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COVID OPERATIONS COMMITTEE (17)

14 JULY 2020

COVID OPERATIONS COMMITTEE

LOCAL LOCKDOWN POWERS

PAPER BY THE HEALTH SECRETARY

1. Following discussion at COVID-O on 2 July, and the Prime Minister's steer, this paper seeks collective agreement of the proposed powers for local outbreak management as part of a more robust approach to containing the spread of the virus.
2. This paper sets out the options to supplement existing outbreak control mechanisms through further powers. It will cover: current outbreak management powers, plans for Local Authority outbreak control powers, options for more interventionist powers at Ministerial level to enable local lockdowns, an update on the bespoke Leicester regulations and whether these could be used in other settings.

CURRENT OUTBREAK MANAGEMENT POWERS

3. At present, Upper Tier Local Authorities (UTLAs) have a specific and distinct range of legal powers under public health, environmental health or health and safety laws which allow them, with advice from the Directors of Public Health, to temporarily close individual settings for a specific reason and period. These powers apply under a patchwork of triggers, for example powers under the Food Safety Act, the Health and Safety at Work Act, and powers for UTLAs to close public spaces which they own. In some cases these powers require an application to a magistrate, for example to issue orders to decontaminate/disinfect premises, or to close premises they do not own, a process which can take several days.
4. A new power was created as part of the 4 July 2020 Regulations amendment, which provides a power for the Secretary of State to direct the closure of, or to restrict access to, a specified public outdoor place (or specified type of outdoor place), where this is necessary and proportionate to manage a serious and imminent threat to public health relating to coronavirus in England. This power is intended to act as broad power to allow closure of a range of public spaces and will help to provide interim local lockdown powers ahead of the broader powers coming into effect.

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5. Without further regulations, Ministers and local authorities will not be able to consistently impose all of the NPIs included in the Contain Framework in response to the challenge presented by local outbreaks of Covid-19.
6. A new suite of powers is therefore needed in order to address the challenges around local outbreaks to ensure UTLAs can promptly take action to mitigate local Covid-19 outbreaks.

PROPOSED UTLA POWERS

7. Proposals for a framework of powers for Upper Tier Local Authorities (UTLAs) to implement the NPIs set out in the Contain Framework document have been developed following detailed discussion between key Whitehall departments. Advice on this was sent up to SoS for Health on 26 June 2020 and a draft Statutory Instrument has been prepared by the Office of the Parliamentary Counsel, which will be made under the Public Health (control of Disease) Act 1984. It proposes that UTLAs have the power, within their areas, to:
 - Close public spaces (including national parks, nature reserves and AONBs), or place restrictions on attendance, and place restrictions on organised gatherings or events.
 - Close certain businesses and venues to address individual outbreaks, but would be required to escalate any proposals to close whole sectors of local economies (e.g. pubs, hairdressers, non-essential business or non-business venues in an area) to Ministers.
 - Notification obligations (see below) will enable departments to intervene if critical national and local infrastructure could be affected by proposed closures. Guidance will also be provided to local HMG representatives to enable the identification and mitigation of closures that could affect such infrastructure. Annex A provides examples of what may additionally be specifically excluded in the Regulations, although the advantages and disadvantages of this are currently being assessed.
8. Guidance should be issued to UTLAs on managing cross-boundary impacts by requiring them to inform neighbouring UTLAs when they exercise these powers, and neighbouring UTLAs should be required to consider whether they should follow suit. UTLAs have existing channels for these kinds of communications and where the boundaries are more complex (with the Das for example) the JBC will assist. To note that the operationalisation of this needs to be worked through, including coordinating, escalation and appeals once outbreaks/decision making are taking place above a UTLA level.
9. UTLAs would be expected to use these powers proportionately when necessary to prevent, protect against or control Covid-19 outbreaks. Actions should only be considered following advice from the Director of Public Health. Further guidance will be provided in the Contain Framework, which lay out how UTLAs should respond to a variety of different scenarios.
10. The proposals include clear mechanisms for Ministerial oversight and for people affected by decisions to appeal.

- Local authorities will be required by guidance to inform Ministers (it is proposed this would be via the JBC), when they exercise their powers under these new regulations. If Ministers think the powers should not have been exercised, or should have been exercised differently, Ministers will be able to direct local authorities to amend or revoke a direction they have made. Ministers will also be able to direct local authorities to act if they have not done so, and Ministers think the powers should be used.
- The regulations will permit someone affected by a decision to make representations to the Secretary of State. The appeal management process is still to be determined. It is not advised that a statutory time limit be imposed on resolving appeals as there is the potential for a large volume of appeals to require decisions at the same time.
- Someone affected by a decision may also appeal the decision in a magistrate's court (this is a requirement of the Public Health (Control of Disease) Act 1984, under which regulations will be made). Appeals are usually determined within two weeks.

