

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (NORTH OF ENGLAND, NORTH EAST AND NORTH WEST OF ENGLAND AND OBLIGATIONS OF UNDERTAKINGS (ENGLAND) ETC.) (AMENDMENT) REGULATIONS 2020

2020 No. 1057

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 Durham County, Gateshead, Newcastle, Northumberland, North Tyneside, South Tyneside and Sunderland.

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 comes into force at midnight on 30 September 2020. The instrument will be published on www.legislation.gov.uk on 29 September 2020.
- 3.2 This instrument makes amendments to four existing statutory instruments. Firstly, it amends the Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020 (S.I. 2020/1010) (“the NENW Regulations”) to impose further restrictions on gatherings indoors in the protected area. Secondly, it amends the “protected area” in the Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020 (S.I. 2020/828) (“the North of England Regulations”) to add local authorities in the north west to the “protected area” (which were previously listed in the protected area in the NENW Regulations). These amendments have no impact on these areas which will remain subject to the same restrictions. Thirdly, the instrument amends the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 (“the Obligations of Undertakings Regulations”) (S.I. 2020/1008) to impose restrictions on relevant premises in the “protected area” to ensure they align with the restrictions in the NENW Regulations.

Finally, this instrument amends the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684) (“the National Regulations”) to disapply the gatherings provisions in those regulations to gatherings indoors in the NENW Regulations.

- 3.3 This 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. The regulations this instrument amends all expire at the end of the period of six months beginning on 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)

- 3.4 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 Minister of State for Mental Health, Suicide Prevention and Patient Safety, Nadine Dorries MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) (North of England, North East and North West of England and Obligations of Undertakings (England) etc.) (Amendment) 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 National Regulations, the North of England Regulations and the NENW Regulations.
- 6.5 This instrument amends the NENW Regulations by placing further restrictions on gatherings indoors in seven local authorities in the north east that, following the amendments made by this instrument, comprise the “protected area” in those

regulations. The seven local authorities are 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 amends the North of England Regulations by adding the local authorities in Merseyside and Lancashire currently in the protected area in the NENW Regulations to the North of England Regulations. These local authorities are Blackburn with Darwen Borough Council, Blackpool Council, Burnley Borough Council, Chorley Borough Council, Fylde Borough Council, Halton Borough Council, Hyndburn Borough Council, Lancaster City Council, Knowsley Metropolitan Borough Council, Liverpool City Council, Pendle Borough Council, Preston City Council, Ribble Valley Borough Council, Rossendale Borough Council, Sefton Borough Council, South Ribble Borough Council, St Helens Borough Council, Warrington Borough Council, West Lancashire Borough Council, Wirral Metropolitan Borough Council and Wyre Borough Council. There is no practical effect from these changes and the restrictions will be unchanged in these local authorities.
- 6.7 Regulation 3 amends the NENW Regulations. Regulation 3 replaces the restriction on participating in gatherings in private dwellings in these regulations with a broader restriction on participating in gatherings in private dwellings and in other indoor settings. The new regulation 6 of the NENW Regulations sets out that gatherings of two or more people in should not occur in private dwellings or other indoor settings unless relevant exemptions apply.
- 6.8 Regulation 3(3) also amends Regulation 6 of the Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020 by updating the list of exemptions to the restrictions on households mixing indoors. The exceptions cover permitted organised gatherings, criminal justice accommodation, support groups, marriage and civil partnerships where no more than 15 persons may gather, funerals of not more than 30 people, weddings and civil partnership receptions of no more than 15 people, visiting persons receiving treatment, protests, elite sport and exemptions for permitted indoor sports gatherings.
- 6.9 The new regulation 6A which this instrument inserts into the NENW Regulations sets out the exemptions which apply to gatherings in both private dwellings and other indoor settings, which include where all the people in the gathering are from the same household or support bubble, where the gathering is reasonably necessary for work purposes, for the provision of voluntary or charitable services, for the purposes of education or training, for the purposes of registered childcare, supervised activities for children or informal childcare provided by a linked childcare household, to provide emergency assistance, to avoid injury or illness or to escape a risk of harm, to provide care or assistance to a vulnerable person, to provide contact between parents and children or to facilitate a house move.
- 6.10 The new regulation 6B which this instrument inserts into the NENW Regulations sets out the exemptions which just apply to gatherings in indoor settings other than private dwellings.
- 6.11 The exceptions cover permitted organised gatherings, gatherings in criminal justice accommodation, support groups, marriage and civil partnerships where no more than 15 persons may gather, funerals of not more than 30 people, weddings and civil

partnership receptions of no more than 15 people, visiting persons receiving treatment, protests, elite sport and exemptions for permitted indoor sports gatherings.

- 6.12 Regulation 3(3) amends Regulation 6C of the Health Protection (Coronavirus, Restrictions) (North East and North West of England) Regulations 2020 in setting out the definition of a gathering for the purposes of Regulation 6A-6C of the North East and North West of England Regulations.
- 6.13 Regulation 3 also inserts Regulation 6C into the NENW Regulations, which includes the required precautions that must be taken in order for some types of gathering to fall under the exemptions in new Regulation 6B, including a requirement for the organiser of the gathering or manager of the premises in which the gathering is taking place to have undertaken a risk assessment and taken all reasonable steps to manage the risk of transmission of coronavirus.
- 6.14 Regulation 4 amends the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 to impose requirements on relevant businesses in the 'protected area' to ensure they align with the restrictions in the NENW Regulations. These include requirements for the relevant businesses to take account of the NENW Regulations' gatherings limits when taking group bookings, when admitting groups into their premises and in relation to interaction between groups. There are also requirements to take account of the different gatherings requirements under the NENW Regulations when considering the obligation on businesses to take reasonable steps to prevent singing in large groups.
- 6.15 Regulation 5 makes a minor amendment to the National Regulations setting out that Regulation 5 of the National Regulations on gatherings does not apply indoor gatherings in those areas which form the protected area under the NENW Regulations.

