

ABERDEEN CITY COUNCIL

COMMITTEE	Public Protection Committee
DATE	7 th October 2020
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	COVID-19 Update – Environmental Health and Trading Standards
REPORT NUMBER	OPE/20/157
CHIEF OFFICER	Mark Reilly
REPORT AUTHOR	Andrew Morrison
TERMS OF REFERENCE	2.1, 2.4 and 3.1

1. PURPOSE OF REPORT

To provide an update on Environmental Health and Trading Standards response to COVID-19.

2. RECOMMENDATION(S)

2.1 That the Committee notes the update of Protective Services' response to COVID-19.

3. BACKGROUND

3.1 Environmental Health and Trading Standards have been responding to the COVID-19 pandemic since March. Environmental Health and Trading Standards were identified as a Critical Service at the start of lockdown and accordingly were not stood down and have continued to provide a public health focused service primarily in relation to Covid-19 throughout lockdown. Appropriate safeguard, risk assessments and Personal Protective Equipment (PPE) have been in place to support this operation being conducted safely. It was immediately apparent that the scale of this public health activity was too large to be undertaken by Environmental Health in isolation and therefore, in line with every other Scottish Local Authority (LA), the Trading Standards team has also been very heavily diverted to this area of work. This response has included the enforcement of the Scotland wide business restrictions and closures as well as the enforcement of the Aberdeen restrictions, and assurance programme to support re-opening of the hospitality sector

Legislation

- 3.2 Scottish Government introduced legislation, the [Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020](#) on 27 March 2020. These and accompanying guidance provided for restrictions on businesses and also restrictions on the movement and gathering of the public. The regulations provided for enforcement of the business restrictions by both Local Authorities and Police Scotland, whilst only Police Scotland could enforce the requirements relating to the general public. Within Aberdeen City Council (ACC), as per all Scottish LAs, the business restrictions have been enforced by officers from Environmental Health and Trading Standards.
- 3.3 The Regulations have been amended 13 times to provide for both additional restrictions and facilitating the move through the phased relaxation in restrictions. On 11 September 2020, these were replaced by the [Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Scotland\) Regulations 2020](#). These regulations were amended on 24 September to provide for the 10pm curfew and table service only. Also, the Scottish Government responded to the need expressed by local authorities for outbreak prevention and suppression in a more targeted way by providing greater powers for local authorities to take more targeted action, where necessary in concert with Police Scotland. The [Health Protection \(Coronavirus, Restrictions\) \(Directions by Local Authorities\) \(Scotland\) Regulations 2020](#) were introduced on 28 August 2020. With the enforcement guidance and appeals procedure now in place, local authorities can now use these powers where it is necessary and proportionate to do so.
- 3.4 For the purposes of this report, the term the Covid Regulations should be considered in relation to the initial regulations, the relevant amended regulations, and/or the new regulations as appropriate.

Approach to Enforcement

- 3.5 The regulations have been supplemented by guidance, which goes beyond the scope of the regulations. For example, the requirement for offices and construction sites and professional dog walkers to cease operations was not within the regulations. Although officers will offer advice and encouragement to comply with the guidance, enforcement action could only be considered where there was a direct breach of the regulations.
- 3.6 Immediately following the regulations being published, an agreement was made with Police Scotland for LAs to take primacy for enforcement of the business rules, with Police Scotland only undertaking enforcement in emergency situations. The exception to this relates to the requirement for face coverings to be worn within certain premises. The enforcement of this provision is reserved to Police Scotland. Business regulation is a core task of both Environmental Health and Trading Standards and the key role of Environmental Health is to ensure Public Health protection. A breakdown of the enforcement responsibilities is included at Appendix 2.
- 3.7 Enforcement of the Covid business restrictions is undertaken in relation to both the Covid Regulations themselves and also relevant Health & Safety legislation. Environmental Health are authorised to enforce Health & Safety across a wide sector of businesses including, hospitality, retail, leisure, offices and care homes (not nursing homes). A UK wide agreement was implemented with the Health & Safety Executive, that in relation to premises that fall within their remit (manufacturing, farming, construction, schools, colleges and universities etc) the Covid restrictions would be enforced by them. The exception to this was premises that were trading whilst required by the regulations to remain closed, as Health & Safety legislation could not be used in these circumstances.

