

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (NO. 2)
(ENGLAND) REGULATIONS 2020

2020 No. 684

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 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 regulations 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 will come into force at 12.01 am on 4 July except in relation to public houses, bars and social clubs and associated provisions which come into force at 6am on 4 July 2020 and will be published on www.legislation.gov.uk as soon as made and at the latest 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 and to the territorial water adjacent 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 Matt Hancock MP has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (No. 2) (England) 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 which this instrument is replacing (S.I. 2020/350), and the subsequent four sets of amending regulations (S.I. 2020/447, S.I. 2020/500, S.I. 2020/558 and S.I. 2020/588). S.I. 2020/350 had replaced S.I. 2020/327.

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 The instrument revokes the previous regulations ‘the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“the first restrictions regulations”) and the subsequent four sets of amending regulations (“the amending regulations”)’. As there have been four sets of amending regulations in relation to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and further significant amendments are being made to the restrictions, it has been decided to revoke the first restrictions regulations, and the amending regulations and to consolidate the remaining provisions in these regulations. Regulation 2 of the first restrictions regulations (which contains saving provisions in respect of offences under S.I. 2020/327) is not revoked and remains in force. This instrument imposes restrictions to require the closure of certain businesses and restrictions on others and revised restrictions on gatherings of persons from 4 July 2020. By revoking the first restrictions regulations, this instrument also removes certain restrictions on businesses and on movement of persons and amends other restrictions on gatherings of persons.

- 6.7 Regulation 4 and Schedule 2 requires the closure of nightclubs; dance halls, discotheques and any other venue which opens at night, has a dance floor or other space for dancing by members of the public; and provides music, whether live or recorded, for dancing, (however, a business is not considered one of these aforementioned venues if they no longer provide music or dancing); sexual entertainment venues and hostess bars are also required to close. Casinos are required to remain closed. It requires that certain close contact services venues remain closed including nail bars and salons, tanning booths and salons, spas and beauty salons, massage parlours, tattoo parlours, and piercing services but allows hairdressers and barbers to reopen. Certain leisure and recreational facilities must also remain closed. This includes indoor skating rinks, indoor and outdoor swimming pools, water parks, indoor play areas and soft play areas, indoor fitness and dance studios, indoor gyms and sports courts and facilities, and bowling alleys. The Regulations (Regulation 4 and Schedule (2)) prevent conference centres and exhibition halls from opening for the purpose of hosting a conference, trade show or exhibition, with the exception of a conferences or event which is attended only by employees of the person who owns or is responsible for running the conference centre or exhibition hall.
- 6.8 Despite the closures outlined above, all businesses and venues are able to host blood donation sessions, and to open for training for elite sportspersons or professional dancers and choreographers as required.
- 6.9 Regulation 4(5) allows the person responsible for the businesses or services set out above to operate a shop, restaurant or café, which is separate to the premises of a closed business or venue, and to make deliveries and respond to orders for goods and services. Shops, cafes or restaurants are separate if they are both in a self-contained unit, and it is possible for a person to enter from the outside the premises.
- 6.10 Regulation 5 prohibits gatherings of more than 30 people which take place in a private dwelling (including any garden, yard, passage, stair, outhouse or other appurtenance of the dwelling). Hotels and certain other holiday accommodation, care homes, educational, military and prison accommodation are not included in the definition of “private dwelling”. Gatherings of more than 30 people are also prohibited on ships and boats, other than those used for public transport. Subject to the exceptions set out in regulation 5(3), gatherings of more than 30 people are also prohibited in a public outdoor place which falls within the definition set out in Regulation 5(2): land which is not operated by a business, a charitable, benevolent or philanthropic institution or a public body as a visitor attraction or part of premises used for the operation of a business, charitable, benevolent or philanthropic institution or public body. Regulation (5)(3) permits gatherings of more than 30 people if in the case of a gathering in a public outdoor place or on a boat or ship, the gathering is held by the organisations listed under 5(2) or a political body and the organiser has carried out a risk assessment which would satisfy the requirements under the health and safety for work regulations, whether or not the organiser is subject to those regulations and has taken all reasonable measures, taking into account that risk assessment, to limit the risk of transmission of the coronavirus. Gatherings in private dwellings, public outdoor spaces or on boats or ships are excluded where the persons in the gathering are elite sportspersons, their coaches, and parents (if a minor), and the gathering is necessary for training or competition. Gatherings of more than 30 people are also permitted when reasonably necessary for work, voluntary or charitable services; to provide emergency assistance; to avoid injury or illness or escape from harm; for

education or childcare (or as part of supervised activities provided for children), or to fulfil a person's legal obligation.

