

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

2020 No. 447

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for 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 clarifying a number of public health measures under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (S.I. 2020/350) (“the Restrictions Regulations”) 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 11.00 a.m. on 22 April 2020 and were published on www.legislation.gov.uk later that day. The Regulations amend the Restrictions Regulations. They will have the same review period as those Regulations. Further, they will expire at the end of six months beginning with 26 March 2020 (the day on which the Restrictions Regulations 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 This instrument applies to England only.
- 3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of:
 - the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament;

- the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales; and
 - the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly.
- 3.3 The Department has reached this view because it considers that the primary purpose of this instrument relates to the protection of public health, which is within the devolved legislative competence of the three Devolved Administrations.

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 Matt Hancock MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (England) (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 (“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 the Regulations (S.I. 2020/327) and the Restrictions Regulations (S.I. 2020/350) which revoked and replaced them.
- 6.5 This instrument corrects an error in the Restrictions Regulations, namely corrects the name of the Department for Work and Pensions in regulation 6(2)(i)(iii).
- 6.6 The instrument also makes a number of changes to the Restrictions Regulations to clarify and better enable the public health measures in those Regulations to achieve the intended purpose of reducing public health risks posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). In particular:

- Regulation 3(4) of the Restrictions Regulations is amended to ensure that prosecutions can be brought (or continued) in respect of breaches of measures in those Regulations, where those measures have subsequently been lifted by a direction.
- Regulation 5(8) of the Restrictions Regulations is amended to clarify burial grounds, including those surrounding crematoriums, can remain open.
- Regulation 6(1) is amended to put beyond doubt that a person commits an offence if they remain outside of the place where they are living without reasonable excuse, having left it for a permitted reason.
- Regulation 6(2) is amended to clarify that it is a reasonable excuse to leave, or be outside of, the house to
 - a. access all types of money service businesses including savings clubs and international money transfer businesses.
 - b. visit a burial ground, garden of remembrance or grounds surrounding a crematorium to pay respects to a family member or friend
- Regulation 8(5)(a) is a clarificatory amendment to provide that where a child is contravening regulation 6(1), enforcement officials (police officers) should instruct the responsible adult of the child to escort the child to the place where the child is living.
- Regulation 8(10) is also a clarificatory amendment. In particular new paragraphs (10A) and (10B) clarify the enforcement action which may be taken against persons accompanying a child who is gathering in contravention of regulation 7 (as it may for a person accompanying a child who is outside of the place they live in contravention of regulation 6).
- Regulation 10 is amended to clarify that a fixed penalty notice can be issued to a person aged 18 and over, rather than over 18. It is also amended to allow a designated officer (not just a local authority) to be specified as the person to whom a fixed penalty is to be paid. It is intended that the Chief Executive Officer of ACRO Criminal Records Office will be designated, to facilitate effective administration of FPNs.
- Regulation 10 is also amended to provide that fixed penalty notices can also be issued and collected by county councils.
- Schedule 2 is amended:
 - a. to ensure outdoor swimming pools are closed (in addition to indoor pools)
 - b. to ensure livestock markets and auctions are exempt from closure,
 - c. to clarify types of money service businesses which can remain open includes savings clubs and international money transfer businesses.

6.7 The police and local authorities will continue to monitor compliance with the regulations, including the amendments set out in this S.I.

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 2020, 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 a 75% reduction in non-household contact. This decision reflected clinical advice that the spread of infection is likely where people are in close contact with people carrying the disease 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 and the Midlands. Legislative measures were taken with the making on 21 March 2020 of the Health Protection (Coronavirus, Business Closure) Regulations 2020 (S.I. 2020/327).
- 7.4 It was later considered necessary to increase compliance with the working at home and social distancing guidance in order to limit the further spread of the disease, therefore the Prime Minister addressed the nation on 23 March 2020 to announce the need for further restrictions. The Restrictions Regulations provided a consolidated set of the previous restrictions and closures, extending them and requiring persons to stay home by prohibiting people from leaving the place they live except for very limited purposes (such as shopping for basic necessities, exercise, to seek medical assistance or to provide care or assistance) and banning public gatherings of more than two people. These came into force at 1pm on 26 March 2020.
- 7.5 The Restrictions Regulations sought to prevent the community transmission of disease, Severe acute respiratory coronavirus 2 (SARS-CoV-2), where possible and to enable the Government to retain 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.
- 7.6 This Statutory Instrument corrects an error in the Restrictions Regulations. The instrument also makes a number of other amendments set out above in paragraph 6.6. These amendments respond to concerns as to effective implementation raised by key stakeholders, such as government departments, trade bodies, county councils, and the National Police Chief’s Counsel, following introduction of the measures.

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 There are no plans to consolidate the Regulations.

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 movements and gatherings under these Regulations.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies has not yet been fully assessed. However, Office of National Statistics data indicates that the closure provided for under the Restrictions Regulations would affect 13.1% of the UK's business units. The amendments are expected to have a negligible effect on this figure. Additional analysis is being carried out to assess the economic impact of the measures related to business and venues closures, considering emerging data since the Regulations came into force. This suggests sectors such as consumer goods/services, hospitality, tourism, construction, and manufacturing are experiencing the most significant impact relative to other sectors.
- 12.2 The impact on the public sector has not yet been fully assessed.
- 12.3 An Impact Assessment has not been prepared for this instrument given the limited time following the speed at which they were implemented.

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 This instrument amends the Restrictions Regulations and the expiry and review provisions set out in that instrument will continue to apply: the Regulations cease to have effect at the end of the period of six months beginning on 26 March 2020 (the day on which the Restrictions Regulations came into force). Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by these Regulations every 21 days. The first review was carried out by 16th April 2020 and the next review will be carried out by 7 May 2020.

15. Contact

- 15.1 Thomas Dalliston at the Ministry of Housing, Communities and Local Government.; Email: thomas.dalliston@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Emran Mian, Director General at the Ministry of Housing, Communities and Local Government at the Ministry of Housing, Communities and Local Government. Email: Emran.Mian@communities.gov.uk can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Matt Hancock MP, Secretary of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.