

EXPLANATORY MEMORANDUM TO

**THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS)
(OBLIGATIONS OF HOSPITALITY UNDERTAKINGS) (ENGLAND)
REGULATIONS 2020**

2020 No. 1008

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes provision for the purpose of enabling measures to be taken in England to reduce the public health risk posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease Covid-19. It does so by requiring pubs, restaurants, cafes and other businesses involved in providing food for consumption on the premises to take reasonable steps or measures to limit customers to parties of six, and to keep tables an appropriate distance apart.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22). The Regulations are made without a draft having been laid and approved by a resolution of each House of Parliament. It is the opinion of the Secretary of State that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved, so that public health measures can be taken in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Regulations come into force on 18th September 2020 and are to be published on www.legislation.gov.uk. The Regulations cease to have effect at the end of the period of 28 parliamentary sitting days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. Further, the Regulations themselves provide that they expire at the end of the period of 364 days beginning with the day on which they came into force. The Secretary of State must review the need for the requirements imposed by the Regulations within six months from the date of their coming into force.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The entire instrument applies to England only.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Department for Business, Energy and Industrial Strategy, Nadhim Zahawi, MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) Business Obligations (England) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”), as inserted by the Health and Social Care Act 2008, provides a legal basis for protecting the public from threats arising from infectious diseases and other risks. It includes powers to impose restrictions or requirements on people, and in relation to things and premises. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.
- 6.2 Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination in England and Wales. (The threat may come from outside England and Wales.) It is subject to certain tests set out in section 45D of the 1984 Act, in particular, that a restriction or requirement imposed under the regulations must be considered by the minister making them to be proportionate to what is sought to be achieved by imposing that restriction or requirement.
- 6.3 This instrument is made under section 45C, to support an effective response to reduce public health risks posed by the incidence and spread of SARS-CoV-2 and should be seen as part of a wider set of measures under the 1984 Act helping to manage the Covid-19 disease transmission risks within certain business premises – in particular, the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (SI 2020/684) (“the Principal Regulations”) as amended most recently by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 4) Regulations 2020 (SI 2020/986). Further regulations relating to the requirement on designated venues to collect customer, visitor, and staff customer details to support NHS Test and Trace are also being made at or around the same time as these Regulations. These Regulations do not amend those or other regulations.
- 6.4 Provision is also made under section 45F, conferring functions on local authorities and other persons and providing for the execution and enforcement of restrictions and requirements imposed under the regulations (see paragraph 6.6 below as to those functions), the creation of offences (explained in paragraph 6.5) and to provide for appeals (see paragraph 6.6 below).
- 6.5 With effect on 14th September 2020, regulation 5 (restrictions on gatherings) of the Principal Regulations was amended to restrict gatherings to no more than six persons (with exceptions in relation to household members and members of linked

households). These Regulations are intended to complement those restrictions by requiring businesses to support the requirement to limit gatherings to six persons. This is done under regulation 2 of these Regulations by requiring the person responsible for the business concerned to take all reasonable measures to ensure that parties of more than six may not book or gain entry to the business, that different parties (“qualifying groups” within the meaning given in regulation 5(2B)(a) of the Principal Regulations) at the venue do not mingle, and that tables are set apart at an “appropriate distance” (defined as two metres, or at least one metre if certain measures are in place, such as barriers or screens).

- 6.6 Under the Regulations, enforcement may be undertaken by designated local authority officers, police officers or persons designated by the Secretary of State. Breach of a requirement under regulation 2 is an offence under regulation 3 of the Regulations, punishable on summary conviction by a fine. Fixed penalty notices may be issued by the authorised officer, in the sum of £1000 on the first occasion (a reduced penalty of £500 being due if paid within 14 days of the notice date), £2000 on a second occasion, rising to £4,000 for a third and any subsequent occasion when a fixed penalty notice is issued under the Regulations. Section 24 of the Police and Criminal Evidence Act 1984 is expressly applied so that arrest by a police officer may be made without warrant on grounds of maintenance of public health and public order.
- 6.7 The Secretary of State in making these Regulations considers that the restrictions and requirements they impose are proportionate to what is sought to be achieved by imposing them, namely the goal of reducing the risk of transmission of Covid-19 in hospitality settings where food and drink are provided, such as restaurants, cafes, and pubs.

7. Policy background

What is being done and why?

- 7.1 The amendments to the 1984 Act made by the 2008 Act comprehensively modernised the legal framework for health protection. Part 2A of the 1984 Act, as inserted by the 2008 Act, takes an “all hazards” approach to health protection, where the criterion for action is based on the potential of an infection or contamination to present significant harm to humans, rather than on specific infectious diseases.
- 7.2 On 21 March 2020, the government took legislative measures with the making of the Health Protection (Coronavirus, Business Closure) Regulations 2020 (S.I. 2020/327). This decision sought to prevent the community transmission of disease, Severe acute respiratory coronavirus 2 (SARS-CoV-2). Consequent amendments and easements were made to these Regulations in line with the Government’s recovery strategy for the Covid-19 pandemic. The Regulations were eventually revoked and replaced on 4 July by the Principal Regulations, which further relaxed some of the previous national restrictions
- 7.3 To ensure that businesses could reopen safely, the government worked with Public Health England and the Health and Safety Executive to create guidance for businesses. The Working Safely guidance for restaurants offering takeaway or delivery was published on 11 May 2020, and updated to include Restaurants, Pubs, and Bars on 23 June 2020. In line with their existing obligations under health and safety legislation, all businesses in scope of this guidance were expected to implement

safety measures upon reopening, including social distancing. Restrictions were relaxed on 4 July 2020 to allow all hospitality venues to reopen.

