

Report to the Cabinet

Meeting to be held on Thursday, 6 August 2020

Report of the Head of Legal and Democratic Services

Part I

Electoral Division affected:
(All Divisions);

Covid-19: Local Powers

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Executive Summary

This report sets out proposed arrangements for decision making in Lancashire in relation to the ongoing Covid-19 pandemic, including in relation to new powers from government to be able to close individual premises, close public outdoor places and restrict events with immediate effect. This report also sets out the principles behind the proposed arrangements for the implementation of those powers.

Recommendation

Cabinet are asked to approve that:

- i. Authority to give directions under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 be delegated to the Chief Executive and Director of Resources, and any other officer(s) that the Chief Executive deems it appropriate to further delegate to.
- ii. The Director of Corporate Services be authorised to approve the final arrangements for the policy and procedure for the implementation of these new powers.
- iii. Powers to take any decision on behalf of the cabinet necessary to urgently address or mitigate outbreaks of Covid-19 which can lawfully be delegated to officers, subject to the decision-taker, before taking the decision, having taken appropriate steps to consult the Leader, or, in his absence, the Deputy Leader, or in the absence of both, any members of the cabinet as considered appropriate by the decision taker, be delegated to the Chief Executive, Executive Directors and the Director of Corporate Services.
- iv. Such powers in (iii) above to replace the delegation to officers approved by the Leader of behalf of Cabinet on 23 March 2020 last until 31 January 2020 unless otherwise reviewed.

This decision should be implemented immediately for the purposes of Standing Order C29 as any delay could adversely affect the execution of the County Council's responsibilities. The reason for this is that there is a need to respond quickly to any new outbreaks or incidents of Covid-19 as they arise in Lancashire.

Background and Advice

New Powers for Local Authorities

On 18 July 2020, new legislation came into effect which gave local authorities new powers to respond to a serious and imminent threat to public health and to prevent COVID-19 transmission in a local authority's area where this is necessary and proportionate to manage spread of the coronavirus. The regulations include powers for local authorities to:

- restrict access to, or close, individual premises;
- prohibit certain events (or types of event) from taking place;
- restrict access to, or close, public outdoor places (or types of outdoor public places);

To make a direction under these Regulations a local authority needs to be satisfied that the following 3 conditions are met:

1. the direction responds to a serious and imminent threat to public health in the local authority's area;
2. the direction is necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in the local authority's area of coronavirus;
3. the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose;

Before making a direction, local authorities will need to gather sufficient evidence to demonstrate that these tests have been met. This evidence may come from a range of local and national sources. A local authority must consult with the director of public health, and assess whether the conditions for taking action have been met.

A local authority should also consult the police prior to issuing a direction, Local authorities should be clear about why they are taking directive action and communicate this clearly to the Secretary of State, the person(s) to whom the direction applies and, where appropriate, those impacted by the direction.

Regulations also allows the Secretary of State to direct a local authority to issue a direction where the Secretary of State considers the conditions above have been met, and can also direct a local authority to revoke an existing direction where the above conditions are no longer met.

Any direction issued by a local authority under the Regulations will need to state the date and time on which the prohibition, requirement or restriction comes into effect, and the date and time on which it will end. This should include the basis on which the

three conditions are met and why a specific prohibition, requirement or restriction is necessary.

A local authority must review a direction it has issued under the Regulations at least every seven days and determine whether the three conditions for making the direction continue to be met. If at any stage the threshold for restrictions is no longer met, the direction should be immediately revoked or replaced with a direction which meets the threshold set out above.

Prior to issuing a direction, local authorities must have due regard to the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 and should consider carrying out an equalities impact assessment to determine whether the measure may disproportionately affect people with protected characteristics. Identifying disproportionate impact would not prohibit a local authority from taking action, but this should be balanced against the wider public health risk in a local authority's area, and mitigations should be considered and implemented wherever possible.

Those directly impacted by any direction under these Regulations, including the owner or occupier of premises or event organiser against whom a direction applies, will have the right of appeal to a local magistrate and may make representations to the Secretary of State. The direction issued must include details of the right to appeal to a magistrates' court and the time within which such an appeal may be brought.

Whilst these powers are intended to be used on serious and imminent threats, the process of gathering evidence means that it is not generally expected that it will be possible to use them to address immediate concerns. However, it would be expected that these powers are part of a wider suite of engagement, support and influencing tools that are, in many cases, already likely to have been used in relation to a venue, site or event that is causing concern, and so prompt action will be possible.

As part of the arrangements, consideration is being given to enforcement activities, and also to the role in the process of colleagues from district councils. Cabinet is asked to note the new powers and approve that the detailed arrangements and the power to issue directions be delegated to officers as set out in the recommendations.

Lancashire County Council delegations

At the start of the outbreak, the Leader of the Council approved an urgent delegation to all officers at Head of Service level or above to enable them to take any decisions that would normally be reserved to Cabinet. This was a mechanism to ensure that the council was able to respond quickly to the rapidly developing and very serious situation, and was also designed to ensure that there were mechanisms in place to take essential decisions in the event that key decision makers were unable to perform their duties because of the virus. Controls were in place to ensure that key decisions makers were consulted on any such decisions.

Whilst the situation has moved on, the situation remains serious, and the need for the council to be able to act quickly in the event of an outbreak remains. However, it is also clear that the mechanisms for democratic decision making by members are effective and in place.

It is therefore suggested that the current delegation be replaced by a delegation to just the most senior officers in the council, and that it be made clear that it only relates to decisions that mitigate or address the impacts of the further spread of Covid-19.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

As set out in the "Background" above.

List of Background Papers

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A