- 6.11 Regulation 5 also prohibits gatherings of more than 30 people indoors which would meet the definition of a rave in the Criminal Justice and Public Order Act 1994 if they took place in open air. This prohibition is not subject to any exceptions.
- 6.12 Regulations 4 and 5 do not apply in relation to those areas to which the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 apply.
- 6.13 Regulation 6 grants the Secretary of State the power, after consulting the Chief Medical Officer ("CMO") or Deputy CMO, to direct the restriction or prohibition of access to a specified public outdoor place or public outdoor places of a specified description, when proportionate, and in order to prevent, protect against, control or provide a public health response to the incidence or spread of Covid-19. The Secretary of State also has the power to revoke or vary the direction. Any direction must: specify the area restricted so that boundaries are determined; state the time and date restrictions come into effect and are lifted; give details of the right of appeal to a magistrates' court, and the time within which such an appeal may be brought; be published on www.gov.uk in the Gazette and in such other way as appears likely to bring it to the attention of persons likely to be affected. The need for a restriction must be reviewed at least once every seven days, and communicated to the Local Authority(ies) where the restricted area falls within, or partially within, their boundaries, and to the appropriate authority when the direction applies to Crown land. These Local Authorities must take reasonable steps to bring the restriction or prohibition of access to the attention of those affected. Both Local Authorities and owners or others responsible for the area must take steps to restrict or prevent public access, and no person may enter or remain in the restricted area, unless they have a reasonable excuse. The non-exhaustive list of reasonable excuses includes the persons being the owner or occupier of land or premises within the restricted area, to gain access to the place a person is living, to avoid injury or escape risk of harm, for child contact arrangements, to fulfil a legal obligation or participate in legal proceedings or it being reasonably necessary for work purposes, provision of voluntary or charitable services, to facilitate a house move, to provide care to a vulnerable person or emergency assistance.
- 6.14 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 may take such action as is necessary to enforce a closure or restriction imposed by the regulation including issuing a prohibition notice requiring a person not to continue to contravene a requirement of the Regulations.
- 6.15 Environmental Health, Trading Standards and police officers will monitor compliance with these regulations. Businesses that breach them can be subject to prohibition notices, and fines.
- 6.16 The instrument also provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by authorised persons (constable, police community support officer, or person designated by a local authority or the Secretary of State) to persons 18 or over whom they reasonably believe has committed an offence under the Regulations. The amount of the fixed penalty is £100, reduced to £50 if paid within 14 days. If a person has already received a fixed penalty notice, under these regulations or those which it revokes, the

amount of the fixed penalty is £200, doubling on each further repeat offence up to a maximum of £3,200 and there will be no discount for repeat offenders paying within 14 days.

- 6.17 The Secretary of State has designated Local Authority officers under regulations 8(12)(a), 10(11) or 11 of the first restrictions regulations and these designations will continue for the purposes of the new 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 21 March 2020, the government took legislative measures with the making of the Health Protection (Coronavirus, Business Closure) Regulations 2020 (S.I. 2020/327). This decision sought to prevent the community transmission of disease, Severe acute respiratory coronavirus 2 (SARS-CoV-2). In order to limit the further spread of the disease, the Prime Minister announced further restrictions which came into force at 1pm on 26 March 2020, prohibiting people from leaving the place they live except for very limited purposes and banning public gatherings of more than two people.
- 7.3 On 22 April 2020 and on 13 May 2020, amendments to the first restrictions regulations came into force to make a number of minor and clarificatory changes to those regulations which addressed concerns raised by key stakeholders. This included ensuring key services such as, waste and recycling centres, remained accessible where required, and reopening garden centres.
- 7.4 In line with Step 2 of the government’s recovery strategy for the Covid-19 pandemic, several amendments were made in June 2020. This included reopening all non-essential retail, except for businesses and venues where the transmission risk was still too high, as well as outdoor areas of visitor and animal attractions. The Regulation which required people to stay at home was also removed, with a relaxation of the restrictions on gatherings and overnight stays for single adult occupancy households and their ‘support bubble’. There is recognition that these changes may lead to an increase in transmission rates and will continue to be kept under review.
- 7.5 As part of Step 3 of the government’s recovery strategy for the Covid-19 pandemic, the Government announced the opening of the hospitality sector from 4 July. The Prime Minister also announced on 23 June 2020 further relaxations in relation to gatherings to come into force in parallel. These further relaxations are possible due to the decrease in the transmission rate and decreasing rates of hospitalisation and fatalities. The Chief Medical Officers have downgraded the UK’s Covid Alert Level from four to three, meaning that we no longer face a virus spreading exponentially though it remains in general circulation. These regulations are supported by detailed Government guidance, across all affected sectors, as well as providing more information to the public about how to stay safe and reduce the transmission risk.
- 7.6 The provisions made in the new Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 will come into force on 4 July. These Regulations

replicate some provisions from the first restrictions regulations, which have been revoked, and make several new provisions.

- 7.7 Revoking and replacing the previous regulations with this new instrument increases the permissiveness of the regulatory regime, enabling the reopening of indoor and outdoor public houses, restaurants, cafes and bars, in line with Step 3 of the government's plan. It also permits the reopening of holiday accommodation, and several leisure and recreational businesses and attractions.
- 7.8 However, venues where individuals are expected to be at close proximity such as, nightclubs, gyms and bowling alleys, as well as dance studios and sports courts, are required to remain closed due to the increased risk of aerosol transmission and the likelihood of prolonged exposure. While this instrument requires the majority of close contact services to remain closed, hair salons are permitted to reopen recognising that these are lower risk than other close contact services as they involve limited face to face contact.
- 7.9 As infection rates have decreased, the regulations are more permissive in relation to gatherings, with restrictions on gatherings of more than 30 individuals in private dwellings, on a ship or boat (other than for public transport) or unmanaged outdoor spaces, save for a small number of exceptions and a prohibition on indoor raves involving more than 30 individuals.
- 7.10 Recognising that over recent weeks certain areas have become particularly crowded, which poses a risk to community transmission, these Regulations also provide the Secretary of State with the power to restrict or prohibit access to a specified public outdoor place or public outdoor places of a specified description in order to prevent, protect against, control or provide a public health response to the incidence or spread of Covid-19.

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 These Regulations revoke and replace the first restrictions regulations and amending 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 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 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.

14.3 Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by these Regulations every 28 days. The first review will be carried out by 31 July 2020.

14.4 Parliament will be informed of any changes to be made to these Regulations following each review, by way of a written or oral statement.

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 at the Ministry of Housing, Communities and Local Government Telephone: 07974 736562; 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.