

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

2020 No. 719

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). Certain provisions in the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment). Regulations came into force at 00.01 on 4 July 2020 except in relation to public houses, bars and social clubs, and associated provisions which came into force at 06:00 on 4 July 2020.
- 3.2 This instrument will amend the Regulations for the first time. These provisions will come into force at 00.01 on 13 July 2020 except in relation to outdoor swimming pools and outdoor waterparks and associated provisions, which come into force at 00.01 on 11 July 2020. 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 Regulations will still expire at the end of six months beginning with 04 July 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)

- 3.3 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 have been made pursuant to the power in section 45C, including the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations (S.I. 2020/684) which this amendment pertains to.

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 makes a number of changes to Schedule 2 (Businesses subject to Closures) of the Regulations. It makes a change to paragraph 12 so that outdoor swimming pools and waterparks (excluding indoor facilities at water parks) are able to open. Indoor swimming pools, including indoor swimming pools at spas, and indoor facilities at water parks, such as fountains, will remain closed.

6.7 This instrument makes a further change to Schedule 2 (the numbers in brackets reference the corresponding Schedule 2 paragraph numbers) to allow the following businesses and venues to re-open on 13 July:

- a) nail bars and salons (5);
- b) Tanning booths and salons (6);
- c) Spas, and beauty salons. For these purposes, “beauty salon” includes any premises providing beauty services including cosmetic, aesthetic, and wellness treatments (7);

- d) Massage parlours (8);
 - e) Tattoo parlours (9);
 - f) Body and skin piercing services (10);
- 6.8 Although the amendment will enable these venues to reopen, supporting guidance will be published to advise against the most high risk close-contact activities taking place.
- 6.9 The instrument changes regulation 4(2) to reflect the opening of outdoor swimming pools.
- 6.10 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 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 12 May 2020, amendments to the Restriction 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 occupancy households. 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 were possible due to the continuing falling of the transmission rate and decreasing rates of hospitalisation and fatalities. This was in line with the downgrading of the UK’s Covid Alert Level by The Chief Medical Officers four to three, meaning that we no longer face a virus spreading exponentially though it remains in general circulation.

- 7.6 These amendments will increase the permissiveness of the restrictions regime by allowing outdoor swimming pools and waterparks to reopen on 11 July, and then close contact services to reopen from 13 July.
- 7.7 The decision to enable the re-opening of outdoor swimming pools and waterparks on 11 July has been taken based on SPI-M's previous statement that permitting outdoor contact with other members of other households or other bubbles, while continuing to maintain a 2m distance, would have no more than a very small impact on overall transmission rates. Furthermore, there has been evidence to show that UV exposure can reduce the half-life of the virus and ventilation can reduce the risk of aerosol transmission. This evidence has guided us to recommend opening outdoor settings where multiple households are gathering more quickly than indoor ones.
- 7.8 The decision taken to enable the reopening of close contact services on 13 July is based on an assessment that Covid-19 Secure mitigations mean that existing restrictions are no longer necessary.
- 7.9 The amendments are supported by detailed Government guidance, providing advice to owners/operators on working safely across all affected sectors, as well as providing information to the public about how to stay safe and reduce the transmission risk.

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 easements under this amendment.

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 This instrument amends the Restrictions Regulations (No.2) 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 04 July 2020 (the day on which the Restrictions Regulations came 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.

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.