- 7.4 The Prime Minister addressed the nation on 9th September 2020 to announce that over recent weeks transmission of Covid-19 has risen significantly, particularly amongst young people. Compliance with social distancing has also decreased. To mitigate this, it was announced that social gatherings would be limited to no more than 6 persons, unless exemptions apply. In this address the Prime Minister also announced that fines would be levied against hospitality venues that fail to ensure their premises remain Covid-Secure.
- 7.5 **Evidence of transmission:** Public Health England publish weekly data on acute respiratory incidents reported to Health Protection Teams. In the report for the week ending 6 September 2020, of the 246 incidents reported, 38 incidents were from food outlet/restaurant settings (compared to 21 the previous week and 11 the week before that), of which 34 had at least one linked case that tested positive for COVID-19. Weekly data also provides a breakdown of contacts for people who have tested positive for COVID-19: the majority of contacts are other household members and household visitors, but the next biggest known category is ‘leisure/community’ which includes eating out, attending events and celebrations, exercising, worship, arts, entertainment, recreation and community activities.
- 7.6 Media reports have covered multiple high-profile cases of establishments not adhering to COVID-19 Secure guidelines that have subsequently been linked to outbreaks (e.g. in Manchester and Preston).
- 7.7 As a result, it has been considered necessary to introduce new measures to limit the spread of coronavirus. Evidence shows that the number of people testing positive for COVID-19 is increasing sharply across England. This increase has been particularly stark in the 17-21 age group, but, as in the US, Spain and France, an initial outbreak in the young has been followed by a general growth of infections in other age groups. These comparison countries are also, after a lag, beginning to show an increase in hospitalisations and mortality. The key conclusion from this data is that if the trend is allowed to continue, we could expect to follow France and Spain into a second wave of significantly increased infections. As a result, it has been considered necessary to introduce new measures to limit the spread of COVID-19.
- 7.8 Certain behaviours, often associated with business premises where socialising occurs, can pose significant disease transmission risks. The policy aim is to provide greater enforcement of safety measures in hospitality venues. There is both law and guidance setting out what business can do at this time. Specific coronavirus legislation sets out that some businesses are not lawfully allowed to open at all in England (the Principal Regulations) and that Upper Tier Local Authorities (UTLA) can direct restricted access to/close an individual premises where there is deemed to be a clear and imminent threat/risk (the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (“the No. 3 Regulations”). For hospitality businesses which are lawfully open, Covid-secure guidance is given effect by health and safety legislation, where its purpose concerns health and safety of workplaces. These Regulations place the requirements in the framework of the public health legislation, to support enforcement of the “rule of 6” policy. They support a proportionate

enforcement by providing for penalties in certain specific circumstances, on an escalating scale where businesses continue to fail to comply with the requirements in these regulations.

- 7.9 Enforcement authorities will take a proportionate approach to breaches identified in the early days of the application of the new requirements, and businesses complying with expected health and safety practice are not expected to have problems with meeting these requirements.
- 7.10 The behaviours include:
- 7.10.1 Failure to take all reasonable measures to ensure adherence to the “Rule of 6” (respecting all exceptions to this) when taking a booking, and when permitting entry to the premises; and once groups are within the premises, failing to take all reasonable measures to ensure groups do not to mingle (unless permitted by regulation 5 of the Principal Regulations).
- 7.10.2 Failure to ensure adequate distance between tables (two metres or, where Covid-19 security measures are in place, at least one metre)

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 Not applicable

10. Consultation outcome

- 10.1 There has been no public consultation in relation to the Regulations themselves, but guidance for working safely during COVID-19 was produced in close collaboration with industry, and formally consulted on between April / May 2020, and through further Taskforces during the summer. These regulations take some of those requirements set out in guidance into law.

11. Guidance

- 11.1 These measures relate to guidance already published at www.gov.uk/workingsafely.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies already meeting their obligations under the Health and Safety regime. The regulations establish a regime of Fixed Penalty Notices for serious breaches of existing COVID-Secure guidance which will only affect those not complying with these obligations.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it will be in place for less than 12 months. Given the urgency it is not possible to estimate the numbers of businesses likely to be in breach of these regulations and it would not be appropriate to delay the introduction to enabling detailed appraisal. The regulations bring into law certain elements of COVID-secure guidance which the government

considers so clear and obvious that failure to comply should attract a penalty. The measures themselves at the time they were set out in guidance have been informed by appropriate business engagement and analysis.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 This instrument requires the Secretary of State to review the need for the restrictions and requirements imposed by these Regulations within six months of their coming into force.

15. Contact

- 15.1 Andrew Wall at the Department for Business, Energy and Industrial Strategy Telephone: 03000685566 or email: Andrew.wall2@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Beccy Eggleton, Deputy Director for Safer Workplaces, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Nadhim Zahawi at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.