

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (NO.2)
(ENGLAND) (AMENDMENT) (NO.5) REGULATIONS 2020

2020 No. 1029

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 risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England 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 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 laid and approved. Public health measures imposed by the Regulations continue to be necessary and proportionate to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus (SARSCoV-2). The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations (S.I. 2020/684) (the “Original Regulations”) came into force on 4 July 2020.
- 3.2 This instrument will amend the Original Regulations. The most recent previous amendments to the Regulations were made by The Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) (No. 4) Regulations 2020). This restricted the size of social gatherings, so that they cannot be larger than six people except in specified circumstances. The instrument will also amend a number of other regulations which relate to local protected areas as noted below.
- 3.3 The provisions in this instrument will come into force at 05.00am on 24 September 2020, save for those in relation to weddings, wedding receptions, funerals and significant event gatherings, which come into force on 28 September 2020. The instrument was published on www.legislation.gov.uk on 23 September 2020.
- 3.4 This instrument will cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made (subject to extension for periods of dissolution, prorogation or adjournment for more than four days) unless, during that period, the instrument is approved by a resolution of each House of Parliament. The Original Regulations and the other regulations which relate to local protected areas (as

listed at paragraph 6.13) which are amended by this instrument will still expire at the end of six months beginning with the day on which they 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)

- 3.5 The entire instrument applies to England and to the territorial water adjacent 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 Lord Bethell of Romford, Parliamentary Under Secretary of State at the Department for Health and Social Care, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (England) (No.2) (Amendment) (No.5) 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 Original Regulations.
6.5 This instrument is made under section 45C to enable a number of public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARSCoV-2).
6.6 The Original regulations were also amended on the 27 August, to create a new offence for the hosting or being involved in hosting an gathering that is prohibited by the Original Regulations and is of over 30 people. This gave the police powers to issue a Fixed Penalty Notice of £10 000 if people breached this restriction.

- 6.7 This instrument makes a number of changes to the Original Regulations to better enable the public health measures in those Regulations to achieve the intended purpose of reducing public health risks posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). In particular:
- 6.8 Regulation 4A has been inserted into the Original Regulations to provide for:
- The closure of businesses selling food or drink from 22:00 – 05:00
 - Cinemas, theatres or concert hall can stay open beyond 22:00 to conclude a performance that has begun before 22:00, but would then be obliged to shut once the performance has concluded.
 - Businesses which are required to close will be able provide services via drive through or delivery
 - Exceptions are provided for certain types of business, such as motorway service areas and supermarkets, convenience stores and cornershops.
- 6.9 Regulation 4B has been inserted into the Original Regulations to require certain businesses to:
- Take reasonable steps to ensure that customers only consume food and drink while seated.
 - If the business serves alcohol for consumption on the premises, to only take orders for food and drink from customers who are seated and only serve them while they are seated. The business must also take reasonable steps to ensure that customers only consume food and drink while seated.
- 6.10 Amendments are also made to each of the following regulations to remove their restrictions on businesses, and allow the provisions in Regulations 4, 4A and 4B of the Original regulations to take effect in their protected areas:
- the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020.
 - the Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020.
 - the Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) Regulations 2020.
 - the Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020.
- 6.11 Regulation 5 of the Original Regulations is amended in relation to the exemptions on gatherings restrictions:
- The exemptions to the gatherings limit have been amended (Regulation 5(3)) to:
 - Restricting attendance at weddings and wedding receptions to 15 (down from 30)
 - Removal of exemption for religious or belief based standalone life cycle ceremonies (except for funerals, which will have a limit of 30 people able to attend)

- Removal of the exemption for indoor organised sport (although indoor sport which is organised for the purpose of allowing persons who have a disability to take part will continue to be exempt, subject to conditions)
 - Place numerical restrictions of a maximum of 15 participants in a support groups, and restrict them from taking place in a private dwelling.
- 6.12 Regulation 9 is amended to provide for the doubling of the amount included in Fixed Penalty Notices for breaches of the restrictions on participation in gatherings, the restrictions on access to specific outdoor places and the requirements to close business, meaning that the initial fine level starts at £200 to a maximum of £6 400.
- 6.13 Amendments are also made to the following regulations to provide for equivalent Fixed Penalty Notices to be issued:
- the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020.
 - the Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020.
 - the Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020.
 - the Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) Regulations 2020.
 - the Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020.
- 6.14 A separate series of levels for Fixed Penalty Notices are established for the new restrictions in regulations 4A and 4B on the Original Regulations. The first Fixed Penalty Notice issues in relation to the offences of breaching these restrictions is set at £1,000, and increases to £2,000 for a second notice, £4,000 for a third notice, and £10,000 for the fourth and all subsequent notices. Consequential amendments are also made to all of the Regulations mentioned in 6.13 to ensure that the issue of an Fixed Penalty Notice in relation to regulations 4A and 4B of the Original Regulations does not affect the escalation of Fixed Penalty Notices in those Regulations, in the same way that it does not affect the escalation of Fixed Penalty Notices in relation to other offences in the Original Regulations.
- 6.15 This instrument also amends the Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020 to provide that businesses in the protected area which are prevented from selling food or drink for consumption off the premises between the hours of 22.00 and 05.00 may still be allowed to make deliveries and allow customers to collect food or drink via a drive through if they remain in their vehicle.
- 6.16 These Regulations also make minor amendments to the Original Regulations and the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 4) Regulations 2020 to address some errors of drafting in the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 4) Regulations 2020. This instrument is therefore issued free of charged to all known recipients of those Regulations. This issue was identified promptly, and corrected promptly at the first opportunity within 11 days of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 4) Regulations 2020 coming into force.

