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To: **Infrastructure, Land and Environment Policy Board**

On: **24 March 2021**

Report by: **Director of Communities and Housing Services**

Heading: **COVID-19 - The Regulation of Businesses During the Pandemic**

1.   Summary

1.1   As previously reported to Board via the Service update reports, Environmental Health and Trading Standards have been at the forefront of public health interventions to prevent the onward transmission of Covid-19.

1.2   This paper outlines the work done to date with regards to businesses, the close working relationship that is being maintained with both the national expert group and Police Scotland and the proactive approach taken in Renfrewshire to ensure compliance with constantly changing legislation and guidance.

2.   Recommendations

2.1   It is recommended that the Board:

(i)   notes the update on the work undertaken within the Regulatory services teams of Communities and Public Protection; and

(ii)   supports the on-going work by ensuring communities are aware of business compliance to date.

3. Background

3.1 Coronavirus controls on businesses were first introduced by regulation in Scotland on 27 March 2020 with the purposes of limiting the risk of infection, transmission and virus spread, and safeguarding public health. Legislation from that date to present day, imposes responsibilities on both private citizens, and on businesses to help control the spread of Coronavirus.

3.2 Since March 2020, there have been over 40 amendments to 5 different iterations of the legislation and two different Frameworks have been implemented for easement of restrictions. Guidance has also been produced for the majority of sectors, or to advise on specific risk points (eg public toilets). This has posed a uniquely challenging situation for citizens, businesses and Regulators alike, as the pace of change has been unprecedented and timescales for implementation leave little room for uncertainty.

3.3 At the time of writing, the most recent iteration of legislation is the Health Protection (Coronavirus) (Restrictions & Requirements) (Local Levels) (Scotland) Regulations 2020 as amended.

4. The Enforcement Approach - Scotland

4.1 Within the first day of the regulations coming into force, the Society of Chief Officers for Trading Standards in Scotland (SCOTSS) and the Society of Chief Officers for Environmental Health in Scotland (SOCOEHS) came together to form an Environmental Health/Trading Standards COVID-19 Expert Group (ETC-19) to assist with the co-ordination of the Scottish enforcement response to COVID-19. By the close of play on 27 March 2020, this group had agreed and ratified a Prohibition Notice template for dissemination and use by all 32 Scottish local authorities.

4.2 The group's remit was drafted to include:

- Development of Standard enforcement processes
- Interpretation of regulations and issue of guidance to local authorities
- Identification of areas requiring additional national Scottish Government guidance
- Collating, sharing and developing additional advice, FAQs and other documentation
- Developing statistical returns for ongoing enforcement data returns to Scottish Government
- Providing a Single Point of Contact with Scottish Government for matters of enforcement liaison.

4.3   The group also agreed and implemented across all regulators – including
       Police Scotland, a uniform model for the approach to enforcement, known as
       the 4 E's - Engage, Explain, Encourage, Enforce. Under this model regulators
       undertake enforcement only as a last resort, in the event that all efforts to
       work with individuals or business operators have proved fruitless. This model
       was discussed and endorsed with enforcement partners including Police
       Scotland to ensure that all enforcement agencies are operating in a unified
       manner, promoting a consistency of approach and communication across the
       whole of Scotland.

4.4   As the first lockdown was relaxed and Scotland moved through the route map
       easement of restrictions, new challenges were posed by the phased re-
       opening of different retail and business sectors and the construction and
       leisure industries. The provision of ratified enforcement responses, carefully
       balanced the need to safeguard public health with the need to support and
       promote the economic recovery of business, and proved invaluable as
       regulators across Scotland routinely seek to continue to monitor compliance
       and support local businesses in a way that is consistent across all of Scotland.

4.5   Partnership liaison with Scottish Government has been key to the success of
       the ETC-19 group. Members of the group have worked hard to forge and
       maintain close bonds with representatives of government, providing their
       expertise in how guidance and legislation is translated into regulatory
       business advice and enforcement functions on the front line. The group
       continues to liaise closely with government representatives to advise and
       comment upon ongoing legislative amendments as the pandemic situation
       changes, giving a voice which is being fed directly from front line regulators to
       the law makers.

