

Council

22 October 2020

Agenda Item 48

Brighton & Hove City Council

Subject:	Amendment to the Scheme of Delegations - Enforcement of Covid-19 Related Legislation		
Date of Meeting:	22 October 2020 8 October 2020 – Policy & Resources Committee		
Report of:	Executive Lead Officer for Strategy, Governance & Law (Monitoring Officer.)		
Contact Officer:	Name:	Abraham Ghebre-Ghiorghis	Tel: 01273 291500
	Email:	Abraham.ghebre-ghiorghis@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The purpose of this report is to seek agreement to amend the scheme of delegations to Committees and Officers to reflect the new powers under the Coronavirus Act 2020 and secondary legislation.

2. RECOMMENDATIONS:

- 2.1 That the Committee agrees the changes to officer delegations and authorisations set out in paragraphs 3.2 to 3.5 inclusive.
- 2.2 That the Committee recommends to Full Council the changes to the scheme of delegation to the Health & Wellbeing Board as set out in paragraph 3.3.5.
- 2.3 That the changes in paragraphs 2.1 and 2.2 come into effect immediately they are approved by this committee of Full Council, as appropriate and that the Monitoring Officer be authorised to make necessary and consequential changes to the council's constitution to reflect the changes.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Since the passing of the Coronavirus Act 2020, the government has conferred various enforcement powers on local authorities. As local authorities act through the agency of Officers and Committees, the proper and lawful use of these powers requires that they are reflected in the Council's scheme of delegations to Committees and officers, including the necessary designations for enforcement purposes. The main legislative provisions and proposed changes to the Council's arrangements are set out in the following paragraphs.
- 3.2 ***Designation of Officers for Enforcement Purposes-premises and businesses:***

- 3.2.1 The *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* authorised Officers designated by local authorities to undertake the task of enforcement of the restrictions on opening of premises and businesses during the period of Covid-19 emergency. On 31st March 2020, The Policy & Resources (Urgency) Sub-Committee authorised the designation of certain Officers for the purposes of the regulations. The regulations were superseded by the *Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020*. To reflect the changes and deal with any future changes, it is recommended that:

(a) For the avoidance of doubt, any designations put in place under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 continue to remain in force under the new or amended regulations notwithstanding any changes; and

(b) That if any new measures are introduced under the Coronavirus Act 2020 giving officers designated by the Council the power to take enforcement action, the Executive Director for Adult Social Care & Health, after consulting with persons that he considers appropriate, be authorised to designate officers for the purposes of such enforcement.

3.3 ***Power to Issue Direction relating to premises and events***

- 3.3.1 The *Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020*, give the Council the power to issue directions relating to premises, events and public outdoor places in Brighton & Hove.

- 3.3.2 Under the regulations, a local authority may give directions only if it considers that the following conditions are met—

(a) that giving such a direction responds to a serious and imminent threat to public health,

(b) that the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and

(c) that the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose.

- 3.3.3 In deciding whether to exercise the power, the Council has to have regard to any advice given to it by its Director of Public Health.

- 3.3.4 The measures that can be taken include:

- (i) *Directions relating to individual premises* – these could include a direction to close the premises, restricting entry to the premises or securing restrictions relating to the location of persons in the premises.

- (ii) *Directions relating to the holding of events*- these could include a prohibition, imposing requirements or restrictions.
- (iii) *Directions relating to outdoor places*- these include imposing prohibitions, requirements or restrictions.

3.3.5 A person served with a direction may appeal to the magistrates court.

3.3.5 Although the power is given to the local authority, in practice, an officer or a committee will need to decide whether to issue a direction. The current scheme of delegations to the Health & Wellbeing Board and the Executive Director for Adult Social Care and Health given them the power to deal with public health in general. However, given that the unusual nature of powers under the regulations (such as closing premises), it is recommended that they are properly reflected in the scheme of delegations rather than relying on general references to health. More specifically, it is recommended that:

the Health & Wellbeing Board, the Executive Director for Adult Social Care & Health and the Director of Public Health be given concurrent delegated powers to discharge the Council's functions under the Coronavirus Act 2020, including, but not limited to, the issuing of direction under the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020."

3.3.6 The powers delegated to the Executive Director and the Director of Public Health will be concurrent and may be exercised jointly or severally. The Council has already adopted an outbreak plan and established a local outbreak board as well as other collaborative and consultative arrangements. The exercise of the above powers will be guided by consultation under these arrangements as necessary. However, these are not decision-making bodies and, so far as legal decision-making power is concerned, that sits with a committee (the Health & Wellbeing Board) or Officers. Without the arrangements described above, there is a risk that as and when formal decisions have to be made, we may not be able to take them or there is a risk of the decision being challenged.

3.3.7 The conferring of these powers on officers does not preclude them putting the matter to the Health & Wellbeing Board for a decision.

3.4 ***Enforcement regarding hospitality undertakings***

3.4.1 The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020 require certain undertakings in the hospitality industry to take measures to ensure that their customers follow the rules on social distancing. A person designated by a relevant local authority can issue fixed penalty notices if this is breached. As this is a new measure, it is proposed that:

- the delegations under the provisions relating to the closure of premises and premises (paragraph 2 above) and the designation of officers under those arrangements apply to the enforcement of the Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020.
- It is further recommended that the Executive Director for Adult Social Care & Health be given concurrent delegated powers to designate individual officers for the purposes of the above regulations relating to hospitality undertakings.

3.5 Enforcement regarding contact details

3.5.1 The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 make it a requirement for certain premises to request contact details from individuals on entry and refuse entry to those who won't provide their details. There is also a requirement for relevant persons to have a QR code.

3.5.1 A person designated by a relevant local authority can issue fixed penalty notices if this is breached.

3.5.2 It is proposed that:

- Officers designated under the arrangements described under paragraph 3.2 above be designated officers for the purposes of enforcement of the contact details requirements referred to above.
- It is further recommended that the Executive Director for Adult Social Care & Health be given concurrent delegated power to designate other officers as he considers appropriate.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 The Council has the option of proceeding under existing general delegations. But that is risky, especially for legal enforcement purposes and is therefore not recommended.

5 COMMUNITY ENGAGEMENT & CONSULTATION

5.1 Given the nature of the issues and the fact that this is dealing with technical arrangements to enable enforcement action to be taken where necessary, no consultation was undertaken

6. CONCLUSION

- 6.1 The proposals set out above will provide the necessary constitutional and legal framework and ensure that any steps the Council takes or directions it issues are done by persons properly authorised.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 There are no direct financial implications arising from the recommendations of this report. Any financial consequences from Officers exercising their delegations and authorisations will be reported within Targeted Budget Management reports to this committee.

Finance Officer Consulted: James Hengeveld

Date: 28/09/20

Legal Implications:

- 7.2 The proposals are within the powers of the Council and the Policy & Resources Committee has the power to amend Officer delegations and authorisations.

Lawyer Consulted:

Abraham Ghebre-Ghiorgis

Date: 28/09/2020

Equalities Implications:

- 7.3 There are no adverse equalities implications arising from this report

Sustainability Implications:

- 7.4 There are no adverse sustainability implications arising from this report

Brexit Implications:

- 7.5 None

SUPPORTING DOCUMENTATION

Appendices:

None

Background Documents

None