion that this item should be considered at the meeting as a matter of urgency for the following reason: given the rapid developments in legislation and guidance in relation to Coronavirus and the Council needs to urgently consider its delegations and actions in relation to the enforcement of regulations.

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the report had to be compiled at short notice having regard to national developments.

### **1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The report outlines the legal and constitutional framework that is in place to cover any enforcement action undertaken by the Council pursuant to both existing and new Covid19 related Regulations and seeks the Committee's agreement to amend existing delegations and enforcement authorisation mechanism.
- 1.2 The report also explains the role of temporary Covid Information Officers who will be appointed using government funding to provide advice and assistance to residents and businesses in relation to compliance with Covid19 Regulations.
- 1.3 This report is the arrangements for enforcement, in particular changes to the scheme of delegations to officers and does not deal with the general policy or the Council's approach to tackling the pandemic.

### **2. RECOMMENDATIONS:**

- 2.1 That Committee approves the amended delegations to the Executive Director of Health and Adult Social Care as set out at Appendix 1 to the report (the new section inserted is in paragraph 6 and shown in bold italics);

2.2 That Committee notes the updated information relating to the role of temporary Covid Information Officers as set out in the report.

### 3. CONTEXT/ BACKGROUND INFORMATION

3.1 Since the outbreak of the pandemic, a number of legislative measures have been introduced under the Public Health (Control of Disease) Act 1984 and the Coronavirus Act 2020 giving local authorities various enforcement powers. Most of these required enforcement to be undertaken by officers authorised or designated by the Council. As and when new legislation is introduced, the Council reviews these arrangements to ensure that they are current and make any changes.

3.2 **Existing arrangements** – On 31 March 2020 this Committee approved the designation of the following officers as enforcement officers for the purposes of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020: -

- Regulatory services managers
- Environmental Health Officers
- Senior Licensing Officer
- Technical Officers in Environmental Health and Licensing Team
- Trading Standards officers
- Fair Trading Officers
- Highways Enforcement Officers
- Field Officers
- Seafront Team

3.3 Committee further agreed that the Head of Safer Communities should oversee the operation of the enforcement work and may issue guidance and provide training and templates to ensure efficient discharge of the functions and ensure appropriate professional standards and quality control.

3.4 On 22<sup>nd</sup> October 2020, full Council approved a number of updates to the Council's Constitution to reflect changes brought into force by the following specific Regulations:-

- The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020
- The Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020
- The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020
- The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020.

3.5 The measures covered by the above Regulations include:- enforcement of restrictions on opening of premises and businesses during the period of Covid-19 emergency; the power to issue directions relating to premises, events and public outdoor places in Brighton & Hove; the power to close premises and enforce the rules regarding provision of contact details and QR codes.

3.6 In addition, full Council agreed in October that if any new measures are introduced relating to Covid19, the Executive Director for Adult Social Care & Health be authorised to designate officers for the purposes of enforcement.

3.7 **The new regulations:** on 20<sup>th</sup> November 2020 the Ministry of Housing, Communities and Local Government wrote to all Leaders and Chief Executives in Local Government to describe proposed new Covid19 enforcement legislation and guidance which was to be introduced from 2<sup>nd</sup> December 2020. On 30 November, the government made two regulations, the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (which introduced a three tier system of restrictions and the Health Protection (Coronavirus, Restriction) (Local Authority Enforcement Power and Amendments) (England) Regulations 2020 authorising local authorities and others to undertake the enforcement.

3.8 The regulations were tabled in parliament on the day they were made and approved on Tuesday 1<sup>st</sup> December. They came into force on Wednesday 2<sup>nd</sup> December. The regulations specifying the tiers designated Brighton & Hove as a tier 2 authority, which means the restrictions summarised in Appendix 2 apply to the Council's area. The full guidance can be accessed on [Government Guidance](#). The regulations introducing a the three tier system give officers designated by a local authority the power to issue a prohibition notice or a direction. The Enforcement regulations give local authorities a number of enforcement powers which include (a) Coronavirus Improvement Notices, (b) Coronavirus Immediate Restriction Notices, (c) Coronavirus Restriction Notices and (d) Fixed Penalty Notices.

