

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

2020 No. 1611

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 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.
- 2.2 This instrument amends the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (“the All Tiers Regulations”) to introduce an additional tier of restrictions (“Tier 4”); move all 32 London boroughs and the City of London and some local authority areas in the east and south east of England from Tier 3 to Tier 4; and amends the Christmas period exception to the gathering limits in Tiers 1, 2 and 3. This is to ensure that appropriate levels of intervention are made in the right places to manage Covid-19 outbreaks and help suppress the virus.

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 20 December 2020 and was published on www.legislation.gov.uk later that day. This instrument will come into force at 7am on 20 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, Tier 3 or Tier 4 should continue to be part of that area at least once every 14 days. The Secretary of State must review the need for the restrictions in the All Tiers Regulations at least once every 28 days, with the first review to be carried out by 30 December 2020.

- 3.3 On 30 September 2020 the Secretary of State made a commitment to the House of Commons that wherever possible for significant national measures with effect in the whole of England or UK-wide, votes would be held before such regulations come into force (Hansard cols 288-289). Owing to the speed with which the Government must take this emergency action to control the virus and save lives it is not possible for a debate to be held before these regulations come 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 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 Secretary of State for Health and Social Care, the Rt Hon Matt Hancock MP has made the following statement regarding Human Rights:
- “In my view the provisions of the Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) 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 protections 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 2020 a revised tiering system was introduced by the All Tiers Regulations. That instrument also allowed some temporary exceptions to gathering restrictions during the Christmas period (23 December to 27 December 2020) across all Tiers.

6.7 On 14 and 16 December 2020 the All Tiers Regulations were amended (The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020 (S.I. 2020/1533) and The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1572) to move some local authority areas between tiers. These changes came into force on 16 and 19 December 2020 respectively.

6.8 This instrument introduces a Tier 4 of restrictions:

Leaving home

6.9 Paragraph 1 of new Schedule 3A sets out a restriction on people leaving the place where they are living without reasonable excuse. Examples of reasonable excuses include the exceptions listed in paragraph 2. This does not apply to someone who is homeless.

6.10 The paragraph 2 exemptions include:

- For necessary purposes:
 - to obtain or access supplies and/or services from businesses and services that are open for oneself, one's household, or a vulnerable person;
 - to access banking services;
 - to take exercise or visit a public open space for the purposes of open air recreation;
 - to attend a place of worship;
 - to undertake activities in relation to buying, renting, selling or letting property;
 - to visit a member of members of a linked household (known as a 'bubble');
 - to collect food or goods that have been ordered for collection; or
 - to recycle or dispose of waste.
- For work, care and legal purposes;
- For the purposes of education and training;
- For emergency assistance;
- For accessing critical public services and services provided by voluntary or charitable services;
- So that elite athletes can train or compete;
- To attend to personal medical needs, or visit those giving birth or in hospital or care;
- To give respite or support to other people, or to access it for oneself;
- To visit a relative or friend on their deathbed, including if for their wedding, or to attend their funeral or a commemorative event following a person's death;
- To attend a wedding or civil partnership ceremony;
- To look after children (for example to take them to school, or to see their siblings, or to meet a prospective adopter) or to attend a parent and child group;
- To provide for the welfare of pets;

- To return home, where the person is on holiday immediately before this instrument comes into force;
- To visit a family member or friend in prison;
- To vote;
- To take part in a permitted outdoor sports gathering.

Restrictions on Gatherings

- 6.11 Paragraphs 3 and 4 set out the restrictions on the participation in gatherings. Gatherings of more than two people are prohibited in certain public outdoor places and gatherings of two or more people are prohibited in all other places, unless an exemption applies.
- 6.12 Paragraph 5 sets out the prohibition on organising a gathering of more than 30 people which is equivalent to an indoor rave, and it also prohibits the organisation or facilitation of gatherings of more than 30 people taking place in private dwellings, on vessels or in a public outdoor place. Gatherings in public outdoor places which are operated by or part of the premises used for the operation of a business or charitable or philanthropic institution, or part of the premises used for the operation of a public body, are not included in the offence. Gatherings organised by a business, a charitable or philanthropic institution, a public body or a political body are not included in the offence where that body has taken the required precautions. Gatherings exempt under paragraph 6 or 7 are also not covered by the offence.
- 6.13 Paragraphs 6 - 8 set out the exceptions to the restrictions on gatherings and include:
- Where all the persons in the gathering are members of the same household or linked households;
 - Where the gathering is reasonably necessary for certain critical activities, for example work, education, care or moving house;
 - Discharging legal obligations or participating in legal proceedings;
 - Where the gathering takes place in criminal justice accommodation;
 - Participating in a support group;
 - To provide respite care to a vulnerable or disabled person or for a short break to be provided in respect of a looked after child;
 - Attending a birth, permitted marriage, or funeral, commemorative event following a person's death or visiting a dying person;
 - Enabling elite athletes to train or compete;
 - Looking after children (for example, to take them to school, to see their siblings, to meet a prospective adopter or to attend a parent and child group);
 - Participating in communal worship; or
 - Taking part in an outdoor sports gathering.
- 6.14 Paragraph 9 sets out what a qualifying group is for the purposes of communal worship gatherings.