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.
- 7.2 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 – S.I. 2020/719, 25 July – S.I. 2020/788, 15 August – S.I. 2020/863, 28 August – S.I. 2020/907, 14 September 2020 – S.I. 2020/986, 22 September – S.I. 2020/1029).
- 7.3 On 14 September 2020, the Health Protection (Coronavirus, Restrictions) (England) (No. 2) (Amendment) (No.4) Regulations 2020 (S.I. 2020/588) came into force. The regulations prohibit people who are not in the same household (or who are not in a

linked household) meeting in a group larger than six (unless one of the exceptions set out in the law apply) across England.

- 7.4 On 22 September 2020, the Health Protection (Coronavirus, Restrictions) (No 2) (Amendment) (No 5) Regulations came into force. Those regulations require certain businesses to close between 10pm and 5am, subject to some exceptions, and also require table service only for certain hospitality venues.

The North of England Regulations

- 7.5 The North of England Regulations came into force on 5 August 2020. Part 2 of the North of England Regulations imposed restrictions on gatherings in the protected area defined in regulation 2 of those regulations, and restrictions on people that lived in the protected area participating in gatherings in private dwellings outside of it. The North of England Regulations were amended to include Preston in the protected area with effect from 8 August 2020 and to include requirements on premises and businesses within the protected area with effect from 15 August 2020.
- 7.6 The North of England Regulations were amended on 26 August 2020 to change the definition of “protected area”, as defined in Regulation 2 of the North of England Regulations to remove the following areas: Wigan Metropolitan Borough Council and Rossendale Borough Council. The North of England Regulations were amended again on 2 September 2020 to change the definition of “protected area” to remove the following areas: Stockport Metropolitan Borough Council, Burnley Borough Council, and Hyndburn Borough Council.
- 7.7 On 8 September, the North of England Regulations were amended to permit the reopening of casinos, indoor skating rings, indoor play areas, bowling areas, conference centres and exhibition halls. The area of Bolton Metropolitan Borough Council was removed from The Health Protection (Coronavirus, Restrictions) (North of England) Regulations and placed under The Health Protection (Coronavirus, Restrictions) (Bolton) Regulations 2020, which came into force on 10 September.
- 7.8 On 22 September, the protected area under the North of England Regulations to include all wards within the Bradford Metropolitan District Council, Calderdale Metropolitan Borough Council and Kirklees Metropolitan Council. On 29 September, the protected area under the North of England Regulations was amended to include Wigan Metropolitan Borough Council, Stockport Metropolitan Borough Council, Leeds City Council were added to the protected area.

The North East and North West of England Regulations

- 7.9 On 18 September, the North East and North West Regulations came into force. These imposed restrictions in the ‘protected area’ and included Durham County Council, Gateshead Council, Newcastle City Council, North Tyneside Council, Northumberland County Council, South Tyneside Council, and Sunderland City Council). The North East and North West Regulations prohibited people from mixing with other households in private homes or gardens. It was also put into guidance that they should not be mixing with people from other households in any setting. The protected area in the North East and North West Regulations was amended to include Merseyside and the majority of Lancashire on 22 September. Blackpool was added to the protected area on 26 September following a further amendment to the Regulations.

- 7.10 Data shared by Public Health England and the Joint Biosecurity Centre indicated that the incidence rates of COVID-19 in Durham County, Gateshead, Newcastle, Northumberland, North Tyneside, South Tyneside and Sunderland were significantly above the national average, and the number of cases was increasing. The data and evidence indicated that community transmission, 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. This instrument places restrictions on household mixing in all indoor settings in Durham County, Gateshead, Newcastle, Northumberland, North Tyneside, South Tyneside and Sunderland. This is designed to limit social mixing and subsequent close contact, which increases the spread of the virus. The local authorities in Merseyside and Lancashire are not subject to further restrictions as a result of these Regulations.
- 7.11 The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020 (S.I. 2020/1008) came into force on 18 September and require certain undertakings in the hospitality industry, to take measures to ensure their customers follow the rules on the social distancing.
- 7.12 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 This instrument does not consolidate any legislation.

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 gatherings in Durham County, Gateshead, Newcastle, Northumberland, North Tyneside, South Tyneside and Sunderland. Guidance on undertakings in the hospitality industry and business restrictions will also be updated.

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 This instrument amends the other Regulations and the expiry and review provisions set out in those instruments will continue to apply: namely those regulations cease to have effect at the end of the period of six months beginning on the day they came into force. Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by those Regulations every 14 days. The review and expiry provisions in these instruments will continue to apply.

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 McCloaghrie, Director at the Department of Health and Social Care; Email: Paul.Mccloaghrie@dhsc.gov.uk can confirm that this explanatory memorandum meets the required standard.
- 15.3 Nadine Dorries MP, Minister of State for Mental Health, Suicide Prevention and Patient Safety at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.