

Cabinet Report



Listening Learning Leading

Report of Head of Legal and Democratic

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To: CABINET

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Delegation of enforcement functions from Oxfordshire County Council to South Oxfordshire District Council under Covid-19 legislation

Recommendations

That Cabinet agrees and RECOMMENDS Council to:

- (a) accept the delegation of functions from Oxfordshire County Council to enable South Oxfordshire District Council to carry out the enforcement actions detailed in The Health Protection (Coronavirus, Restriction) (England) (No.3) Regulations 2020;
- (b) authorise the Head of Legal and Democratic to enter into all necessary contracts and agreements to implement the delivery of the enforcement actions on behalf of Oxfordshire County Council under The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020;
- (c) authorise the Head of Legal and Democratic to enter into all necessary contracts and agreements to implement the delivery of the enforcement actions on behalf of Oxfordshire County Council for any further period for which The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 may be extended by the Secretary of State for Health and Social Care and any enforcement actions which Oxfordshire County Council may delegate to the council in pursuance of any other provision (whether by statute, regulation or direction) by which The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 may be replaced, amended or supplemented;
- (d) authorise the Head of Housing and Environment to perform the enforcement actions set out in any such agreements referred to above and to authorise other officers to exercise any of these actions.

Purpose of Report

1. To accept the delegation of functions granted to Oxfordshire County Council under The Health Protection (Coronavirus, Restriction) (England) (No.3) Regulations 2020 that give local authorities powers relating to the control and prevention of coronavirus.

Corporate Objectives

2. The exercise of these functions will support the Strategic Objectives of “Build thriving communities” and “Be tough on enforcement.”

Background

3. Prior to July 2020, local authorities had a specific and distinct range of legal powers under public health, environmental health or health and safety laws which allowed them

to temporarily close individual settings for a specific reason and period. These powers apply under a patchwork of triggers or, in some cases, require an application to a magistrate. These powers were not sufficient to enable local authorities to fully implement the measures potentially needed to prevent, protect against, delay or otherwise control the incidence or spread of coronavirus in their area.

4. In July 2020 the government introduced new powers for local authorities to support local outbreak management. The Health Protection (Coronavirus, Restriction) (England) (No.3) Regulations 2020 (the Regulations) give local authorities powers relating to the control and prevention of coronavirus. The regulations are due to expire on 17 January 2021 but could be extended if necessary.
5. With the support of district council officers, Oxfordshire County Council (OCC) has decided to delegate these functions to the district councils under section 101 of the Local Government Act 1972 and section 9EA of the Local Government Act 2000 together with Regulation 5 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012.
6. The recommendations in this report are intended to allow South Oxfordshire District Council to accept and take advantage of the delegation of functions to promote public health and reduce the spread of infection from the coronavirus; Covid-19.
7. Acceptance of functions delegated by OCC will not transfer OCC's enforcement obligations under the Regulations but, in so far as South Oxfordshire District Council utilises those powers, it will be acting on behalf of OCC and the latter will include that activity in the reports it is required to make to government.
8. The powers under the Regulations can be exercised if there is a serious and imminent threat to public health. Any direction issued must be necessary and proportionate to prevent, protect against, control or provide a public health response to the incidence or spread of coronavirus in a local authority's area. The Regulations define the designation of powers to the local authority in the Oxfordshire context as OCC.
9. Before using the powers, local authorities must:
 - gather sufficient evidence to demonstrate that these tests have been met,
 - consult with the Director of Public Health and the police (if the direction prohibits, requires or restricts access to a premise, event or public outdoor place),
 - have due regard to the Public Sector Equality Duty (s.149 of the Equality Act 2010) and consider carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics,
 - have regard to the need to ensure the public has access to essential public services,
 - be clear about why they are taking directive action and communicate this clearly to the Secretary of State, the persons to whom the direction applies and, where appropriate, those impacted by the direction.

The local authority must have regard to advice given by its Director of Public Health before determining whether to give a direction as set under the Regulations.

Powers under the Regulations

10. The Regulations provide the following powers to the local authority

- closure of, or limiting access to, individual premises

Under this Regulation a local authority may impose prohibitions, requirements or restrictions in relation to entry and exit from or location of people within, specified premises. The local authority cannot give this direction to any business or premises that forms part of essential infrastructure (as defined in the Regulations), vehicles used for public transport or the carriage or haulage of goods.

- impose prohibitions, requirements or restrictions in relation to the holding of a specified event or events of a specified description.

The direction can be given to: the owner or occupier of the premises for an event; the organiser of such an event; any person involved in holding such an event. A direction may impose requirements about informing persons who may be planning to attend an event of any prohibitions, requirements or restrictions imposed in relation to the holding of it.

- closure of public outdoor places or prohibit or restrict access to public outdoor places at specified times

Where the public outdoor place forms part of Crown land, the local authority cannot give a direction in relation to that place without the agreement of the appropriate authority.