### 3.9 **Coronavirus Improvement Notices:**

A local authority designated officer can issue an improvement notice requiring a person who they believe is breaching or has breached one of the requirements of the legislation to stop the breach and ensure it is not repeated. The recipient of the notice can request a review. Failure to comply with an improvement notice could result in a fixed penalty notice or a Coronavirus Restriction Notice being issued.

### 3.10 **Coronavirus Immediate Restriction Notice:**

An Officer designated by the Council can issue a Coronavirus Immediate Restriction Notice on a person the officer believes is breaching, or has breached one of the statutory provisions set out in the regulations and there is a future risk of exposure to coronavirus. The notice is to require either closure or part closure of the premises and/or the breach to be stopped. The notice has effect for 48 hours. This notice is used where rapid action is needed to close premises without first issuing a Coronavirus Improvement Notice to reduce the spread of the virus. Failure to comply with the Coronavirus Immediate Restriction Notice can result in a fixed penalty notice of £4000 being issued. Which can be issued multiple times for each breach.

### 3.11 **Coronavirus Restriction Notice.**

The regulations enable a local authority designated officer to issue a Coronavirus Restriction Notice on a person the officer believes has not complied with a

Coronavirus Improvement Notice and that non-compliance involves a risk of exposure to Covid-19. The notice is to require either closure or part closure of premises and/or the breach to be stopped. The notice has effect for 7 days. Failure to comply with a Coronavirus Restriction Notice can result in a fixed penalty notice of £4000 being issued, which can be issued multiple times for each breach

### **3.12. Prosecutions and Appeals**

The regulations provide that prosecutions may be brought by the local authority in the magistrates' court for offences under the regulations. They also provide that an appeal against a Coronavirus Improvement Notice, Coronavirus Immediate Restriction Notice or a Coronavirus Restriction Notice issued under the regulations made be made to the magistrates' court within 28 days of the notice being issued.

### **3.13 Requirement for proportionality**

The enforcement actions listed above all require the officer undertaking the enforcement to be satisfied that the action is necessary and proportionate under the circumstances

3.14 In order to put the Council in a position to enforce the different measures, it is necessary to review the scheme of officer delegations so that appropriate authorisations and designations can take place. A copy of proposed updated delegations to the Executive Director Health and Director Adult Social Care is attached at Appendix 1 for approval.

3.15 Given the frequency of legislative changes and the speed with which they are introduced, the approach adopted is to future proof the authorisations so that there is no need to amend them every time the regulations relating to enforcement are amended. Therefore, these updated delegations ensure all of the current and any future Covid19 Regulations are adequately covered for legal enforcement purposes. The delegations have been drafted as widely as possible to include Regulations already made and which may be made in the future under both the Public Health (Control of Diseases Act) 1984 and the Coronavirus Act 2020.

### **3.16 General Approach to enforcement**

Formal enforcement, whether by serving notices, issuing fixed penalty notices or instituting prosecution is something used as a matter of last resort. Informing, encouraging and persuading people would normally be the preferred choice. But that may not be appropriate in all circumstances and the Council has to be prepared to use formal enforcement powers where they are necessary and proportionate. In the practical use of any powers, regard will be had to ensure that any action taken is consistent with the Council's policies regarding inclusion and equalities.

### **Temporary Covid Information Officers**

3.17 Temporary central government funding of approximately £154k has been awarded to the Council to help to ensure that the City follows Covid requirements. The funding is short term, until February 2021.

