

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

CABINET

10th August 2020

Report of the Head of Planning and Public Protection – Mr C Morris and Head of Legal Services – Mr C Griffiths

Matter for Decision

Wards Affected: All

Enforcement under the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020

Purpose of Report

- 1 That Members authorise the Director of Environment and Regeneration and Director of Finance and Corporate Services, Head of Planning and Public Protection, Head of Legal Services and any officers so designated by them the delegated authority to issue a Premises Improvement Notice or Premises Closure Notice pursuant to Regulation 12 of the Health Protection (Coronavirus Restrictions) (Wales) (No2) 2020 (as amended).

Executive Summary

- 2 The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 have been made “in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales”. The Regulations set out a specific and separate system for enforcing regulation 12. This provides that enforcement officers from local authorities can require certain (specified) measures to be taken in relation to premises, and they can if necessary close them. Closure can be required either because specified measures aren't subsequently taken or because the breach of the requirements is sufficiently serious to justify closing a premises immediately or with only very limited notice.

Background

- 3 The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 have been made “in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales”. The appropriate use of powers to enforce these restrictions and requirements imposed by the Regulations is important to:
 - promote and maintain sustained compliance as a preventative measure to help contain the coronavirus;

- ensure action is taken immediately to deal with situations in which there is a risk of coronavirus spreading;
 - ensure that those who fail to comply are held to account.
4. Regulation 12 requires persons responsible for premises to do three things, all for the purpose of minimising the risk of exposure to coronavirus on the premises.
- (a) The first is to take “all reasonable measures” to maintain 2 metres distance between people who are on the premises or are waiting to go in to the premises.
 - (b) The second is to take “any other reasonable measures” to minimise the risk of exposure to coronavirus – this primarily means improving hygiene and taking measures to minimise face to face interaction (something which is particularly important where 2 metre distancing isn’t reasonably practicable).
 - (c) The third is to provide information to those entering or working at the premises about how to minimise the risk of exposure to coronavirus – something that is closely linked to the other two requirements as measures taken will often depend on the behaviour of those on the premises.
5. Regulation 12 applies to “open premises” and any other premises in which work takes place. Open premises are premises that were previously required by regulations to close or open only on a limited basis (such as food shops which were always permitted to open but subject to taking all reasonable measures to ensure people on the premises maintained a 2m distance between each other). These premises are now open, subject to the requirements of regulation 12. Premises also includes vehicles used for public transport.

Enforcement

6. Guidance has been produced by the Welsh Government on the use of these enforcement powers which should be read in conjunction with the Enforcement Strategy agreed by Cabinet in April 2020. The following principles should be applied when exercising powers to enforce regulation 12:
- proportionality in application
 - targeting of enforcement action;
 - consistency in approach;
 - transparency about how enforcement officers operate and what can be expected, and
 - accountability for actions taken.
7. The Regulations set out a specific and separate system for enforcing regulation 12. This provides that enforcement officers from local authorities can require certain (specified) measures to be taken in relation to premises, and they can if necessary close them. Closure can be required either because specified measures aren’t subsequently taken or because the breach of the requirements is sufficiently serious to justify closing a premises immediately or with only very limited notice.

Premises Improvement Notice

8. Where non-compliance with the requirements under regulation 12(2) is identified at a premises, the enforcement officer should normally seek to remedy the non-compliance by a graduated and proportional approach to enforcement. Where possible, education of responsible persons, giving advice and informal action should be attempted before any other enforcement action. However, when necessary, a Premises Improvement Notice should be issued. This notice can be served if the enforcement officer considers that the measures specified in the notice are proportionate and necessary in order to ensure that the person complies with those obligations, in order to minimise the risk of exposure to coronavirus. The notice must specify the measures that must be taken in order to ensure that the person complies with the obligations imposed by regulation 12(2). The notice must specify a time limit for compliance (not less than 48 hours) and set out the right of appeal.
9. An enforcement officer may terminate a Premises Improvement Notice if satisfied that the person to whom it has been issued has taken the measures specified in the notice or otherwise taken action necessary to ensure that regulation 12(2) can be complied with when the premises are allowed to be open.

Premises Closure Notice

10. An enforcement officer may issue a “Premises Closure Notice” to a person responsible for premises referred to in regulation 12(1) requiring the premises, or part of the premises, to be closed for up to 336 hours (14 days) at a time. This can be done if either one of two conditions are met:
 - (1) Where a Premises Improvement Notice has been issued to the person and the enforcement officer considers—
 - that the person has failed to take the measures specified in notice within the specified time, and
 - that the closure of the premises or part of the premises is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.
 - (2) Where the enforcement officer considers—
 - that the person is not complying with the obligations imposed by regulation 12(2), and
 - the closure of the premises or part of the premises (without a Premises Improvement Notice having been issued) is necessary and proportionate for the purpose of minimising the risk of exposure to coronavirus.
11. Where a Premises Improvement Notice has been issued, the Premises Closure Notice must set out the measures that the enforcement officer considers must be taken in order to ensure that the responsible person complies with the obligations imposed by regulation 12(2).
13. An enforcement officer may terminate a Premises Closure Notice if satisfied that the person to whom it has been issued has taken the measures or otherwise taken action necessary to ensure that regulation 12(2) can be complied with when the premises are allowed to be open. This will mean that the requirement to close the premises no longer applies.

Appeals

14. A person to whom a Premises Improvement Notice or Premises Closure Notice is issued may appeal, within 7 days, to a Magistrates' Court against the notice. A Magistrates' Court has discretion to suspend the effect of a Premises Improvement Notice or Premises Closure Notice pending the determination of an appeal but unless the Court does so, the notice under appeal continues to have effect and must be complied with.

Financial Impact

- 15 None

Integrated Impact Assessment

- 16 An integrated impact assessment is not required for this decision as it merely establishes a protocol to follow. Consideration to all such impacts will be had when measures are considered for enforcement.

Workforce Impact

- 17 None.

Legal Impact

- 18 Requirement must be had at all times with the Health Protection (Coronavirus Restrictions) (Wales) (No2) 2020 (as amended).

Crime and Disorder Impact

- 19 Section 17 of the Crime and Disorder Act 1998 places a duty on the Council in the exercise of its functions to have "due regard to the likely effect of the exercise of those functions on and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment). This report and policy is consistent with these obligations as it sets out how the Council will work with its partners and the community at large to enforce the measures set out in the Regulations and to ensure steps are taken to ensure compliance with the aforementioned Regulations.

Risk Management

- 20 None.

Consultation

- 21 There is no requirement under the Constitution for external consultation on this item.

Recommendation(s)

- 22 That Members authorise the Director of Environment and Regeneration and Director of Finance and Corporate Services, Head of Planning and Public Protection, Head of Legal Services and any officers so designated by them the delegated authority to issue a Premises Improvement Notice or Premises Closure Notice pursuant to Regulation 12 of the Health Protection (Coronavirus Restrictions) (Wales) (No2) 2020 (as amended).

Reason for Proposed Decision(s)

- 15 To ensure that appropriate authority is in place for officer to implement the powers under the Health Protection (Coronavirus Restrictions) (Wales) (No2) 2020 (as amended).

Implementation of Decision

- 16 The decision is proposed for implementation immediately.

Appendices

- 17 None

List of Background Papers

- 18 None.

Officer Contact

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