11. Are Ministers content to approve i) the proposed set of UTLA powers and ii) the proposed approach to the oversight and appeals?

PROPOSED MINISTERIAL POWERS

12. There are currently no powers that would enable Ministers to impose the more potent lockdown measures, such as restricting the movement of people or requiring people to stay at home, at a sub-national level without bespoke regulations. We propose the following menu of options, which would be imposed by further regulations (under the Public Health (Control of Disease) Act 1984) on a case by case basis, rather than through a direction-making power:

13. *Stay at home measures*

- A power which prohibits people from leaving their homes unless there is a reasonable excuse to leave (including overnight stays).
- The list of reasonable excuses is being developed with lawyers, drawing on previous iterations of the national regulations. We propose a non-exhaustive list to enable this to be individually applied on a case by case basis.

14. *Restrictions on movement*

- A requirement that people should not leave, or enter, a designated area, unless they have a reasonable excuse.
- The power would also facilitate restrictions on the use of public transport within a designated area. This could include:
 - The closure of stations or stops in a public transport network, including bus routes, train lines and underground lines, or to close routes entirely

- Restriction on using public transport without a 'reasonable excuse' – with a close alignment between the list of excuses for being outside the home
- Requirements to use face coverings
- We would expect to provide a non-exhaustive list of reasonable excuses, with a probable close alignment with previous iterations from the national regulations.

15. *Restrictions on gathering*

- A power to place restrictions on the numbers of people who may gather within a specified area, both indoors and outdoors, which varies from wider national requirements.
- We propose to create a modular approach which would allow a range of exceptions to be applied on a case by case basis, for example allowing linked households to gather in greater numbers.

16. *Closing whole sectors or whole geographical areas*

- A Ministerial power to close whole sectors of local economies (e.g. all pubs, bars and restaurants, hair dressers etc) [or non-business venues \(e.g. all churches or community centres\)](#) within a defined geographical area.

17. We would expect light touch enforcement of these powers, principally relying on compliance, but nonetheless ensure that powers were available for police to enforce restrictions where Ministers decide this is necessary. The draft regulations will be published but only laid as and when required and as necessary in response to particular outbreaks. [This means they may be changed prior to being used in any specific case.](#) **Are Ministers content to approve this approach?**

18. These proposals, together with UTLA level powers and the existing power to close public spaces, will provide an extensive framework of tools to manage local outbreaks. **Do Ministers agree that we should proceed with these proposals, noting that the UTLA powers should come into effect on 17 July 2020 and the draft interventionist powers will also aim to be published on that day** (but this is more likely to be done during the week commencing 20 July 2020)?

LEICESTER REGULATIONS

19. The bespoke regulations laid to enable the restrictions in Leicester to be put in place could potentially also be used as a template to develop regulations for other geographic areas. This could act as an interim measure to control a local outbreak if one is identified ahead of the menu of powers detailed above being ready, or the local powers being in place.

ANNEX A – potential exclusions from UTLA power to close premises

Buildings owned or occupied by central or local government bodies, to the extent that they are so occupied

Border infrastructure – including settings to support the checking of goods (border control points).

Premises from which a health care professional operates, as defined in regulation 8 of the Human Medicines Regulations 2012

Waste facilities, including waste collections and management facilities used for the management, sorting, treatment, recovery, or disposal of waste (including energy from waste).

Any facility or setting which produces, manufactures, distributes or sells water, [other than food retailers smaller than 280sqm], or the manages waste water, including water company premises & Water Treatment Works sites

Any facility or setting which produces, manufactures, distributes or sells food, [other than food retailers smaller than 280sqm]

Premises located within English Heritage estate

Veterinary medicine manufacturers and distributors and surgeries

Energy generation or distribution, including electricity, gas, and district and communal heating

A site that has been granted a nuclear site licence as defined in section 1 of the Nuclear Installations Act 1965

Sites or locations where command and control of a space launch vehicle or spacecraft for nominal operations, collision avoidance or anomalies are conducted, or where space situational awareness activities are conducted

A downstream oil facility that has a capacity in excess of 20,000 tonnes

Sites or locations that support the safe and secure operation of “offshore installations” as defined in section 44 of the Petroleum Act 1998, or “upstream petroleum infrastructure” as defined in section 9H of the Petroleum Act 1998, or “wells” has defined in section 45A(10) of the Petroleum Act 1998

A site or location operated by or on behalf of a postal operator, as defined in section 27(3) of the Postal Services Act 2011

A site or location involved in the continued production, supply, movement, manufacture, storage or preservation of goods

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Premises connected with the provision of public transport, including (but not limited to) train or underground stations, bus stations and garages, and trains buses or taxis.

Premises connected with the provision of emergency services