- 3.18 Four temporary Covid Information Officers will be appointed to focus on assisting businesses to comply with government Covid control guidelines. They will engage with places of employment including retail, office based, manufacturing, construction sites, those working in other people's homes and the hospitality sector to facilitate Covid safe places.
- 3.19 These officers will be recruited on an initial three-month basis to enable the service to be reviewed and adapted as required depending on the local and national Covid threat, infection levels and the local and national risk factors.
- 3.20 The team will work closely with the Public Health team to use national, local and global Covid infection intelligence and analysis to focus the service. It will devise and deliver targeted information and awareness campaigns with relevant stakeholders such as business sectors, associations and communities.
- 3.21 Where businesses do not follow the advice offered, these Information Officers will be providing reports, evidence and statements to relevant officers as detailed in paragraph 3.1 to take follow up action including enforcement action where appropriate. Any subsequent proposed enforcement action will be reviewed to ensure that it is both proportionate and necessary and in line with our enforcement code.
- 3.22 These officers will undergo a mandatory two-day training course to ensure clarity and consistency in relation to their role.
- 3.23 The officers will not be authorised to undertake enforcement activity but will work with police and relevant officers as listed in 3.1 to assist and focus their enforcement. This is seen as a particularly important role in potentially busy football areas during the build up to Christmas.
- 3.24 A specific part of this service will operate to support police management of the night-time economy, using up to four licensed security staff. Again these officers will not be utilising any enforcement powers but instead will provide some additional capacity to support police colleagues on Friday and Saturday nights to ensure social distancing in the busiest areas of the night time economy.

#### **4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The Council has the option of not using government funding to support officers being deployed, however, that is not considered appropriate in view of the need to ensure as much clarity and assistance for businesses and residents as possible regarding the relevant Covid19 compliance rules and how to follow them.

#### **5 COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The proposals for a temporary information officer service have been discussed with the City Leadership Board. The Police are supportive of the use of the information officers, who they would like to link in with existing police briefings.

## 6. CONCLUSION

- 6.1 The Council has the necessary constitutional and legal framework in place to ensure that any steps the Council takes or directions or notices it issues are taken by persons who are properly authorised. The time limited appointment of information officers will support the Council in providing sufficient information and clarity for businesses and residents to ensure compliance with the relevant Covid19 related legislation.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 There are no additional financial implications as the temporary Covid information officers will be funded from the £0.154m Compliance & Enforcement Grant received from the MHCLG. The proposed use and timescales of the funding are in accordance with the grant conditions.

*Finance Officer Consulted: Jeff Coates*

*Date: 27.11.2020*

### Legal Implications:

- 7.2 Legal implications are addressed in the body of the report.

*Lawyer Consulted: Elizabeth Culbert*

*Date: 261120*

### Equalities Implications:

- 7.3 It is essential that any enforcement action taken does not have any conscious or unconscious discriminatory effect. The training to be delivered to the information officers will ensure that the Council's public sector equality duties are complied with in the exercise of the function. Any subsequent enforcement action that may be taken by the Council will be reviewed by the Council's regulatory services to ensure that it is proportionate and necessary and in line with the Council's enforcement code.

- 7.4 The officers authorised to carry out enforcement action operate within the Council's enforcement concordat, which includes provisions regarding equalities and inclusion. They are also usually experienced in statutory enforcement (such as Environment Health and Trading Standards Officers) and will have undertaken professional training as part of their main role.

### Sustainability implications

- 7.5 Sustainability implications have not been identified in relation to the recommendations in this report.

## **Supporting Documentation:**

- Appendix 1 Updated Officer Delegations to Executive Direct Health and Adult Social Care.  
Appendix 2 Tier 2 restrictions



## **VI DELEGATIONS TO THE EXECUTIVE DIRECTOR OF HEALTH AND ADULT SOCIAL CARE**

### **(1) Director of Adult Social Services**

- (i) To be the Council's Director of Adult Social Services pursuant to Section 6(A1) of the Local Authority Social Services Act 1970 and discharge the Council's adult social care and health functions within the Care Act 2014 and associated Guidance.
- (ii) Authority to discharge the Council's functions in accordance with the Mental Health Act 1983 and the Mental Capacity Act 2005.

