

Cherwell District Council

Council

7 September 2020

<p>Delegation of enforcement powers from Oxfordshire County Council to Cherwell District Council under Covid – 19 legislation</p>
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Report of Director of Public Health and Wellbeing

This report is public

Purpose of report

To accept the delegation of powers 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.

1.0 Recommendations

The Council is recommended to:

- 1.1 **Accept** the delegation of powers to enable Cherwell District Council to carry out enforcement actions detailed by The Health Protection (Coronavirus, Restriction) (England) (No.3) Regulations 2020.
- 1.2 **Authorise** the Assistant Director Regulatory Services, acting in consultation with the Director Law and Governance and the Corporate Director Finance, to enter into all necessary and appropriate contracts and agreements to implement the delivery of the enforcement work on behalf of Oxfordshire County Council (OCC).
- 1.3 **Delegate** authority to the Assistant Director Regulatory Services to perform the enforcement duties of OCC set out in any such agreements referred to above.

2.0 Introduction

- 2.1 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.
- 2.2 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 will expire on 17th January 2021.

- 2.3 OCC's delegation was made under section 101 of the *Local Government Act 1972* and section 9EA *Local Government Act 2000* together with Regulation 5 of the *Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012*.
- 2.4 The recommendations in this report are intended to allow Cherwell District Council to accept and take advantage of the delegation of powers to promote public health and reduce the spread of infection from the coronavirus; Covid -19.
- 2.5 Acceptance of powers delegated by OCC will not transfer OCC's enforcement obligations under the Regulations but, in so far as Cherwell 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.

3.0 Report Details

- 3.1 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.
- 3.2 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.

3.3 Powers under the Regulations

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 LA 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.

3.4 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.

3.5 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.

3.6 Notification

3.6.1 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.

3.6.2 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.

3.7 Enforcement

3.7.1 The instrument includes provision that a person who contravenes certain provisions of these Regulations, or directions made under these Regulations, commits an offence, punishable by a fine. It also includes 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.

3.7.2 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.

3.7.3 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.

3.8 Delegation of powers

3.8.1 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 (a draft of the delegations of powers agreement is shown as Appendix A). This will be done under a section 101 agreement.

- Environmental Health Officers will be delegated powers under the regulations acting as agents of OCC.

3.8.2 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 be delegated to raise directions under the Regulations.
- Trading standard officers will be delegated to enforce any directions issued by OCC.

4.0 Conclusion and Reasons for Recommendations

4.1 Accepting the delegation 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.

4.2 The Council will not be obliged to take on any particular enforcement responsibilities as a result of accepting the delegations but will be able to make use of those provisions it deems pertinent in light of its other responsibilities and resources as circumstances and opportunities arise.

5.0 Consultation

None

6.0 Alternative Options and Reasons for Rejection

6.1 The following alternative options have been identified and rejected for the reasons set out below.

Option 1: Adopt none of the powers; – 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 a local authority's area.

7.0 Implications

7.1 Financial and Resource Implications

- 7.1.1 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 officer but is not currently resourced to take on significant additional enforcement. However, the intention behind the proposed delegation of powers is not to transfer enforcing responsibilities and obligations, but to allow the Council the ability to enforce this legislation in order to assist in preventing the spread of Covid 19.

Comments checked by:

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7.2 Legal Implications

- 7.2.1 OCC will delegate the enforcement powers subject to an agreed agency agreement being 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 3.8 above, OCC will retain the powers under the Regulations itself but the Council will be able to act as OCC's agent in carrying out enforcement activity.
- 7.2.2 Section 101 of the Local Government Act 1972 and Section 9EA of the Local Government Act 2000 permits OCC to delegate powers to Cherwell District Council to discharge certain functions, and this will be the authority relied upon in the agreement between the two councils.

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7.3 Risk Implications

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

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8.0 Decision Information

Key Decision

Financial Threshold Met:	No
Community Impact Threshold Met:	No

Wards Affected

All

Links to Corporate Plan and Policy Framework

- Thriving communities and Wellbeing
- Clean, Green and Safe

Lead Councillor

Councillor Andrew McHugh

Document Information

Appendix No	Title
One	Section 101 Agreement
Background Papers	
None	
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