

Appendix: Additional COVID-19 Local Authority Enforcement Powers

Adapted from Government guidance published on 4 December 2020:

<https://www.gov.uk/government/publications/additional-covid-19-local-authority-enforcement-powers/additional-covid-19-local-authority-enforcement-powers>

1. Introduction

- a) The new tools provided to local authorities consist of the following:
 - Coronavirus Improvement Notice (CIN).
 - Coronavirus Restrictions Notice (CRN).
 - Coronavirus Immediate Restrictions Notice (CIRN).
- b) The notices are based in part on the existing health and safety regime under the Health & Safety at Work etc. Act 1974 (HSWA). The HSWA regime has been used so that local authority Officers will have some familiarity with the new regime. Proportionality and the principles set out in the Regulators Code¹ should be followed, so that local authority Officers should attempt to engage with a business before issuing a notice where possible.

2. Coronavirus Improvement Notice (CIN)

- a) A Coronavirus Improvement Notice can be issued by a local authority when a business is failing to fulfil a provision set out in the relevant coronavirus regulations. This will often be the first step for local authority enforcement Officers to encourage businesses to remedy unsafe practices. A CIN will be applied for a minimum of 48 hours. Its actual duration will be at the discretion of the local authority enforcement Officer.
- b) An early review can be requested by the recipient of the notice if early compliance is achieved. Failure to comply with a CIN by the end of its operational period could lead to a fixed penalty notice (FPN) of £2,000 and/or a Coronavirus Restriction Notice being issued.

3. Coronavirus Restriction Notice (CRN)

- a) A Coronavirus Restriction Notice will be issued by a local authority when there has been a breach of the provisions of the relevant coronavirus regulations, and a premises has failed to comply with the terms of a Coronavirus Improvement Notice, where this non-compliance creates a risk of exposure to coronavirus.
- b) Following the 7-day period of application, a CRN can be withdrawn or allowed to expire where the premise has taken necessary steps to remedy unsafe practices.

¹ <https://www.gov.uk/government/publications/regulators-code>

- c) An early review can be requested by the recipient of the notice if early compliance is achieved. Failure to comply with a CRN during its operational period will result in an FPN of £4,000 being issued.

4. Coronavirus Immediate Restriction Notice (CIRN)

- a) A Coronavirus Immediate Restriction Notice can be issued by enforcement Officers where rapid action is needed to close a premises or restrict an activity to stop the spread of the virus, without first issuing a CIN to stop the spread of the virus. Closure will be for a 48-hour period initially. The local authority will be required to review the notice. A CIRN can be withdrawn or allowed to expire where the premise has taken necessary steps to remedy unsafe practices.
- b) Where necessary, a local authority can decide to issue a CRN at the end of the 48 hours, so that the premises is required to close for a further 7-day period, or where it is assessed that the premises is causing a serious and imminent threat to public health, a direction can be issued under separate regulations.
- c) Failure to comply with a CIRN will result in an FPN of £4,000 being issued.

5. Reviews

- a) A review will occur at the end of each notice or where an early review is requested for a CRN. A local authority Officer will apply their judgement to determine whether action taken by the recipient has complied with the notice. The relevant review periods are set out in each of the notices.

6. Appeal and withdrawal

- a) A notice can be appealed by the claimant in accordance with the Magistrates' Courts Act 1980. Where an appeal is made and is successful, compensation may be awarded by the magistrates' court. Following review or at challenge via the magistrates' court, a notice may be varied or withdrawn. The period of appeal is limited to 28 days.

7. Investigative powers

- a) The relevant powers of entry and investigation for local authority Officers to support the issuing of a notice, are set out in section 61 and 62 the Public Health (Control of Disease) Act 1984 (PH(CD)A), which is the enactment under which coronavirus regulations have been made in England to date.
- b) The powers are available to a "relevant health protection authority", but the local authority specified at section 1 of that act is extended, so that the powers are also available to county councils in 2-tier areas.

8. Relevant obligations on businesses

- a) These notices enforce rules to:

- take reasonable steps not to accept bookings, admit groups or allow persons to join groups or interact, in a way that offends the gatherings rules.
- keep appropriate distance between tables in hospitality premises.
- display a notice or otherwise ensure persons entering the relevant area are given the relevant information about the rules on face coverings, that information being that they need to wear one unless an exemption applies.
- prohibit a person responsible for a business from preventing or seeking to prevent any person at their premises from wearing a face covering where they must do so.
- restrict any business from providing a waterpipe for the consumption of tobacco or other substances or a device for the inhalation of nicotine or other substances (including for shisha).
- ensure that orders for food or drink for consumption on the premises between 10pm and 11pm are not accepted and require that the carrying on of that business or the provision of that service is not provided between 11pm and 5am in Tier 1 and Tier 2 (the sale of food or drink for consumption off the premises by delivery, click and collect and drive-through services is allowed between 11pm and 5am).
- restrict the opening hours for drive-in cinemas, drive-in theatres, outdoor concert venues and outdoor attractions at theme parks and fairgrounds and funfairs in Tier 3 so that they must close at 11pm save for the purpose of concluding a performance which began before 10pm.
- restrict service of food and drink for consumption on the premises in Tier 1 and Tier 2 so that where alcohol is served for consumption on the premises, any food or drink is ordered by and served to a customer who is seated on the premises and require that all in hospitality businesses serving food or drink for consumption on the premises, reasonable steps are taken to ensure that customers remain seated whilst consuming the food or drink.
- require the closure of any premises or part of the premises where food or drink is provided for consumption on the premises and restrict the provision of food or drink for consumption on the premises in Tier 3 (the sale of food and drink for consumption off the premises is allowed, however between 11pm and 5am only delivery, click and collect or drive-through services are allowed).
- close businesses providing alcohol for consumption on the premises without a substantial meal in Tier 2.
- display an NHS QR code in a relevant premises for the collection of contact details.
- request certain details from an individual, or at least one member of a group, when they seek to enter a relevant premises and have not scanned the NHS QR code.

- request the details of an individual and the one member of staff, volunteer or person providing the service, where an individual will only come into contact with that person.
- require hospitality businesses or premises to refuse entry to individuals or groups who do not provide the required details.
- require businesses or premises to retain this information securely for 21 days and disclose those details when requested to do so by a public health Officer.
- require an employer not to knowingly allow a worker who must self-isolate to attend work other than at the designated place of isolation, during the period of isolation.

9. Additional Information

- a) There are exceptions to these rules and the above summary does not contain all the relevant detail. The specific guidance as it applies would need to be consulted in specific cases.