### **(2) General Adult Social Services**

- (i) To meet the needs of individuals or families in accordance with the provisions of sections 18, 19 and 20 of the Care Act 2014 to include residential and day care accommodation within the agreed policy of the Council and the estimates provisions.
- (ii) To make variations to the number of places at any Social Services establishment, in response to changes in demand or resource availability.
- (iii) After consultation with the Executive Lead for Strategy, Governance and Law (and Monitoring Officer, to exercise the powers of the Council to enforce, make application and representations to a Court or Magistrate, and authorise, institute and defend proceedings under any enactment in respect of adults.
- (iv) In accordance with the general policies from time to time laid down by the Council, to administer arrangements made in accordance with the provisions of the Care Act 2014 and associated Care and Support Regulations and to authorise expenditure within overall budget provision.
- (v) After consultation with the Executive Director of Finance and Resources, to set future inter-authority and standard charges for residential and day-care accommodation, in accordance with the provisions of the Care Act 2014 and associated Care and Support Regulations.
- (vi) To waive assessed contributions for adaptations to homes or provision of equipment in exceptional circumstances, subject to the contribution not exceeding £1000 or such other sum as may from time to time be fixed by the Council.
- (vii) To authorise officers to be the Council's nominee for the purpose of obtaining Grants of Probate and to deal with related matters and to seek appointment as Deputy pursuant to the Mental Capacity Act 2005 where it is appropriate for an officer of the Council to act.

- (viii) To appoint Approved Mental Health Practitioners for the purposes of the Mental Health Act 1983.
- (ix) To accept guardianship applications and to make orders for Guardianship under the Mental Health Act 1983.
- (x) To authorise in exceptional individual cases variations from the approved scale of charges for a particular service and to operate the scale of allowances to disabled people attending day centres.
- (xi) To exercise the Council's functions regarding residential homes and nursing homes.
- (xii) To exercise the Council's functions under the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018 regarding access to personal files or information held by the department.

**(3) Section 75 Arrangements**

To exercise the Council's functions under or in connection with the adult social care and health partnership arrangements with health bodies made pursuant to Section 75 of the National Health Service Act 2006, to the extent that the arrangements permit an officer to exercise the functions.

**(4) Housing Related Support**

Subject to any instructions of the Chief Executive given from time to time,

- (i) to be the lead director responsible for the co-ordinated commissioning and management of associated funds in relation to housing related support services;
- (ii) to exercise the council's function in relation to housing related support services for adults generally.

*[Note: the power referred to in paragraph (4)(ii) above is delegated concurrently to the Executive Director of Housing, Neighbourhoods and Communities .]*

**(5) Public Health**

To exercise the Council's functions in respect of Public Health, including the Council's public health functions under the National Health Service Act 2006, the Health and Social Care Act 2012 and related functions.

*[Note - Where the Director of Public Health (DPH) appointment is made to an Officer other than the Executive Director of Health and Adult Social Care, and to the extent that the Council's functions are required by law to be exercised by the DPH, the DPH will have delegated to them concurrent powers to discharge the functions of the Council relating to Public Health.]*

**(6) Coronavirus- related Enforcement Functions**

**(i) To exercise the enforcement functions delegated to the Council under the Public Health (Control of Disease) Act 1984 and/or the Coronavirus Act 2020 and regulations made under those Acts, including but not limited to the Council's powers to take enforcement action in relation to:-**

- **Hospitality and retail undertakings;**
- **Premises and businesss restrictions, including in relation to opening and closing;**
- **Events and public outdoor places in Brighton & Hove;**
- **Provision of contact details and QR codes;**
- **Adherence to social distancing requirements.**

**For the avoidance of doubt, the exercise of the above enforcement functions shall include any future enforcement powers conferred on the Council pursuant to the Public Health (Control of Disease) Act 1984 and/or the Coronavirus Act 2020. It shall extend to all enforcement-related activity taken using powers conferred by the above legislation including the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) Local Authorities Enforcement Powers and Amendments) (England) Regulations 2020a.**

**(ii) To authorise officers to exercise the enforcement functions delegated to the Council under regulations made under the Public Health (Control of Disease) Act 1984 and/or the Coronavirus Act 2020, having consulted with any persons they consider appropriate and subject to any limitation in relevant legislation. Any authorisation or designation for enforcement purposes may be by reference to job roles or by reference to individuals.**

