

# COVID-19: local government regulation and enforcement

September 2020



## Key messages

- As part of the work to support local outbreak management, councils were given new powers under the Health Protection (Coronavirus, Restrictions) (England) (no 3) Regulations 2020, enabling them to issue directions imposing prohibitions, requirements or restrictions in relation to individual premises, events or outdoor places.
- While these powers are a welcome addition to the tools that councils have to tackle local outbreaks, and some councils have issued directions, there are also some challenges in using the directions. The regulations include the threshold of a serious and imminent threat to public health before a direction can be issued, and there is a need to consult with both the local Director of Public Health and to inform the Secretary of State for Health. This threshold has had the effect of deterring councils in areas where there has not to date been a significant rise in infections from issuing directions, in the belief that they do not meet the test of a serious and imminent threat to public health.
- More generally, councils are concerned that they do not have the correct powers to address lower level compliance issues arising in premises. If they could address these issues earlier, it would enable councils to take preventative action before the need to issue a direction is reached.
- In its sectoral guidance on business and wider re-openings following the removal of lockdown restrictions in summer, the Government highlighted the Health and the Safety at Work Act (HSWA) 1974 as the key vehicle for overseeing the implementation of COVID secure guidelines. Some of these regulations – for example collection of contact details for tracing purposes – have not been legally enforceable to date, although the Government has now listened to the calls from the LGA and councils to make it mandatory to collect contact details in hospitality businesses. Councils are the enforcing authority for a number of workplaces, including hospitality premises and retail venues.
- There are challenges with using the HSWA as the main vehicle for COVID enforcement activities, as the tools under the Act are less suitable for the type of swift action to require changes or force closure of non-compliant premises that councils need. The Health and Safety Executive has suggested that it would not be possible to issue a prohibition notice requiring a premises to close due to the failure to implement social distancing measures, while improvement notices allow a 28 day period to introduce necessary changes – too long in the context of a pandemic.
- The LGA and councils have been raising these issues with the Government. Alongside the number three regulations, we have called for the introduction of a temporary public health objective under the Licensing Act 2003. This would enable councils to deal with issues in hospitality premises using tried and tested tools under that Act, enforced by officers who are used to dealing with compliance issues in the sector - including forcing closures where safety is jeopardised. Councils have also highlighted the COVID specific powers that

# Briefing

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have been created in Wales, requiring improvements to be made within a two day period before further action is taken, as a lower level alternative to the more limited option of using directions.

## **FURTHER INFORMATION**

### **The Health Protection (Coronavirus, Restrictions) (England) (no 3) Regulations 2020**

The Health Protection (Coronavirus, Restrictions) (England) (no 3) Regulations 2020 make provision for a local authority to give directions relating to premises, events and public outdoor places in its area. This is the specific legal mechanism the Government has created for councils to ensure compliance with the COVID-19 rules. There are of course a series of different regulations for individual local authority areas currently managing local lockdowns.

A direction may only be given under these regulations if the local authority considers that the public health, necessity and proportionality conditions set out in regulation two are met. The local authority must review a direction given under these Regulations at least once every seven days. The Regulations also give the Secretary of State power to direct the local authority to give a direction under these Regulations, or to revoke (with or without replacement) a direction given by the local authority under these Regulations.

### **COVID marshals**

The Government has recently announced that Covid-secure marshals will be introduced in towns and city centres in England to help ensure social distancing rules. We are working with the Government to clarify whether extra resources will be supplied to support councils in this work and the powers marshals will be given to ensure their role is effective and how the scheme will work in practice.