

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS)
(OBLIGATIONS OF UNDERTAKINGS) (ENGLAND) (AMENDMENT)
REGULATIONS 2020

2020 No. 1046

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 amending the Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations (SI 2020/1008) (“the Original Regulations”) to apply requirements in those Regulations relating to the “rule of six” to all premises where the track and trace requirements apply, and by introducing new requirements on certain hospitality businesses to take reasonable measures to stop customers in groups of more than six from singing, and to stop customers dancing (subject to exceptions). The Regulations also require pubs, cafes, restaurants and bars to limit music noise levels (other than live music) to a prescribed maximum. They also require signage to be displayed at all places where face coverings are required informing persons on the premises of that requirement unless an exemption applies or the person has a reasonable excuse not to wear one, or other measures to be taken to this effect. (These requirements apply at all such premises, and are not confined to hospitality businesses.) At places where face coverings are required, the Regulations also prohibit the person responsible for carrying on a business at that place from preventing or seeking to prevent any person at their premises from wearing a face covering when its wear is required by the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) Regulations 2020 (SI 2020/791) (“the Face Covering Regulations”) as amended most recently by SI 2020/1026. Finally, the Regulations introduce a fixed penalty of £10,000 where a person receives a fourth or subsequent fixed penalty notice issued under the Original Regulations or either of two other sets of Regulations imposing requirements in relation to gatherings and the track and trace arrangements.

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 28th 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 Original Regulations, which these Regulations amend, provide that they expire at the end of the period of 364 days beginning with the day on which they came into force (which was 18th September 2020). The Secretary of State must review the need for the requirements imposed by the Original Regulations, as amended, 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. 5) Regulations 2020 (SI 2020/1029), the Face Covering Regulations, and the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (SI 2020/1005) (“the Track and Trace Regulations”). These Regulations make amendments to the Principal Regulations and the Track and Trace Regulations in one respect (to do with the computation of the number of occasions on which past fixed penalty notices have been issued – explained in more detail in paragraph 6.11 below).
- 6.4 Provision is also made under section 45F, for the creation of offences (set out more fully below) and giving authorised officers enforcing the Original Regulations a power to issue a fixed penalty notice offering the recipient the opportunity to discharge liability to conviction in respect of an offence which the authorised officer reasonably believes the recipient of the notice has committed (see further detail below).
- 6.5 Regulation 5 (restrictions on gatherings) of the Principal Regulations now restricts gatherings to no more than six persons (with exceptions in relation to household members and members of linked households). The Face Covering Regulations also require persons at specified premises to wear face coverings. The Track and Trace Regulations require the recording of information about persons when they seek to enter certain premises. These Regulations, and the Original Regulations they amend, are intended to complement those restrictions and requirements.
- 6.6 These Regulations introduce additional requirements and restrictions to those in the Original Regulations and widen the scope of provisions relating to the “rule of six”.
- 6.7 It does so firstly, by amending the requirements in the Original Regulations in relation to bookings of no more than six, admission of parties of no more than six persons, and mingling so that they apply in all premises subject to the Track and Trace regulations as “relevant premises”.
- 6.8 Secondly, the Regulations amend the Original Regulations to impose new requirements on the person responsible for carrying on a business of a public house, café, restaurant or bar (including a bar in a hotel or members’ club) to take reasonable measures to stop customers from singing in groups of more than six on the premises and to stop customers dancing on the premises (with exceptions for couples who dance at their wedding or civil partnership ceremony or reception). The Regulations also require persons responsible for carrying on the business of pubs, cafes, restaurants and bars to limit noise levels in such premises, including bars, to 85 A-weighted decibels when measured at the source of the sound. Live music is excluded from this requirement.
- 6.9 Lastly, the Regulations also require either signage to be displayed at all “relevant areas” where face coverings are required under the Face Coverings Regulations (that is, not only at the premises of hospitality businesses) informing persons at the relevant place of the requirement to wear a face covering unless an exemption applies or there

is reasonable excuse, or other measures to be taken to ensure that persons entering the relevant area are informed of the requirement to wear face coverings unless an exemption applies or there is reasonable excuse. The Regulations also prohibit the person responsible for carrying on a business at a relevant area from preventing or seeking to prevent a person present at that place from wearing a face covering when its wear is required of that person under those Regulations.