**(iii) To exercise the additional public health functions conferred on the Council under the Public Health (Control of Disease) Act 1984 and/or the Coronavirus Act 2020, having had regard to any advice given to them by the Director of Public Health or other person where such is a requirement.**

**[Note - Where the Director of Public Health (DPH) appointment is made to an Officer other than the Executive Director of Health and Adult Social Care, the DPH will have delegated to them concurrent powers to discharge the functions of the Council relating to Coronavirus support set out above in paragraphs 6 (i)-(iii).]**

(7) **Adult Disability**

To exercise the Council's functions regarding adult disability.

*[Note - To the extent that it relates to Adult Learning Disability, the power referred to in paragraph 8 above is delegated concurrently to the Executive Director of Families, Children and Learning. The Director of Adult Services (DAS) will discharge such powers as are required by law or rules of professional practice to be exercised by the DAS.]*

(8) **Integrated Commissioning**

To manage and co-ordinate an integrated commissioning function on behalf of Health and Adult Social Care and Families, Children and Learning.

## Appendix 2

### Tier 2: High alert

This is for areas with a higher or rapidly rising level of infections, where some additional restrictions need to be in place.

In Tier 2:

- you must not socialise with anyone you do not live with or who is not in your support bubble in any indoor setting, whether at home or in a public place
- you must not socialise in a group of more than 6 people outside, including in a garden or a public space – this is called the ‘rule of 6’
- businesses and venues can continue to operate, in a [COVID-Secure](#) manner, other than those which remain closed by law, such as nightclubs
- pubs and bars must close, unless operating as restaurants. Hospitality venues can only serve alcohol with substantial meals
- hospitality businesses selling food or drink for consumption on their premises are required to:
  - provide table service only, in premises which sell alcohol
  - close between 11pm and 5am (hospitality venues in airports, ports, transport services and motorway service areas are exempt)
  - stop taking orders after 10pm
- hospitality businesses and venues selling food and drink for consumption off the premises can continue to do so after 10pm as long as this is through delivery service, click-and-collect or drive-through
- early closure (11pm) applies to casinos, cinemas, theatres, museums, bowling alleys, amusement arcades, funfairs, theme parks, adventure parks and activities, and bingo halls. Cinemas, theatres and concert halls can stay open beyond 11pm in order to conclude performances that start before 10pm
- public attendance at outdoor and indoor events (performances and shows) is permitted, limited to whichever is lower: 50% capacity, or either 2,000 people outdoors or 1,000 people indoors

- public attendance at spectator sport and business events can resume inside and outside, subject to [social contact rules](#) and limited to whichever is lower: 50% capacity, or either 2,000 people outdoors or 1,000 people indoors
- places of worship remain open but you must not socialise with people from outside of your household or support bubble while you are indoors there, unless a legal exemption applies
- weddings and funerals can go ahead with restrictions on numbers of attendees – 15 people can attend wedding ceremonies and receptions, 30 people can attend funeral ceremonies, and 15 people can attend linked commemorative events such as wakes or stonettings.
- organised outdoor sport, and physical activity and exercise classes can continue
- organised indoor sport, physical activity and exercise classes will only be permitted if it is possible for people to avoid mixing with people they do not live with (or share a support bubble with). There are exceptions for indoor disability sport, sport for educational purposes and supervised sport and physical activity for under-18s, which can take place with larger groups mixing
- you can continue to travel to venues or amenities which are open, but should aim to reduce the number of journeys you make where possible
- if you live in a tier 2 area, you must continue to follow tier 2 rules when you travel to a tier 1 area. Avoid travel to or overnight stays in tier 3 areas other than where necessary, such as for work, education, youth services, to receive medical treatment, or because of caring responsibilities. You can travel through a tier 3 area as a part of a longer journey
- for international travel see the Foreign, Commonwealth and Development Office [travel advice](#) for your destination and the [travel corridors list](#)