Business restrictions

- 6.15 Paragraph 10 requires the closure of a broad range of venues in the entertainment, leisure, and beauty sectors to close subject to certain restrictions. The full list of

businesses required to close is contained in Paragraph 15(2) and (7). The applicable exceptions are listed in paragraph 12.

6.16 Paragraph 11 imposes restrictions on hospitality businesses, restricting them to delivery, click and collect, drive through and takeaway, the following are exempted from closure requirements:

- Workplace canteens where there is no other practical alternative for workers;
- Cafes and canteens in hospitals, care homes, schools, educational accommodation for students attending higher education courses or provider of post-16 education or training, military/naval/air force or MoD facilities;
- Canteens at criminal justice accommodation or immigration detention accommodation;
- Cafes or canteens at a higher education provider where there is no practical alternative for staff and students at that institution to obtain food and drink; and
- Venues serving food for voluntary or charitable purposes.

6.17 Essential retail will remain open, as listed in paragraph 17 of the Schedule. Non-essential retail will be closed by paragraph 16 of the Schedule. Paragraph 16 also closes libraries and community centres and halls subject to some exceptions.

6.18 Paragraph 14 provides that holiday accommodation is closed, subject to certain exceptions.

Christmas

6.19 This instrument makes changes to the Christmas relaxation provisions previously made in the All Tiers Regulations. The period during which it is permitted to form a Christmas bubble of up to three households is reduced to the 25 December only. Those people in Tier 4 are not permitted to form a Christmas bubble.

Tier 4 areas

6.20 This instrument moves all 32 London boroughs and the City of London and some local authority areas in the east and south east of England from Tier 3 to being subject to the Tier 4 restrictions.

Obligations of Undertakings

6.21 Regulation 3 amends the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulation 2020 to impose requirements on businesses in the Tier 3 and Tier 4 areas to ensure that they take account of the gatherings restrictions in their Tier where accepting bookings or admitting people into their premises. The Regulations already contain equivalent provisions in relation to businesses in the Tier 1 and Tier 2 areas.

7. Policy background

What is being done and why?

7.1 The three tiers introduced on 2 December 2020 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 Cases are rising rapidly in the country, especially in London and the south east and east of England. A high proportion of the infections are due to the new variant of Covid-19, which has multiple mutations. In response to this, the introduction of Tier 4: Stay at Home has been identified as a means of managing the spread of the virus in certain parts of England by introducing more stringent restrictions. All 32 London boroughs and the City of London as well as some local authority areas in the east and south east of England will move out of Tier 3 and into the new Tier 4. The new information about the variant also necessitates a reduction in Christmas flexibilities nationally in order to reduce the risk of transmission.

Restrictions for Tier 4: Stay at Home

- 7.4 Restrictions in Tier 4 go further than the existing Tier 3 and introduce a ‘stay at home’ message in law, with some exemptions permitted.
- 7.5 They also restrict gatherings to one household, with exemptions. This is more restrictive because the virus is being transmitted at a higher level between households, especially in light of the discovery of a new variant of COVID-19. As a result, social contact needs to be further restricted to reduce transmission, thereby saving lives and protecting the vulnerable. The exemptions seek to minimise the negative impact this will have on individuals.
- 7.6 Hospitality businesses are restricted in the same way as in Tier 3. Additional businesses are closed including non-essential retail, hospitality and other entertainment and leisure venues. Holiday accommodation is also closed other than in a limited number of circumstances.
- 7.7 Places of worship will be open for communal worship and they will be allowed to open to support the gathering exemptions e.g., for funerals and related commemorative events. Outdoor sports facilities will be permitted to remain open.

Christmas

- 7.8 In Tiers 1, 2 and 3 people are only permitted to form a Christmas bubble on 25 December. People in Tier 4 are not permitted to form a Christmas bubble.

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.

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 this instrument 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 All Tiers Regulations must be reviewed by the Secretary of State at least every 28 days.
- 14.2 The allocation of areas into Tiers 2, 3 and 4 must be reviewed by the Secretary of State every 14 days.
- 14.3 The All Tiers Regulations that this instrument amends cease to have effect on 2 February 2021 when they 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 Charlette Holt-Taylor, 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 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.