       The Controls

4.6   Restrictions on private citizens include the requirement to wear a face
       covering, the requirement to stay home, travel restrictions and restrictions on
       gatherings both indoors and outdoors. These are enforced by Police Scotland
       only, but the Local Authority will usually receive and provide advice on a range
       of enquiries on these matters.

4.7   All businesses of any type are required to adhere to the rules of physical
       distancing which are that there should be 2 metres between all people on the
       premises, at all times (except for hospitality, where the rule is 1 metre).

4.8   For businesses which sell goods or services by retail, in a shop premises,
       there are various levels of closures or restrictions on their trading, depending
       on the Protection Level the country is in at the time. These closures and
       restrictions are advised on - and enforced by - officers from Environmental
       Health and Trading Standards services within the local authority. Businesses
       which are not retail based are out of scope of the closure requirements e.g.
       manufacturing, trade suppliers, distribution & support services – at times the
       range of businesses out of scope of closure requirements can be confusing
       for the public.

Powers

4.9   Regulations allow officers to issue different types of enforcement notice, as well as report significant matters to the Procurator Fiscal, for consideration for prosecution. Notices include:

- Fixed Penalty Notices: for key people within a business, for failure to comply with controls or with requests to provide information.

- Prohibition Notices: on business owners and/or people in control of a business, for contravention of legal controls.

- Directions Notice: on business owners and/or people in control of a business - this type of Notice requires a business, event or public place to implement specific controls, dictated and directed by the Local Authority which can include total closure if necessary.

Compliance – Renfrewshire

4.10   Partnership: The well developed and close working relationship with Police Scotland through the Community Safety Partnership Hub has allowed regulators to build and maintain a local working protocol swiftly and effectively. Information is shared between Environmental Health, Trading Standards, Licensing and Police Scotland via Daily Tasking, and joint working including joint visits and enforcement is employed where beneficial.

4.11   Economic Development are responsible for administering the various Scottish Government funding streams, and Environmental Health and Trading Standards assist the team by providing advice and guidance on current legislative requirements. It is vital for the integrity of the funding scheme that public funds are dispersed only to those who are entitled to the support. Eligibility criteria for the funds state that businesses must currently be trading, must be closed by law and must not have breached Coronavirus controls. This liaison work has resulted in the refusal of a number of applications as a result of prior breaches, or misleading information being provided on application forms.

4.12   Other key partnerships are those with Paisley First, Pubwatch and Braehead Shopping Centre, all of whom have assisted in disseminating clear and consistent information to the business community.

4.13   Complaints: The majority of complaints and enquiries from the general public are down to misinterpretation of legal requirements. Face coverings not being worn in businesses remains the most reported complaint, where in fact this is not a breach by the business itself. The second highest reported complaint is that businesses are trading when they should not be. In the majority of cases, these businesses are in fact out of scope of the Regulations, and as such are still permitted to trade.

4.14 <u>Enquiries:</u> Enquiries spike whenever there is an announcement on forthcoming controls and / or a change in legislation or guidance. These can be challenging to manage, as a defined answer cannot be given until the law or detailed guidance itself is published. There has been very little that has remained constant through the pandemic – legislative controls, and associated guidance change constantly as knowledge and experience evolves. Easement between levels of restriction can be particularly problematic, as the law changes around 3 days after relevant announcements are made. This often means the details of controls are not clear until the point that controls are already in place. Overwhelmingly, compliance is high and businesses just want to know what they need to do to comply.

