

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, BUSINESS CLOSURE)
(ENGLAND) REGULATIONS 2020

2020 No. 327

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government 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 order 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 came into force at 2pm on 21 March 2020 and were published on www.legislation.gov.uk later that day. The Regulations cease 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. Further, the regulations themselves provide that they expire at the end of the period 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)

- 3.2 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 Secretary of State for Health and Social Care has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Business Closure) 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 (“the 2008 Act”), 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, for use in rare circumstances where voluntary cooperation cannot be obtained. 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 outside England and Wales.

6.4 A number of regulations under section 45C have been made, including equivalent regulations which apply in Wales (S.I. 2020/326).

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 (SARS-CoV-2).

6.6 This instrument enables the enforcement of the closure of all businesses within the categories listed from 2.00pm on 21 March 2020.

6.7 These businesses include all food and drink venues for consumption on site, excluding hospitals, schools, care homes, homeless services and military canteens; drinking establishments including bars, pubs and nightclubs, entertainment venues including cinemas, theatres, concert halls and bingo halls; museums and galleries; spas and massage parlours; casinos and betting shops; all indoor leisure and sports facilities including gyms.

6.8 The instrument includes provision that a person who contravenes this regulation commits an offence, punishable by a fine. It also includes provision that a person, designated by the Secretary of State to take such action as is necessary to enforce a closure or restriction imposed by the regulation.

6.9 Environmental Health, Trading Standards and police officers will monitor compliance with these regulations. Businesses that breach them will be subject to prohibition notices, and potentially unlimited fines.

6.10 The Secretary of State has made designations under regulation 4 (1) and (2) of the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (“the Business Closure Regulations”) in particular:

- a) Officers appointed by a local authority in England to enforce the Business Closure Regulations are designated by the Secretary of State, to take such action as is necessary to enforce a closure or restriction imposed by those regulations.
- b) Police constables in England are designated by the Secretary of State, to take such action as is necessary to enforce a closure or restriction imposed by the Business Closure Regulations.
- c) The local authority and the chief officer of police (for the area in which the business premises in question are located) are both designated by the Secretary of State as able to bring proceedings for any offence under the Business Closure Regulations.

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 Monday 16 March, the Government advised citizens across the country to begin working from home where possible, and to minimise social interactions, including by not visiting pubs, restaurants, clubs and theatres, with the aim of achieving 75% reduction in non-household contact. This decision reflected clinical advice that the spread of infection is likely where people are in close contact for more than 15 minutes.
- 7.3 Early data, including from Transport for London and Google, on compliance is mixed. Public polling data showed that social distancing behaviours were increasing, but slowly. NHS capacity, whilst expected to be manageable across England in the coming weeks, is already stretched in London where critical care occupancy stands at 79 per cent.
- 7.4 Further measures were therefore deemed necessary to increase compliance with the guidance and limit the further spread of the disease, by closing all businesses and venues in which activities would lead to prolonged social contact. Based on levels of uptake of the Government’s earlier guidance, it was considered necessary to require business closures through these Regulations.
- 7.5 There are two main reasons to introduce these new Regulations. Firstly, that it is critical for the UK Government to take all reasonable steps to prevent the community transmission of disease, where possible. Severe acute respiratory coronavirus 2 (SARS-CoV-2) was recently declared by World Health Organisation a Public Health Emergency of International Concern. It is also essential that the Government retains public trust in its public health protection measures. This level of trust will be critical to ensuring that the public continues to engage and comply with interventions designed to protect individuals and communities if transmission of the virus within the UK increases in the coming weeks.
- 7.6 We note that there are other global precedents for these types of powers and actions. France, Italy and Spain have each recently mandated the closure of non-essential businesses and other venues to limit community spread of severe acute respiratory coronavirus 2 (SARS-CoV-2).

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.

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 will include information in relation to closures under these regulations.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because of the need to make and lay the instrument urgently to encourage self-isolation and minimise the risks to public health arising from Covid-19.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does include a statutory review clause.

14.2 The instrument ceases to have effect at the end of the period of six months beginning on the day on which it comes into force. Prior to its expiry, the Secretary of State must review the need for restrictions imposed by these regulations every 28 days. The first review will be carried out before the expiry of the period of 28 days starting with the day after the day on which these regulations are made.

15. Contact

15.1 Michelle Warbis at the Ministry of Housing, Communities and Local Government. Telephone: 07958611482; Email: michelle.warbis@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Emran Mian, Director General for Decentralisation and Growth at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Matt Hancock at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.