- 3.8 In line with all Scottish LAs and Police Scotland, ACC has taken a '4 Es' approach to enforcement. This consists of Engagement, Education, Encouragement and Enforcement. Formal enforcement is only utilised where other approaches have failed to achieve the desired outcome. To date, within Aberdeen, formal enforcement has only been required in relation to one business premises.
- 3.9 From the very start of lockdown, ACC has been enforcing the restrictions and providing support, advice and assistance to businesses in relation to compliance with the restrictions. Initially this was focused on telephone and e-mail based interventions and surveying the city to ensure that relevant businesses were not trading. This was to limit un-necessary journeys within the cohort of ACC staff thereby ensuring we played our part in reducing spread. As Scotland progressed through the phased relaxing of restrictions, officers commenced visiting premises to assess controls, investigate complaints etc. This has continued to develop as the requirements have changed and businesses have been permitted to re-open. For example, the current focus of pro-active assessments relates to hospitality, gyms and swimming pools as per Phase 3 of the Scottish Government Route-map.
- 3.10 On 22 September 2020, the First Minister indicated that additional financial resources would be provided to recruit additional officers for Covid-19 enforcement. Prior to this, additional resources had not been provided. This has required resources to be diverted from other statutory duties and performance indicators. In some areas, for example, food law, specific derogations have been provided, but in other areas this has been undertaken on the basis of prioritising on the public health priority.
- 3.11 To date, 3,300 interventions with businesses has been undertaken. A breakdown of the data is included in Appendix 3. This could not have been achieved without diverting resources from other statutory duties across Environmental Health and Trading Standards.

Liaison Arrangements

- 3.12 Immediately that restrictions were implemented, the Society of Chief Officers of Environmental Health in Scotland (SoCOEHS) and the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) formed a small expert group of officers to ensure consistency across Scotland and to provide a focal point for communications with Scottish Government and other partner organisations. ACC is represented on this group from both an Environmental Health and Trading Standards perspective. The Expert Group meets twice weekly. The main activities undertaken are:
- Provision of enforcement advice to LA colleagues and the formulation of FAQs
 - Collation of data on interventions, complaints and enforcement action undertaken
 - Consultation on Scottish Government, Partner and Industry guidance
 - Liaison with Scottish Government
- 3.13 Additional other liaison arrangements have also been implemented to ensure consistency and support arrangements. These include:
- NHS Grampian, Aberdeen, Aberdeenshire and Moray Councils meet weekly
 - Protective Services Managers from Aberdeen, Aberdeenshire and Moray meet weekly
 - The Scottish Food Enforcement Liaison Committee Executive meet weekly
 - The Health and Safety Co-ordinating Group meet fortnightly
 - The North of Scotland Liaison Groups meet fortnightly
- 3.14 Representatives from the Expert Group meet weekly with Scottish Government and other regulators to provide updates, enforcement advice and developments.

Aberdeen Restrictions

- 3.15 On Friday 31 July 2020, ACC was informed by colleagues within the NHS Grampian Public Health team of a cluster of cases of Covid-19 associated with a bar on 26 July 2020. A Problem Assessment Group meeting was held that afternoon. Officers visited the establishment to assess the controls and obtain the customer contact details for Test & Protect. Officers assessed that controls were being implemented and provided advice on how these could be improved. The officers' advice was acted on immediately.
- 3.16 By Monday 3 August 2020, it had become apparent that a number of cases had visited several premises and additional cases were being identified.
- 3.17 On Wednesday 5 August 2020, in order to control the increase in cases of Covid-19, Scottish Government announced additional restrictions for Aberdeen. These included:
- People in Aberdeen City were asked not to meet other households indoors or travel more than 5 miles for leisure or recreational purposes.
 - Visiting in hospitals and care homes were limited to essential visits only.
 - Bars, restaurants, cafes and pubs were required to close.

The [Health Protection \(Coronavirus, Restrictions\) \(Aberdeen City\) Regulations 2020](#), were introduced to require the business closures by 5pm.

- 3.18 Scottish Government named the premises that had been visited by positive cases in order to provide transparency. This was not intended to apportion blame or that there had been onward transmission of the virus. Due to timings, it was not possible to contact each of these businesses ahead of being named.
- 3.19 Immediately after the restrictions were announced, officers commenced contacting businesses to advise of the requirements and then continued surveying the city to ensure compliance with the requirements. Again, compliance with the requirements was good and there was no need for enforcement action.
- 3.20 In order to support the re-opening of the hospitality sector, and to provide the IMT with assurance that all hospitality premises were compliant with the revised Scottish Government sectoral guidance, a robust assurance programme was implemented which included pre-opening assessment of all hospitality premises, and an on-going focus on compliance within the hospitality sector after re-opening, including evenings and weekends.
- 3.21 In order to deliver the pre-opening assurances required, premises were split into two groups – those identified as social drinking establishments (bars, clubs, golf clubs and some hotels) which were assessed through a physical onsite visit by officers from ACC Environmental Health and Trading Standards. The remaining hospitality premises were assessed by an officer led telephone questionnaire.
- 3.22 To assist businesses to be prepared for the assessments and ensure effective controls were implemented, two webinars were delivered to approximately 200 delegates. Speakers included, Environmental Health, NHS Grampian Public Health Team, Police Scotland and Economic Development.
- 3.23 It was not viable for the assurance programme to be achieved within the necessary timescales with the resources within the Protective Services team. Therefore, mutual aid was requested from other Scottish LAs to help administer the telephone questionnaires. Twenty-

one Scottish LAs volunteered to assist deliver this. Additionally, Aberdeenshire Council also provided officers to assist with visits to premises where the telephone questionnaire indicated that a visit was warranted.

