
Report To:	Inverclyde Council	Date:	10 September 2020
Report By:	Head of Legal & Property Services	Report No:	GM/LP/098/20
Contact Officer:	Gerard Malone	Contact No:	01475 712710
Subject:	Scheme of Delegation – The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020		

1.0 PURPOSE

- 1.1 This report seeks the Council's authority to delegate the new powers granted to Scottish Local Authorities to issue Directions in response to the serious and imminent threat to public health which is posed by the incidence and spread of Coronavirus in Scotland.

2.0 SUMMARY

- 2.1 The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (referred to here as "the Regulations") came into force, following upon urgent procedures determined by Scottish Ministers, on 28 August 2020. The Regulations give new powers to the Council to give Directions relating to specified premises, events and public outdoor places in Inverclyde. The Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of Coronavirus in Scotland.
- 2.2 Scottish Local Authorities have been given new powers to give Directions for the purposes 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. Directions may be given by the Council relating to individual premises, to events, and to public outdoor places. Detailed Scottish Government guidance is expected on the use of Directions and additionally the Scottish Government may in certain circumstances itself direct local authorities to give a Direction. The Regulations give powers to the Council's designated officers for enforcement and to Police Constables so that the regulations may be enforced. Officers in Environmental & Public Protection are already authorised to enforce the Health Protection (Coronavirus) (Restrictions) Regulations 2020. The Interim Head of Service – COVID Response will have the delegated powers to authorise officers under the (new) Regulations.
- 2.3 However, the new powers given by the Regulations are granted to the Council. Accordingly, it is necessary in the circumstances to seek an explicit delegation of the function to give Directions in terms of the Regulations to relevant officers so that the powers may be effectively and timeously used in the event of their being required. This report seeks the authority to delegate the power to give a Direction in terms of the Regulations to the Interim Head of Service – COVID Response or, in his absence to the Corporate Director Environment, Regeneration & Resources.

3.0 RECOMMENDATIONS

It is recommended that:

- 3.1 the Council authorises the Interim Head of Service – COVID Response, and in his absence the Corporate Director Environment, Regeneration & Resources, the powers to give any Directions in terms of the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020;

- 3.2 the officers in Environmental & Public Protection be authorised as relevant designated officers for purposes of enforcing their requirements of the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020; and
- 3.3 it be remitted to the Head of Legal & Property Services to make such necessary amendments to the Scheme of Delegation to Officers as may be necessary.

Gerard Malone
Head of Legal & Property Services

4.0 BACKGROUND – THE REGULATIONS

- 4.1 The Regulations came into force, following upon urgent procedures determined by Scottish Ministers, on 28 August 2020. The Regulations were made on 27 August 2020 and laid before the Scottish Parliament on the same date. Scottish Ministers were of the opinion that, by reason of urgency, it was necessary to make the Regulations without a draft having been laid before the Scottish Parliament. The Regulations give new powers to the Council to give Directions relating to specified premises, events and public outdoor places in Inverclyde. The Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of Coronavirus in Scotland.
- 4.2 Scottish Local Authorities have been given new powers to give Directions for the purposes 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. Directions may be given by the Council relating to individual premises, to events, and to public outdoor places. Detailed Scottish Government guidance is expected on the use of Directions and additionally the Scottish Government may in certain circumstances itself direct local authorities to give a Direction. The Regulations give powers to the Council's designated officers for enforcement and to Police Constables so that the regulations may be enforced. Officers in Environmental & Public Protection are already authorised to enforce the Health Protection (Coronavirus) (Restrictions) Regulations 2020. The Interim Head of Service – COVID Response will have the delegated powers to authorise officers under the (new) Regulations.
- 4.3 The Council may give a Direction only if it is considered that it 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 Inverclyde and that the prohibitions, requirements or restrictions are a proportionate means of achieving that purpose. Directions may be given by the Council imposing prohibitions, requirements or restrictions in relation to the entry into, departure from or location of specified persons in specified premises within Inverclyde. The Direction may close the premises, restrict entry to the premises or secure restrictions in relation to the location of persons in the premises. The Direction may impose conditions relative to the number of persons in premises, the purpose for which people may enter the premises and the facilities in the premises. Similar provisions relate to events: the Council may give a Direction imposing conditions in respect of the holding of any specified event within the Inverclyde area. Directions may also be given to the use of any public outdoor place.
- 4.4 The provisions of the Regulations contain new powers granted to the Council in relation to the COVID-19 pandemic. There are detailed provisions within the Regulations for the giving of Directions. The Directions have the effect of imposing restrictions on the owner or occupiers of premises or persons involved in managing entry into, or departure from the premises. There is an appeal procedure to the Sheriff Court. There are provisions within the Regulations for public notice of those Directions which are given.
- 4.5 Environmental & Public Protection officers within Inverclyde may enforce the requirements of any Directions and Police Constables may, similarly, take such actions as are necessary to enforce Directions. The Regulations also provide that a fixed penalty may be issued by a Constable to any person whom they reasonably believe has committed an offence under the Regulations.

5.0 DELEGATED POWERS

- 5.1 The powers to give Directions are granted to Scottish Local Authorities. Accordingly, it is necessary to ensure these powers are formally delegated to relevant officers so they may be used timeously and effectively, if they are needed. It is almost certainly the case that the powers will be required very quickly in response to any outbreak or intelligence e.g. about an intended event outwith the phasing of the Route Map.
- 5.2 In terms of the Local Government (Scotland) Act 1973 it is competent for the Council to

decide to delegate its functions to a Committee or to officers as appropriate. This report requests that the Interim Head of Service – COVID Response be formally authorised to give Directions in terms of the Regulations and, in his absence, that the Corporate Director Environment, Regeneration & Resources be also formally delegated powers to give Directions.

- 5.3 For the above reasons a special meeting of the Council has been requested. The Provost has also confirmed that if circumstances require an earlier meeting, then he will exercise his discretion to convene an urgent meeting of the Council on short notice.
- 5.4 Officers from Environmental & Public Protection are already authorised to issue Prohibition Notices under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. These powers, together with powers under the Health & Safety at Work etc. Act and the Licensing (Scotland) Acts have been used in order to ensure that businesses and organisations are operating in a safe manner as the economy has re-opened. Delegated powers to enforce the Regulations are required in order to ensure that the Environmental & Public Protection officers are formally authorised as designated officers under the Regulations in order to allow them to enforce the terms of any Direction which may be made by the Council or Scottish Ministers.

6.0 IMPLICATIONS

6.1 Finance

There are no financial implications.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

6.2 Legal

The legal issues are contained within this report.

6.3 Human Resources

There are no HR implications related to this proposal.

6.4 Equalities

Equalities

- (a) Has an Equality Impact Assessment been carried out?

	YES
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X	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required
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(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
X	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
X	NO

6.5 Repopulation

There are no direct repopulation issues within this report.

7.0 CONSULTATIONS

7.1 There have been consultations with the Interim Head of Service – COVID Response and with the Chief Executive.

8.0 BACKGROUND PAPERS

8.1 None.