- 6.17 The police and local authorities will continue to monitor compliance with the Original Regulations, including the amendments set out in this instrument.

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 at 1pm on 26th March 2020, prohibiting people from leaving the place they live except for very limited purposes and banning public gatherings of more than two people. The legislative elements of these restrictions were given effect in the Health Protection (Coronavirus, Restrictions)(England) Regulations 2020 (the “Restrictions Regulations”).
- 7.2 On 22nd April 2020 and on 12th May 2020, amendments to the Restrictions Regulations came into force to make several minor and clarificatory changes to those Regulations which addressed concerns raised by key stakeholders. This included ensuring key services, such as waste and recycling centres, remained accessible where required, and opening garden centres.
- 7.3 In line with Step 2 of the government’s recovery strategy for the Covid-19 pandemic, several amendments were made in June 2020. This included reopening all nonessential retail, except for businesses and venues where the transmission risk was still too high, as well as outdoor areas and animal attractions. The stay at home prohibition in Regulation 6 in the Restrictions Regulations was also removed, with a relaxation of the restrictions on gatherings and overnight stays for single occupancy households.
- 7.4 As part of Step 3 of the government’s recovery strategy for the Covid-19 pandemic, the government announced the opening of the hospitality sector from 4th July 2020. The Prime Minister also announced on 23rd June 2020 further relaxations in relation to gatherings to come into force in parallel. These further relaxations were possible due to the continued fall in transmission rates and decreasing rates of hospitalisation and fatalities. The Chief Medical Officers had also downgraded the UK’s Covid-19 Alert Level from four to three. The Prime Minister noted that if rates increased again, restrictions would be imposed as needed.
- 7.5 The Original Regulations, which replaced the Restrictions Regulations, came into force on 4th July 2020 and have subsequently amended a number of times. These opened up businesses and venues, meaning now only nightclubs, dancehalls, discotheques, businesses that offer dancing at night, sexual entertainment venues, and hostess bars are required to remain closed nationally. They were also amended to create an offence for holding an illegal gathering, giving the police the power to issue a Fixed Penalty Notice of £10 000. There have also been a number of local restrictions mandated as set out in 6.13, which have been amended and review a number of times to reflect the rate of transmission in the restricted area.
- 7.6 Nationally transmission rate has continued to increase over recent weeks, in particular amongst young people, and compliance with social distance guidance has decreased.

As a result it was been considered necessary to introduce new measures on the 14 September to limit the size of social gatherings to 6 people unless exemptions applied.

- 7.7 Due to the transmission rate continuing to increase and the Chief Medical Officers upgrading the UK's Covid-19 Alert Level from three to four, the Government has taken further actions which effect businesses and social gatherings. The closure of businesses selling food and drink from 22:00 to 05:00 (subject to exemptions) will reduce the likelihood of people not adhering to social distancing rules, with compliance often being affected by alcohol consumption. Similarly, mandating seated consumption of food and drink aims to reduce the amount of time that customers spend at the ordering counter, which in turn will reduce the risk of transmission from mingling with people you do not live with. Preventing ordering or collection of food and drink at a counter or bar in businesses that sell alcohol for consumption on the premises will limit the risk of transmission even further in premises that carry increased risk. Introducing fines for businesses who do not follow these restrictions will deter businesses from not following these new rules. The fine levels are higher than some other restrictions, but in line with approaches taken in relation to business restrictions
- 7.8 Increasing the restrictiveness of the exemptions to the limits on gatherings as set out above will also reduce the risk of transmission from large groups. The Government has looked to balance increasing the restrictiveness of social distancing to reduce the risk of transmission with maintaining exemptions for specific activities, reflecting the importance of activities such as weddings and funerals. The doubling of fine levels for breaches to the gathering limit look to deter people from not adhering to social distancing rules and reflects the seriousness of breaching the gathering limit.
- 7.9 The Government keeps these regulations and the other local area regulations under constant review and will ensure that they remain proportionate and necessary to the risk posed by the spread of coronavirus.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union 2018

- 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 includes information in relation to the tightening of restrictions and requirements brought about by these amendments.

12. Impact

- 12.1 This instrument is an amendment to the Original Regulations and other local protected area regulations (as listed at paragraph 6.1) and as such is a temporary provision

forming part of the Government's response to Covid-19, lasting a maximum of six months from the date on which the Original Regulations and the other local protected area regulations took effect. 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.
- 13.2 The final decision on what action to take to assist small businesses is that no such action is needed, since the government has provided a number of financial support schemes.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause.
- 14.2 This instrument amends the Original Regulations and the expiry and review provisions set out in that instrument will continue to apply. The Original Regulations cease to have effect at the end of the period of six months beginning on 04 July 2020 (the day on which the Original Regulations came into force).
- 14.3 Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by the Original Regulations at least every 28 days. The next review must be carried out by 21 October 2020. The instrument also amends a number of other regulations (as listed at paragraph 6.13) which relate to certain protected areas and those regulations will continue to have 14 day review periods and six month expiry dates from the day they came into force.

15. Contact

- 15.1 Angela Chadha, Department of Health and Social Care: Angela.Chadha@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Lamberti, Department of Health and Social Care: David.Lamberti@dhsc.gov.uk can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Bethell of Romford, Parliamentary Under Secretary of State at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.