11. The local authority must also review the need for any direction at least once every 7 days, to assess whether the conditions for issuing a direction (relating to a threat to public health and a direction being a necessary and proportionate means of preventing, protecting against, controlling or providing a public health response to the incidence or spread of coronavirus in the local authority's area), are still met. If these conditions are not met, the direction must be revoked.

12. If the threat still remains but the measures in the direction are found to be no longer necessary or proportionate, the local authority must either revoke without replacement, or revoke and replace the direction with one containing measures that are necessary and proportionate.

Notification

13. If a local authority decides to give a direction under these powers to a person specified in the direction by name, the direction must be given in writing to that person. Where a local authority decides to revoke such a direction, a notice of revocation must similarly be given to that person in writing. All other directions must be published on the website of the local authority. It does not need to be in any particular prescribed format. The local authority may also publish any direction in such other manner as the local authority considers appropriate to bring it to the attention of any person who may be affected by it.

14. Local authorities giving directions ('initiating authorities') are required to notify any local authority whose area is adjacent to the initiating authority's area when they give or revoke a direction under the Regulations.

Enforcement

15. The Regulations include provision that a person who contravenes certain provisions of the Regulations, or directions made under the Regulations, commits an offence, punishable by a fine. They also include provision that a local authority designated officer or a constable (including a police community support officer) may take such action as is necessary to enforce a direction made under the Regulations.
16. A local authority designated officer will be able to issue a prohibition notice requiring a person not to continue to contravene a direction under the regulation.
17. In relation to contraventions of a direction relating to an event, or relating to public outdoor places, a constable (including a police community support officer) may direct a person to leave the event or place, or may remove a person from the event or place, and in relation to an event, may direct the event to stop. Businesses or individuals that are in breach of such a direction can be subject to prohibition notices and fines.

Delegation of functions

18. It is intended that OCC will delegate all powers and performance of all duties under and in accordance with the Regulations to the City and district councils in the county. This will be done under a formal agreement. City and district environmental health officers will be then be authorised to exercise the powers and duties under the Regulations.
19. OCC will still retain the power to issue directions and enforce under the Regulations. The Director of Public Health and consultants in Public Health will also be authorised to raise directions under the Regulations. Trading standards officers will be authorised to enforce any directions issued by OCC.
20. The agreement will apply until the expiry of the Regulations on 17 January 2021, subject to a right to extend by mutual agreement for such period as the Regulations may be extended by the Secretary of State for Health and Social Care. The recommendations in this report also seek a delegation to make provision for any provisions by which the Regulations may be replaced, amended or supplemented.

Options

21. An alternative option would be to refuse to accept a delegation of the functions but that would prevent the council from contributing to sharing enforcement with OCC to prevent, protect against, control or provide a public health response to the incidence or spread of coronavirus in the council's area.

Financial Implications

22. The council has experience of enforcing legislation in both the domestic and commercial sectors under existing legislation which provides enforcement powers to housing and environmental health officers but is not currently resourced to take on significant additional enforcement within existing resources. However, the intention behind the proposed delegation of functions is to allow the council the ability in the

short term to prioritise the deployment of existing resources if necessary to enforce this legislation in order to assist in preventing the spread of Covid-19.

23. The Health Protection Board (HPB) has agreed a mechanism to facilitate the submission of claims from the test and trace grant which Oxfordshire County Council Public Health has received. Claims should only be made for previously agreed uses of the fund. This currently includes the costs associated with the new reactive weekend rota (stand-by costs, overtime, mileage and expenses). If new initiatives are identified ideas may be presented to the HPB for consideration.

Legal Implications

24. OCC will delegate the functions under the Regulations subject to a formal agency agreement being put in place. The agreement will include review periods to enable amendments to be made if necessary. As the main body of the report makes clear at paragraph 19 above, OCC will retain the powers under the Regulations itself but this council will also be able to act as OCC's agent in carrying out enforcement activity.
25. Section 101 of the Local Government Act 1972 and Section 9EA of the Local Government Act 2000 permits OCC to delegate functions to South Oxfordshire District Council, and this will be the authority relied upon in the agreement between the councils.
26. Cabinet and Council are asked to authorise the Head of Housing and Environment to perform the enforcement actions set out in the agreement and to authorise other officers in her service to exercise any of these actions.

Risks

27. Operational risks are low and strategically there is greater risk to the public from not accepting the delegation to enforce the legislation than being party to efforts to contain the spread of Covid-19. Operational risks will be captured in the service risk register and appropriate mitigations established and escalated to the corporate risk register as and when necessary.

Other implications

28. None.

Conclusion

29. Accepting the delegation of functions from OCC of the enforcement powers proposed in this report will allow the two councils to develop shared working arrangements that will improve enforcement of the legislation relating to the prevention, protection and control of incidences of coronavirus.
30. The council will be able to make use of those provisions as necessary in light of its other responsibilities and resources as circumstances and opportunities arise.

Background Papers

None