

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND)
(AMENDMENT) (NO. 4) REGULATIONS 2020

2020 No. 588

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). Certain provisions in the Regulations came into force at 00.01 a.m. on 13 June 2020. Namely these are: regulation 1 of this instrument, the amendments to the interpretation provisions in regulation 1 of the Restrictions Regulations, the amendment to regulation 5, allowing individual prayer in places of worship; the amendment to regulations 6 and 7 and insertion of regulation 7A, to enable those who have formed a bubble with a linked household to stay overnight at the home of that linked household and to gather together, the provisions expressly providing for birth, end of life and other compassionate visits and the amendments to the enforcement provisions in regulations 9 and 10 of the Restrictions Regulations. The remaining provisions of these Regulations come into force at 00.01 a.m. 15 June 2020. The Regulations amend the Restrictions Regulations for the fourth time. These 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 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. 4) 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), the second amendments to the Restriction Regulations (S.I. 2020/500), and the third amendments to the Restriction Regulations (S.I. 2020/558).
- 6.5 This 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 non-essential retail premises. The relaxations will also enable certain important aspects of public and private life to continue in a controlled manner. The amendments to the Restrictions Regulations being made include:
- 6.6 Regulation 4: To enable those businesses or services which are required to be closed under Part 2 of Schedule 2 to carry on business in a shop or from a restaurant or café (for takeaway service only) which is self-contained and can be accessed directly from outside the premises.
- 6.7 Regulation 5: Amended to allow for reopening of non-essential retail. As amended regulation 5(1) relates solely to libraries. Libraries may not reopen except for click and collect services but may open a shop or café or restaurant (for takeaway service only) which is separate from the premises and accessible from outside. As the business closure provisions (apart from libraries) in regulation 5(1) have been removed Part 3 of Schedule 2 (which lists exceptions to those business closure provisions) has also been removed.
- 6.8 Regulation 5: To allow private prayer by individuals in places of worship and to enable self-contained shops in places of worship which can be accessed from outside the premises to open and cafes and restaurants (which meet the same conditions) to offer takeaway service.
- 6.9 Regulation 5: To allow the holding of indoor markets in community centres.
- 6.10 Regulation 6: To enable those who have formed a bubble with a linked household to stay overnight at the home of that linked household.
- 6.11 Regulation 6: To enable a person to stay away from home overnight where it is necessary to attend a birth or for compassionate visits as permitted by regulation 7.
- 6.12 Regulation 7: Expressly providing that people can gather for birth and end of life, visit those in hospitals, hospices and care homes and to support someone with a medical appointment.
- 6.13 Regulation 7: To provide an exception to the gatherings limit for members of a household or linked households attending a drive-in cinema in a car or other vehicle.
- 6.14 Regulation 7: To enable single occupancy households (those with only one adult member) to gather together with the members of another household (“a linked household”) with which they have formed a support bubble.
- 6.15 Regulation 7A is inserted to make provision setting out the circumstances in which linked households may form a bubble.

- 6.16 Regulation 9: To clarify that obstruction of local authority officers and any other relevant person under regulation 8 is an offence
- 6.17 Regulation 10: To clarify that a local authority may designate persons to issue fixed penalty notices for the offence of obstruction under regulation 9(2).
- 6.18 Schedule 2 is amended:
- a. To allow betting shops to open
 - b. To allow retail galleries to open.
 - c. To allow the outdoor areas of zoos, safari parks, aquariums and outdoor visitor attractions at farms or other animal attractions to open.
 - d. To allow drive-in cinemas to open
 - e. To allow auction houses to open
 - f. To allow shops to open at attractions such as botanical gardens, heritage sites and landmarks such as observation wheels.
- 6.19 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 On 1 June 2020 several amendments were made in line with Step 2 of the government's recovery strategy for the Covid-19 pandemic. This included relaxing the restrictions on outdoor gatherings and reopening certain forms of outdoor retail. In response to issues raised by stakeholders such as government departments and external bodies, other amendments included, enabling elite athletes to make use of training facilities. The stay at home Regulation 6 was also removed, although it remained the case that people could not stay away from home overnight except for defined circumstances. To account for this, the list of closed businesses and venues in Schedule 2 was added to.
- 7.9 Following the amendments made on 1 June 2020, this statutory instrument makes a number of further relaxations set out above in paragraph 6.5, in line with Step 2 of the government's recovery strategy for the Covid-19 pandemic. These include opening all non-essential retail, except for businesses where the transmission risk is not considered to be sufficiently low, such as businesses providing close-contact services. It also includes permitting individual prayer in places of worship and enabling single occupancy households to form 'support bubbles' with one other household.
- 7.10 Following issues raised by stakeholders such as external bodies, other amendments include enabling outdoor areas of aquariums, visitor farms, zoos and safari parks to open, as well as drive-in cinemas. The amendments also clarify that food and drink establishments, including cafes, that operate within businesses or attractions that are required to close, can only open for takeaway and delivery services if they are self-contained units which can be accessed from outside the premises. The same is true for retail, such as self-contained gift shops which can be accessed from outside business or venues that continue to be closed. Indoor markets are permitted to be hosted in community centres. Auction houses and betting shops are also allowed to open. The amendments do not allow libraries to open to the public but continues to permit them to operate click and collect services. Libraries may also open shops and restaurants cafes (takeaway service only) which are in self-contained units accessible from outside the premises.

- 7.11 The amendments also expressly provide that close family, members of the same household and friends can gather to visit people near end of life in all settings, to visit an inpatient in hospital, hospice or resident of a care home and support someone attending a medical appointment. In addition, it expressly provides that that a women’s birth partner can attend hospital or someone’s home to support her for the birth. This represents an exception to restrictions on indoor gatherings.
- 7.12 The regulations in relation to gatherings and overnight stays away from home are amended to allow those who have formed linked households to gather together indoors and to stay at each others’ homes. “Linked households” or “bubbles” may be formed between a household which has only one adult member and one other household (of any number of members) where all adults in both households agree (see regulation 7A).

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.