- 6.10 Under the Original Regulations, enforcement may be undertaken by designated local authority officers, police officers or persons designated by the Secretary of State. Breach of the requirements introduced to the Original Regulations by these Regulations will be an offence under regulation 3 of the Original Regulations, punishable on summary conviction by a fine.
- 6.11 The Original Regulations give authorised officers powers at regulation 4 to issue fixed penalty notices where they reasonably believe an offence under those Regulations has been committed. The fixed penalty levels begin 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 and £4,000 on a third occasion. These Regulations amend the Original Regulations by providing for a fixed penalty of £10,000 for a fourth and any subsequent occasion when a fixed penalty notice is issued. These Regulations also amend the provisions for the escalation of fixed penalties in the Original Regulations so that, when calculating the level of fixed penalty notice to be issued in respect of an offence under these Regulations, fixed penalty notices issued under the Track and Trace Regulations and the Principal Regulations are also taken into account in the calculation of the number of previous occasions on which a fixed penalty notice has been issued. (Amendments are made to the Track and Trace Regulations and the Principal Regulations accordingly to make equivalent provision in those regulations in relation to fixed penalty notices issued under these Regulations. The Track and Trace Regulations are also similarly amended to take account of fixed penalty notices issued under the Principal Regulations; and likewise, the Principal Regulations are amended to take account of fixed penalty notices issued under the Track and Trace Regulations when calculating the level of a fixed penalty notice.)
- 6.12 No appeal is provided for in relation to the fixed penalty provided for in these Regulations, nor in relation to those already provided for in the Original Regulations, since the fixed penalty notice is an opportunity to discharge liability to conviction, the alternative being prosecution of the offence through the court, during which process the person alleged to have committed the offence would have an opportunity to present a defence. (The Explanatory Memorandum laid with the Original Regulations erroneously referred to appeal provisions in the last lines of paragraph 6.4.)
- 6.13 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 and other businesses where face coverings are required or where the track and trace obligations must be met.

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. 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.
- 7.4 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. 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 on 21st September 2020, the Government has taken further actions which effect businesses and social gatherings.
- 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 13 September 2020, of the 729 incidents reported, 34 incidents were from food outlet/restaurant settings (compared to 38 the previous week and 21 the week before that), of which 25 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 Evidence shows that the number of people testing positive for COVID-19 is increasing sharply. In England, the 7 day average daily cases has increased from around 1,100 on 27 August to around 3,000 as of 18 September. 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, can pose significant disease transmission risks. The policy aim is to provide greater enforcement of safety measures in businesses. 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 and other 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. The Original Regulations and the amendments to them made by these Regulations place the requirements in the framework of the public health legislation, to support enforcement of Covid-secure safety measures. 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. The setting of the highest fixed penalty on the escalating scale is intended to reflect the severity of the offences and to target those businesses who are persistently failing to meet their obligations. These Regulations also introduce “cross-laddering” in respect of the escalation of fixed penalties – that is, a breach of the Track and Trace requirements, the Principal Regulations or the Original Regulations as amended would be taken account of in calculating the level of fixed penalty to be issued in respect of an offence under the any of those three sets of Regulations to reflect offenders who do not respect the legal requirements in place to protect others against the threat of infection and its spread.
- 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 Fuller detail of the offences are given in the Legislative Context section but the behaviours include:

- 7.10.1.1 Failure to stop customers in groups of six from singing;
- 7.10.1.2 Failure to limit music noise levels (with an exception for live music) to 85dB(A) when measured at the source of sound, in public houses, cafes, restaurants and bars;
- 7.10.1.3 Failure to display signage or otherwise to remind customers to wear a face covering at places where these are required under the Face Coverings Regulations;
- 7.10.1.4 Failure to stop individuals dancing.

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 These Regulations are the first amendments to the Original Regulations. There is currently no plan to consolidate the Original Regulations.

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 and guidance on social distancing, the rule of six and associated exemptions at: <https://www.gov.uk/government/publications/coronavirus-covid-19-meeting-with-others-safely-social-distancing/coronavirus-covid-19-meeting-with-others-safely-social-distancing>

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 Original Regulations established a regime of Fixed Penalty Notices for breaches of the requirements in those Regulations which reflected existing COVID-Secure guidance. These Regulations provide for a higher level of fixed penalty in situations where a fourth offence has been committed under these Regulations. The fixed penalties 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 the instrument it is amending 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 enable 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 Natalie Hitchings at the Department for Business, Energy and Industrial Strategy Telephone: 03000 685 756 or email:Natalie.hitchings@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.