- 3.24 Whilst the hospitality sector was closed, it proved difficult to contact some businesses to arrange for the assessments to be delivered, as the normal contact arrangements were not being monitored by businesses to the same extent. It was therefore necessary to appeal to businesses to provide us with alternate contact details. This resulted in a delay in contacting some of the businesses, and therefore it was not possible to have assessed every premises prior to re-opening. Every higher risk premises was assessed prior to reopening on Wednesday 26 August 2020 and the assessment of lower risk premises was completed by Friday 28 August 2020. A total of 519 premises were assessed by the Friday including 166 higher risk premises that were assessed by an inspection from an officer. In order to deliver the assurance programme, it was necessary for officers from Environmental Health and Trading Standards to work protracted hours including during the evenings and weekends.
- 3.25 Since re-opening, officers have continued to monitor the hospitality sector, including monitoring and visits on Friday and Saturday nights. Compliance levels have been good with only relatively minor issues identified. In the main, issues have related to the actions of customers in complying with the controls implemented rather than a lack of controls being implemented by the businesses.

Impact on Staff and Other Duties

- 3.26 Significant resource has been devoted to ensuring public health is protected through the application of the regulations and guidance in relation to the business restrictions. This has required the resources to be diverted from other statutory duties and performance indicators. In some areas, for example, food law, specific derogations have been provided, but in other areas this has been undertaken on the basis of prioritising on the public health priority. As we start to recommence 'Business as Usual' activities, this will require to continue to be balanced against additional demand on the Council to ensure compliance with Covid related legislation and guidance.
- 3.27 Officers have worked extremely hard under difficult circumstances and tight deadlines to ensure that effective controls are implemented. This has necessitated very long hours and significant evening and weekend working. Officers across Environmental Health and Trading Standards have put themselves forward to deliver this. Officer workloads will continue to be carefully managed to ensure the capacity to provide the service is maintained.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the recommendations of this report. Additional expenditure related to the Covid response has been captured with finance as part of the Covid submission. In line with other Scottish LAs, the response to Covid-19 has predominantly achieved by diverting existing resources from other statutory roles by prioritising the public health response to Covid-19. However, officers have been undertaking considerable excess hours in order to deliver the necessary public health protection measures.
- 4.2 Consideration of how to deliver our statutory requirements alongside Covid-19 controls and EU Exit will be considered as part of the budgetary process.

5. LEGAL IMPLICATIONS

5.1 There are no direct legal implications arising from the recommendations of this report.

6. MANAGEMENT OF RISK

6.1 The capacity to respond to the Covid-19 pandemic has only been possible by prioritising this activity over other areas of statutory work. As the need to recommence these activities increases, the ability to manage this effectively could be compromised.

6.2 Additionally, the fact that routine activities to protect public health and consumer safety have to a large extent been suspended increases the potential for public health and consumer safety in these areas to be compromised.

6.3 EU Exit will also place additional responsibilities on Protective Services in relation to exports and potentially imports which could further exacerbate the demand on the limited resources available.

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk			
Compliance	Risk that statutory duties for Environmental Health and Trading Standards are not met.	H	Resources are focused on public health, consumer protection and essential business support. SG and CoSLA kept informed of service prioritisation
Operational	Risk of staff being overworked	M	Officer workloads managed to ensure the welfare of staff and capacity to provide the service is maintained.
Financial	Additional costs associated with enforcement of Covid-19 business restrictions	M	Additional costs captured within financial returns.
Reputational	Risk of negative publicity regarding enforcement of Covid-19 controls	M	Resources prioritised to Covid-19 business restrictions. 4Es approach to enforcement of the requirements. Consistency of approach across Scottish LAs and Police Scotland
Environment / Climate			

7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
	Impact of Report

<p>Aberdeen City Council Policy Statement</p>	<p>The activity outlined in this report supports the ACC Policy Statement through protection of public health, provision of advice and support to businesses and enforcement of the business restrictions</p>
<p>Aberdeen City Local Outcome Improvement Plan</p>	
<p>Prosperous Economy</p>	<p>The activity outlined in this report supports the Prosperous Economy element of the LOIP through provision of advice and support to businesses in relation to the business restrictions, assessing the controls implemented, undertaking a 4Es approach to enforcement and ensuring that businesses within Aberdeen can operate safely in relation to Covid-19.</p>
<p>Prosperous People</p>	<p>The activity outlined in this report supports the Prosperous People element of the LOIP by ensuring effective public health protection measures are implemented across business establishments in the City, both in relation to the workforce and the general public. The activity has supported businesses re-opening and operating safely.</p>
<p>Prosperous Place</p>	<p>The activity outlined in this report supports the Prosperous Place element of the LOIP by ensuring that appropriate assurances were in place to facilitate reopening of the hospitality sector</p>
<p>UK and Scottish Legislative and Policy Programmes</p>	
<p>UK and Scottish Legislative and Policy Programmes</p>	<p>The activity outlined in this report supports the Scottish legislative and policy programme through provision of an effective and proportionate enforcement of the regulation and promotion of the guidance.</p>

