

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (NORTH EAST
OF ENGLAND) REGULATIONS 2020

2020 No. 1010

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department of Health and Social Care 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 a number of public health measures to be taken to reduce the public health risk posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Northumberland, North Tyneside, South Tyneside, Gateshead, Newcastle, Sunderland and Durham County, which causes the disease Covid-19.

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 instrument is 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 instrument 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 instrument came into force at midnight on 18 September 2020 and will be published on www.legislation.gov.uk on 17 September 2020. The instrument ceases to have effect at the end of the period of 28 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 instrument itself provides that it expires at the end of the period of six months beginning with the day on which it came 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 Secretary of State for Health and Social Care Matt Hancock MP, has made the following statement regarding Human Rights:

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

6. Legislative Context

6.1 The Public Health (Control of Disease) Act 1984 (the “1984 Act”) and regulations made under it provide a legislative framework for health protection in England and Wales.

6.2 Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and 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.

6.3 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 can come from inside or outside England and Wales.

6.4 A number of regulations under section 45C have been made, including regulations relating to Covid-19, such as the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations (S.I. 2020/684) (the “National Regulations”), the Blackburn with Darwen and Bradford Regulations (S.I. 2020/822), the Leicester Regulations (S.I. 2020/824), the North of England Regulations (S.I. 2020/828), the Birmingham, Sandwell and Solihull Regulations (S.I. 2020/988) and the Bolton Regulations (S.I. 2020/974).

6.5 This instrument imposes restrictions in relation to a defined geographical area or “protected area”. The “protected area” is defined in regulation 1 of the instrument as the area of Durham County Council, Gateshead Council, Newcastle City Council, Northumberland County Council, North Tyneside Council, South Tyneside Council and, Sunderland City Council.

6.6 Regulation 2(2) requires the restrictions imposed by the Regulations to be reviewed at least once every 14 days. The first review will be carried out by 2 October 2020.

6.7 Regulation 2(3) provides that the Secretary of State must publish a direction terminating a restriction if the Secretary of State considers that the restriction is no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England with the coronavirus. The Secretary of State may also give a direction to provide that any one or more specified local authority no longer fall within the protected area.

6.8 Regulation 3 requires that a person responsible for carrying on a business or providing a service in the protected area which is listed in Part 1 of the Schedule must cease to carry on that business.

- 6.9 Regulation 4(1) requires the closure of restricted businesses between the hours of 22:00-05:00 including bars, pubs, and restaurants as listed in Parts 2 and 3 of the Schedule.
- 6.10 Regulation 4(2) provides that the businesses required to close during these hours are permitted to provide delivery services between 22:00-05:00.
- 6.11 Regulation 5(1) requires that businesses listed in Part 2 of the Schedule may sell food or drink for consumption on the premises only if it is served to customers sitting at a table.
- 6.12 Regulation 5(2) provides that an area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.
- 6.13 Regulation 5(3) provides that if a business listed in Part 2 of the Schedule (“business A”) forms part of a larger business (“business B”), the person responsible for carrying on business B complies with the requirement to sell food or drink for consumption on the premises only if it is served to customers sitting at a table if it complies with that requirement in relation to business A.
- 6.14 Regulation 6 prohibits gatherings of two or more people from different households (apart from linked households) in private dwellings in the protected area and prohibits people living in the protected area from participating in a gathering in a private dwelling outside the protected area, unless those meeting are from linked households. There are specific exemptions, including but not limited to work purposes, education and the provision of emergency assistance. Hotels and certain other holiday accommodation, care homes, educational, military and prison accommodation are not included in the definition of “private dwelling”.
- 6.15 Regulation 7 sets out the circumstances in which households may choose to be linked households.
- 6.16 Regulations 8 and 9 provide that a person who contravenes these regulations without reasonable excuse commits an offence. They also include a provision that a constable, police community support officer, or person designated by the Secretary of State or in some cases a person designated by a local authority may take necessary action in order to enforce a closure or restriction imposed by the regulations. This includes issuing a prohibition notice to prevent an individual from continuing to contravene a requirement of the Regulations, and directing a gathering or attendees of the gathering to disperse where they are gathered in contravention of regulation 6.
- 6.17 Regulation 10 provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by a relevant person to persons 18 or over whom they reasonably believe has committed an offence under the Regulations. The amount of the fixed penalty is £100, reduced to £50 if paid within 14 days. If a person has already received a fixed penalty notice, under these Regulations or other Regulations listed in regulation 10(9), the amount of the fixed penalty is £200, doubling on each further repeat offence up to a maximum of £3,200 and there will be no discount for repeat offenders paying within 14 days.
- 6.18 Environmental Health, Trading Standards and police officers will monitor compliance with these Regulations. Businesses that breach them can be subject to prohibition notices, and potentially unlimited fines. Where a gathering is held in contravention of these Regulations, any person in the gathering may be directed to disperse or return to

the place where they are living. An individual who contravenes a direction given by a police officer, or person designated by the Secretary of State, commits an offence and may thereby be issued a fine.

