

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

2020 No. 1572

1. Introduction

- 1.1. This explanatory memorandum has been prepared by the 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 amends the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (“The All Tiers Regulations”) to move some local authority areas in the east and south east of England from Tier 2 to Tier 3, as well as amendments to move two local authority areas from Tier 3 to Tier 2 and one from Tier 2 to Tier 1. This is to ensure appropriate levels of intervention are made in the right places to manage Covid-19 outbreaks and help suppress the virus and keep the R rate below 1. This enables a number of public health measures to be taken to reduce the public health risks posed by the spread in England of acute severe respiratory syndrome coronavirus 2 (SARS-CoV-2) 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. This instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c.22) (“the 1984 Act”). This instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. It is of the opinion of the Secretary of State that, by reason of urgency, it is necessary to make this instrument without a draft being so laid and approved so that public health measures can be taken in response to the severe and imminent threat to public health which is posed by the incident and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- 3.2. This instrument was made on 17 December 2020 and was published on www.legislation.gov.uk later that day. This instrument will come into force on 19 December 2020 and the All Tiers Regulations, which this instrument amends, will expire on 2 February 2021. This instrument will cease to have effect at the end of the period of 28 days beginning with the day on which it is made unless, during that period, it is approved by a resolution of each House of Parliament. The Secretary of State must review whether each area that is part of Tier 2 or Tier 3 should continue to be part of that area at least once every 14 days. This instrument makes amendments which reflect the outcome of the review carried out on 16 December 2020.

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)

- 3.3. This entire instrument applies to England only, including English airspace and the English territorial sea.

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 Care, Helen Whately MP, at the Department of Health and Social Care, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment No.2) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1. 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 diseases, or contamination from chemicals or radiation. Part 2A 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 of infection or contamination can come from outside England and Wales.
- 6.4. 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 coronavirus 2 (SARS-CoV-2).
- 6.5. In accordance with section 45R of the Act, the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament.
- 6.6. On 2 December a revised tiering system was introduced by the All Tiers Regulations.
- 6.7. On 14 December 2020 the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020 (S.I. 2020/1533) amended the All Tiers Regulations to move the following local authority areas into Tier 3: all 32 London boroughs and the City of London; in Essex: Basildon, Brentwood, Harlow, Epping Forest, Castle Point, Rochford, Maldon, Braintree, Chelmsford – and two unitary authorities Thurrock and Southend on Sea Borough Council; in Hertfordshire: Broxbourne, Hertsmere, Watford and Three Rivers. These changes came into force on 16 December 2020.

- 6.8. This instrument moves council areas in the east and south east of England from Tier 2 to Tier 3. Those areas include Bedfordshire, Peterborough, the remaining areas of Hertfordshire which weren't already in Tier 3, Buckinghamshire, parts of East Sussex and Hampshire, Portsmouth, Reading, West Berkshire, Bracknell Forest, Windsor and Maidenhead, Wokingham and Surrey (except Waverley Borough Council).
- 6.9. This instrument also moves Bristol City Council and North Somerset Council from Tier 3 to Tier 2 and Herefordshire Council from Tier 2 to Tier 1.

7. Policy background

What is being done and why?

- 7.1. The three tiers introduced on 2 December were:
 - Tier 1: Medium Alert which are the baseline measures nationally and represent the minimum level of restrictions considered appropriate given the current levels of circulation of the virus;
 - Tier 2: High Alert, which places further restrictions on social contact aimed primarily at targeting areas of high transmission; and
 - Tier 3: Very High Alert, which goes further in restricting social contact to continue to address household to household transmission and places further restrictions and closures on businesses, as a proportionate response to the heightened transmission risk.
- 7.2. Decisions on which tier will initially apply in each area were announced on 2 December 2020 and are primarily based on 5 key indicators:
 - Case detection rates in all age groups;
 - Case detection rates in the over 60s;
 - The rate at which cases are rising or falling;
 - Positivity rate (the number of positive cases detected as a percentage of tests taken); and
 - Pressure on the NHS, including current and projected occupancy

It was envisaged that areas could move between tiers.

- 7.3. The Secretary of State must review whether each area that is part of the Tier 2 or Tier 3 area should continue to be part of that area at least once every 14 days, with the first review to be carried out by 16th December 2020. In carrying out this review the Secretary of State must in particular consider whether it is necessary for each area that is part of the Tier 2 area or of the Tier 3 area to continue to be part of that area for the purposes of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection in England with coronavirus. This instrument reflects the changes made as part of the Secretary of State's review of the Tier 2 and Tier 3 areas on 16 December 2020.

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 geographic areas subject to closures and restrictions on movements and gatherings under this instrument.

12. Impact

12.1. An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government's response to Covid-19. As the All Tiers Regulations, which this instrument amends, will cease to have effect on 2 February 2021 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 restrictions in the All Tiers Regulations must be reviewed by the Secretary of State at least once every 28 days.

14.2. The allocation of areas into Tier 2 and Tier 3 must be reviewed by the Secretary of State at least once every 14 days.

14.3. The All Tiers Regulations which this instrument amends ceases to have effect on 2 February 2021 when it will expire.

15. Contact

15.1. Christina Head at the Department of Health and Social Care Telephone: 07761328305 or email: christina.head@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2. Kevin Dodds, Deputy Director for Social Distancing Strategy, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3. Helen Whately MP, Minister of State for Care at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.