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	Full impact assessment not required
Data Protection Impact Assessment	Not required
Duty of Due Regard / Fairer Scotland Duty	Not applicable

9. BACKGROUND PAPERS

[Health Protection \(Coronavirus\) \(Restrictions\) \(Scotland\) Regulations 2020.](#)

[Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Scotland\) Regulations 2020](#)

[Health Protection \(Coronavirus, Restrictions\) \(Directions by Local Authorities\) \(Scotland\) Regulations 2020](#)

[Health Protection \(Coronavirus, Restrictions\) \(Aberdeen City\) Regulations 2020](#)

<https://www.gov.scot/coronavirus-covid-19/>

10 APPENDICES

Appendix 1 – Enforcement Responsibility

Appendix 2 – Covid-19 Interventions undertaken by ACC Environmental Health & Trading Standards

11. REPORT AUTHOR CONTACT DETAILS

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Appendix 1: Enforcement Responsibility

	Reg	Requirement	EH & TS	Police Scotland	HSE	NHS Grampian
Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 as amended (Between 27th March and 14th September)	3	Requirement to close premises and businesses	X	X		
	4	Requirement to take measures to minimise risk of exposure to coronavirus	X	X	Under Health & Safety legislation in relation to HSE enforced premises	
	4ZA	Requirement to collect and share information to minimise risk of spread of coronavirus (Data for Test & Protect)	X			X
	4A	Guidance on minimising exposure to coronavirus (Statutory guidance)	X	X	Under Health & Safety legislation in relation to HSE enforced premises	
	5	Restrictions on movement		X		
	6	Restrictions on public gatherings		X		
	6ZA	Restriction on parties in private dwellings		X		
	6ZB	Power to enter a private dwelling		X		
	6A	Requirement to wear a face covering on public transport		X		
	6B	Requirement to wear a face covering in certain indoor public places		X		

	Reg	Requirement	EH & TS	Police Scotland	HSE	NHS Grampian
Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 as amended (since 8th June)	6	Requirement for travellers to stay in specified premises		X		
Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 (Between 5th & 26th August)	5	Requirement to close (hospitality) premises and businesses	X	X		
Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 (Since 14th September)	4	Requirement to close certain premises to members of the public	X	X		
	5	Requirement to take measures to minimise risk of exposure to coronavirus	X	X	Under Health & Safety legislation in relation to HSE enforced premises	
	6	Requirement to collect and share information: restaurants, cafes, bars, public houses, etc.	X			X
	7	Guidance on minimising exposure to coronavirus (Statutory guidance)	X		Under Health & Safety legislation in relation to HSE enforced premises	
	8	Restriction on public gatherings		X		
	9	Restriction on gatherings in private dwellings		X		
	10	Restriction on parties in private dwellings		X		

	Reg	Requirement	EH & TS	Police Scotland	HSE	NHS Grampian
Continued Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 (Since 14th September)	11	Power to enter a private dwelling		X		
	12	Requirement to wear face coverings on public transport		X		
	13	Requirement to wear face coverings in certain indoor public places		X		
Health & Safety Legislation			X		X	

Appendix 2

Covid-19 Interventions undertaken by ACC Environmental Health & Trading Standards

	No. of advice requests from business	No. of enquiries / complaints about business	Open premises - interventions	Intervention follow ups	Social media releases	Written warnings	Prohibition notices
Period 1 - 26/3 - 1/5*	0	103	751	25	0	0	0
Period 2 - 2/5 - 15/5*	0	30	238	50	0	0	0
Period 3 - 16/5 - 29/5	19	28	432	14	29	0	0
Period 4 - 30/5 - 12/6	26	22	313	13	20	2	1
Period 5 - 13/6 - 26/6	15	34	183	26	12	0	0
Period 6 - 27/6 - 10/7	9	13	111	2	21	0	0
Period 7 - 11/7 - 24/7	12	17	205	2	13	0	0
Period 8 - 23/7 - 7/8	48	100	560	1	12	0	0
Period 9 - 8/8 - 21/8	23	34	110	5	9	0	0
Period 10 - 22/8 - 4/9	50	62	393	19	16	0	0
Period 11 - 5/9 - 18/9							
Totals	202	443	3296	157	132	2	1
*Statistics calculated using a different methodology							