- 6.19 Regulation 11 provides that proceedings for an offence under this instrument may be brought by the Crown Prosecution Service and any person designated by the Secretary of State.
- 6.20 Regulation 12 sets out that the instrument ceases to have effect at the end of the period of six months beginning on the day on which it comes into force.
- 6.21 Regulation 13 provides that a person designated by the Secretary of State under the relevant provisions in the National Regulations is to be treated as if they were designated for the purposes of this instrument.
- 6.22 Regulation 14 provides the consequential amendments to the North of England Regulations, the National Regulations, the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020, the Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020, and the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020, the Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) and Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020.

7. Policy background

What is being done and why?

- 7.1 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). In order to limit the further spread of that disease, the Prime Minister announced further restrictions which came into force on 26 March 2020 through The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, prohibiting people from leaving the place they live except for very limited purposes and banning public gatherings of more than two people. In line with Step 2 and 3 of the Government's recovery strategy for the Covid-19 pandemic, several amendments were made to these Regulations in June 2020, before they were revoked and replaced on July 4 through the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations. These Regulations have since been amended several times (11 and 13 July, 24 July, 15 August, 28 August, 14 September 2020).
- 7.2 On 14 September 2020, the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No.4) Regulations 2020 came into force. The regulations prohibit people that you do not live with (or are not in a support bubble) meeting in a group larger than six (unless one of the exceptions set out in the law apply) across England. There are also stricter requirements in relation to gatherings in private dwellings across a number of regions. These Regulations also provide for stricter measures in relation to private dwellings as explained above.
- 7.3 Data shared by Public Health England and the Joint Biosecurity Centre indicated that the incidence rates of COVID-19 in the protected area, except for Northumberland, were significantly above the national average, and the number of cases was increasing. The data and evidence indicated that household transmission, either within

the household or due to transmission between households, as well as social mixing constituted a high proportion of COVID-19 transmissions with people travelling across the protected area for work and other purposes. It was decided to include the seven local authorities within the Regulations due to the interconnectedness of the region and in discussion with Directors of Public Health and local leaders.

- 7.4 The instrument requires certain venues to stay closed, such as nightclubs, to protect against the risks to public health arising from coronavirus. This instrument also places restrictions on certain businesses so they may sell food or drink for consumption on the premises if it is served to customers sitting at a table. The instrument also introduces restrictions on the operating hours of certain entertainment, leisure and hospitality businesses so that they may not operate between 22:00 and 5:00, with certain exemptions. This is designed to limit social mixing and subsequent close contact, which increases the spread of the virus.
- 7.5 These measures intend to reduce the transmission of Covid-19 in the protected area, particularly amongst younger people (amongst whom incidence rates are high), such that local incidence rates decline to a level where public health advice is that the local easing of restrictions can realign with measures in the rest of England.
- 7.6 These Regulations are supported by Government guidance, providing advice to owners/operators on working safely across all affected sectors, as well as providing information to the public about how to stay safe and reduce the transmission risk.

8. European Union (Withdrawal) Act 2018/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 2018.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 There has been no public consultation in relation to this instrument.

11. Guidance

- 11.1 The Government has published guidance in relation to Covid-19 at www.gov.uk/coronavirus and this guidance will include information in relation to closures and restrictions on movements and gatherings in Northumberland, North Tyneside, South Tyneside, Gateshead, Newcastle, Sunderland and Durham, County in England under this instrument.

12. Impact

- 12.1 This instrument is a temporary provision as part of the Government's response to Covid-19, lasting only six months. As this instrument will cease to have effect after less than 12 months, a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to review the instrument every two weeks. The instrument includes a statutory review clause.
- 14.2 A statutory review clause is included in the Regulation. The instrument ceases to have effect at the end of the period of six months beginning on the day on which it comes into force. Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by these Regulations every 14 days. The first review will be carried out by 2 October 2020.

15. Contact

- 15.1 Tim Charlton at the Department for Health and Social Care; Email: tim.charlton@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Paul McCloghrie, Director at the Department of Health and Social Care; Email: Paul.Mccloghrie@dhsc.gov.uk can confirm that this explanatory memorandum meets the required standard.
- 15.3 Matt Hancock MP, Secretary of State for Health and Social Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.