

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND)
(AMENDMENT) (NO. 3) REGULATIONS 2020

2020 No. 558

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 makes provision amending a number of public health measures under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (S.I. 2020/350) (“the Restrictions Regulations”) to ensure a proportionate and appropriate response to 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 Regulations without a draft being laid and approved so as to ensure that only proportionate and necessary public health measures remain in place 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 12.01 a.m. on 1 June 2020 and were published on www.legislation.gov.uk on 31 May 2020. The Regulations amend the Restrictions Regulations for the third time. 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. The Regulations further amend the requirement for review of the restrictions and requirements in the Restrictions Regulations such that they now require review within every 28 days, with the first such review taking place within 28 days from the last review, i.e. by 25 June. The amended Restrictions Regulations will still expire at the end of six months beginning with 26 March 2020 (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 This entire instrument applies to England only.

- 3.3 In the view of this 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.
- 3.4 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) (No 3) 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 Health Protection (Coronavirus, Business Closure) (England) Regulations (S.I. 2020/327), the Restrictions Regulations (S.I. 2020/350) which revoked and replaced S.I. 2020/327, the first amendments to the Restriction Regulations (S.I. 2020/447) and the second amendments to the Restriction Regulations (S.I. 2020/500).

- 6.5 The instrument makes a number of changes to the Restrictions Regulations to enable and support gradual relaxation of restriction measures whilst amending, but crucially, keeping in place public health measures to continue to reduce public health risks posed by the incidence and spread SARS-CoV-2. The relaxations will facilitate the country's economic recovery by opening certain non-essential retail premises operating mainly outdoors as supported by health data. The relaxations will also enable certain important aspects of public and private life to restart in a controlled manner. The amendments to the Restrictions Regulations being made include:
- 6.5.1 Regulation 1 is amended to define what is meant by the term 'elite athlete' within the regulations.
 - 6.5.2 Regulation 1 is amended to define childcare within the regulations.
 - 6.5.3 Regulation 3 is amended to change the review period of the regulations to every 28 days with the next review due by 25 June.
 - 6.5.4 Regulation 4 (5) is amended to allow indoor fitness studios, gyms, sports courts, indoor or outdoor swimming pools and other indoor leisure centres or facilities to remain open for training for elite athletes only.
 - 6.5.5 Regulation 5 is amended to allow accommodation to be provided to; those required to self-isolate by law; and to elite athletes, their coaches, and a parent or legal guardian of an elite athlete who is under the age of 18 at the time of the training or competition, where necessary for the purposes of training or competition.
 - 6.5.6 Regulation 5 is amended to allow community centres and places of worship to open for provision of early years childcare provided by a person registered on the Early Years Register under Part 3 of the Childcare Act 2006.
 - 6.5.7 Regulation 6 which previously contained a restriction on leaving home without reasonable excuse is substituted by a Regulation to provide that no person may stay overnight at any place other than the place where they are living except with reasonable excuse, specific examples of which are given.
 - 6.5.8 Regulation 7 is amended to state that no person may participate in a gathering which is in outdoor space (public or private) with more than six people from different households, subject to specific exceptions.
 - 6.5.9 Regulation 7 is amended to state that there can be no indoor public gatherings of 2 people or more from different households, subject to specific exceptions.
 - 6.5.10 Regulation 7 is amended to define what is meant by a gathering.
 - 6.5.11 Regulation 8 is amended to update the enforcement powers as a result of the amendments to regulations 6 and 7.
 - 6.5.12 Schedule 2 is amended:
 - a. To allow all outdoor markets to open
 - b. To allow vehicle showrooms and other premises, including outdoor areas used for the sale or hire of caravans, boats, or any vehicle which can be propelled by mechanical means to open.
 - c. To allow amenities for water sports, stables, shooting and archery venues, golf courses and driving ranges to open.

- d. To add the following categories of venues which must close: indoor games, recreation and entertainment venues; theme parks and adventure parks and activities; social clubs; model villages; zoos, aquariums, and safari parks; visitor attractions at farms; indoor attractions at landmarks including observation wheels and viewing platforms; and indoor attractions at visitor attractions such as botanical or other gardens, biomes or greenhouses, and heritage sites or film studios.
- 6.6 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 were 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, was stretched in London and the Midlands. In response, 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 continues to be critical to ensuring that the public continues to engage and comply with interventions.
- 7.6 On 21 April 2020 amendments were made to the Restriction Regulations to correct an error and to make a number of minor and clarificatory changes to those regulations which addressed concerns as to effective implementation raised by key stakeholders,

such as government departments, trade bodies and county councils following introduction of the measures. These amendments came into force at 11am on 22 April 2020.

7.7 On 12 May 2020 further amendments and clarifications were made to respond to new issues, including ensuring key services such as, waste and recycling centres, and hotels for key workers remained accessible where required. A number of small relaxations of the restrictions such as reopening garden centres, allowing individuals to meet outside with 1 member of another household, and allowing access to outdoor sports courts, were made in line with advice from scientific advisors.

7.8 This statutory instrument makes a number of further amendments set out above in paragraph 6.5. These amendments make amendments in line with Step 2 of the government's recovery strategy for the Covid-19 pandemic. These include relaxing the restrictions on outdoor gatherings and reopening certain forms of outdoor retail. A definition of gathering has also been provided. Following issues raised by stakeholders such as government departments and external bodies, other amendments include enabling elite athletes to make use of training facilities. The stay at home Regulation (6) has been removed, though it remains the case that people cannot stay away from home overnight save for defined circumstances. The list of closed businesses and venues in Schedule 2 has been added to, to account for this change. The approach has been considered by scientific advisors who agree that they are likely to have an acceptably small impact on transmission rates.

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 be updated to include information in relation to closures and restrictions on movements and gatherings under these Regulations.

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 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).
- 14.2 Prior to its expiry, the Secretary of State must now review the need for restrictions and requirements imposed by these Regulations every 28 days. Previously, reviews were required every 21 days and were carried out by 16 April 2020, 7 May 2020 and 28 May 2020 respectively. The next review will be carried out by no later than 25 June 2020.

15 Contact

- 15.1 The Closures Team at the Ministry of Housing, Communities and Local Government; Email: ClosuresTeam.Covid19@communities.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. 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.