4.15 <u>Proactive advice:</u> Work on reactive enquiries early on in the pandemic established that certain themes quickly emerged as recurring topics. Mailing lists were set up for sectors that have either seen the most change, or that have previously caused the most demand on services to provide proactive support and advice to these sectors on any change impacting on them. Regular advice and compliance updates sent to these lists has seen reactive enquiries drop in number, and compliance in these sectors increase. Key sector mailing lists include for hospitality (around 280 businesses), gyms and personal trainers (around 50 premises) and close contact services (around 80 premises). Relationships with the business community have been strengthened through this programme of work, and businesses report feeling reassured to be receiving regular information.

4.16 <u>Targeted Enforcement:</u> Enforcement is a key part of regulatory duties, but on-site visits must only be undertaken in line with current legal restrictions. Targeted visits are normally undertaken a few days after controls are imposed, to allow businesses the chance to implement any new measures. As enforcers, Officers cannot visit a premise to "approve" their measures in advance of opening, as this would be a conflict of interest. In practice, regulators operating the 4 E approach would rarely take enforcement action at first visit unless an issue of non-compliance was deliberate or sufficiently severe.

5. Businesses with Covid-19 clusters/outbreak

5.1 Environmental Health Officers from all 6 local authorities in the Greater Glasgow and Clyde Health Board area meet with representatives from the NHS each morning at 9.30am to discuss clusters of cases that have occurred in business premises. If a cluster has been identified, the aim is to intervene early to ensure the COVID-19 controls in place at the premises are adequate.

5.2 Some business premises are normally regulated by the Health and Safety Executive (HSE) – and in these cases any concerns will be discussed with HSE, however, where public health is of importance, local Environmental Health officers will take the lead.

5.3 Daily meetings and early reactive work has allowed assistance to be offered to businesses to minimise spread through workplaces and ensure business can continue in a compliant manner.

5.4   In Renfrewshire compliance is high and no clusters have been identified in businesses that shouldn't have been open, therefore no formal enforcement action has been required to be taken.

6.   Renfrewshire statistics

6.1   The key statistics for Renfrewshire are given below dating from the start of the pandemic in March 2020 and are maintained on a rolling basis.

6.2   These statistics are collated and passed to SOCOEHS, SCOTSS and the Scottish Government every fortnight to ensure consistency across local authority areas.

Service Demands	
Demand	**Number**
Complaints	222
Enquiries/Reactive Advice	449
Proactive Advice & Checks	4878
Targeted Visits	401
Enforcement Actions	
Action	**Number**
Revisits	341
Written Warning	359
Fixed Penalty Notices	0
Prohibition Notices	5
Directions Notices	0

7.   Next Steps

7.1   Officers from Communities and Public Protection (Environmental Health and Trading Standards) will continue to liaise and interact with businesses throughout the pandemic. An integrated and staged approach will be undertaken with enforcement continuing to be used as a last resort.

7.2   Two additional Officers (Environmental Health – Compliance Officers) are currently being recruited to increase resilience and allow ongoing assistance to be provided to businesses and the public responding to increased regulatory pressures arising from both COVID-19 and Brexit.

Implications of the Report

1. **Financial** – with regards to Grant Funding, all discussions take place with Economic Development who release the funds to businesses if appropriate.

2. **HR & Organisational Development** - none

3. **Community Planning**
   - **Our Renfrewshire is thriving** - by liaising with businesses and ensuring they understand legislation, guidance and are compliant; this allows businesses to open where possible.

   - **Our Renfrewshire is safe** – by undertaking this work, it ensures that businesses in Renfrewshire are safe and Covid-19 compliant. This should minimise Covid-19 cases and onward transmission.

4. **Legal** – There are numerous pieces of legislation and guidance that have been put into place by the Scottish Government to ensure Covid-19 compliance.

5. **Property/Assets** - none

6. **Information Technology** - none

7. **Equality & Human Rights** - The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report

8. **Health & Safety** – where staff are required to visit premises, all risk assessments and safe working procedures have been developed.

9. **Procurement** - none

10. **Risk** - none

11. **Privacy Impact** - none

12. **CoSLA Policy Position** - None

13. **Climate Risk** - None

List of Background Papers

None

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