

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

2020 No. 750

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 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 18 July 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. When calculating the period of 28 days, no account is taken of any period where both Houses of Parliament are adjourned for more than 4 days. Further, the regulations themselves provide that they expire at the end of 17 January 2021.

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.

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) (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 or enable the imposition of 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 This instrument will give Local Authorities powers relating to the control and prevention of coronavirus. They can be used if there is a serious and imminent threat to public health. Any direction issued must be necessary and proportionate to prevent, protect against, control or provide a public health response to the incidence or spread of coronavirus in the local authority’s area. Under regulation 2(4), the local authority must first have regard to advice given by its director of public health (or its interim or acting director of public health), before determining whether to give a direction as set under Regulations 4, 5 or 6 (as set out below). Local Authorities are defined under regulation 1 as: a county council in England; a district council in England for an area for which there is no county council; a London borough council; the Common Council of the City of London in its capacity as a local authority, and the Council of the Isles of Scilly.
- 6.5 Regulation 2 also requires a local authority that gives a direction under Regulation 4 (1), 5(1) or 6(1) to notify the Secretary of State soon as is reasonably practicable after the direction is given. The local authority must also review the need for the direction at least once every 7 days, to assess whether the conditions for issuing a direction (relating to a threat to public health and a direction being a necessary and proportionate means of preventing, protecting against, controlling or providing a public health response to the incidence or spread of coronavirus in the local authority’s area), are still met. If these conditions are not met, the direction must be revoked. If the threat still remains but the measures in the direction are found to be no longer necessary or proportionate, the local authority must either revoke without replacement, or revoke and replace the direction with one containing measures that are necessary and proportionate. This must be done with regard to any advice of its director of public health (or its interim or acting director).

- 6.6 Regulation 3 enables the Secretary of State to direct a local authority to use its direction-making powers under the Regulations where it is considered there is a serious and imminent threat to public health. In doing so the Secretary of State must consider that any direction issued by the local authority as directed by the Secretary of State is necessary and proportionate to prevent, protect against, control or provide a public health response to the incidence or spread of coronavirus in the local authority's area. If the Secretary of State considers that there is no serious and imminent threat to public health, the Secretary of State must direct the local authority to revoke any relevant direction they have given. The Secretary of State must direct a local authority to revoke or revoke and replace a direction if they consider a direction given by a local authority under these Regulations is no longer necessary or proportionate in controlling the incidence or spread of coronavirus in the local authority's area. The Secretary of State must consult the Chief Medical Officer or one of the Deputy Chief Medical Officers of the Department of Health and Social Care before giving a direction.
- 6.7 Regulation 4 sets out the powers to give directions relating to the closure of, or limiting access to, individual premises. Under this regulation, a local authority may impose prohibitions, requirements or restrictions in relation to the entry and exit from, or location of people within, specified premises in its area.
- 6.8 Reg 4(3) sets out that a local authority may not give a direction under this regulation to any business or premises that forms part of essential infrastructure, any premises consisting of vehicles used for public transport or the carriage or haulage of goods, or any vessel which is not public transport but where the direction would be likely to have the effect of preventing a change-over of crew.
- 6.9 Before issuing any direction under regulation 4, a local authority must have regard to the need to ensure that members of the public have access to essential public services and goods.
- 6.10 Under regulation 4(5), the direction may only be issued to the premises owner or occupier, or any other person involved in the management of the entry and exit from the premises or the location of persons within them. Regulation 4(2) further sets out that the direction may be for the purpose of closing the entire premises, restricting entry to the premises, or securing restrictions in relation to the location of persons in the premises. Regulation 4(6) states that any direction can impose prohibitions, requirements or restrictions by reference to: the number of people in the premises; the purpose for which someone is in the premises; and the facilities of the premises.
- 6.11 Any direction must set out the date and time for which the measures it imposes will come into force, and end, as well as give details of the right of appeal to a magistrates' court, and the time frame within which such an appeal may be brought. Any person who is subject to a direction may appeal to a magistrates' court or make representations to the Secretary of State regarding the direction, under regulation 4(9). The local authority issuing the direction must take reasonable steps to give advance notice to both a person carrying out any business from the premises to which the direction relates, and, if different, any person who owns or occupies the premises.
- 6.12 Regulation 5 gives local authorities the power to give directions in relation to events in their area. It allows for a local authority to impose prohibitions, requirements or restrictions in relation to the holding of a specified event or events of a specified description. Regulation 5(3) states the direction can be given to: the owner or occupier

of the premises for an event; the organiser of such an event; any other person involved in holding such an event (this does not include a person whose only involvement is attending the event). A direction may, among other things, impose requirements about informing persons who may be planning to attend an event of any prohibitions, requirements or restrictions imposed in relation to the holding of it. Regulation 5(7) requires the direction to state the date and time of when the measures it imposes come into force and end, also provide details of the right to appeal to a magistrates' court and the time within such an appeal may be brought. Any person who is subject to a direction may appeal to a magistrates' court or make representations to the Secretary of State regarding the direction. The local authority issuing the direction must take reasonable steps to give advance notice of the direction to the organiser of the event and, if different, any person who owns or occupies premises for the event.

- 6.13 Regulation 6 provides a power for a local authority to close public outdoor places, or prohibit or restrict access to public outdoor places at specified times. The regulation gives a local authority power to issue a direction imposing prohibitions, requirements or restrictions in relation to a specific public outdoor place or public outdoor places of a specified description. The direction must: specify the public outdoor place or places to which it relates in sufficient detail to enable the boundaries of the place to be determined; set out the start date and time of any measure imposed by the direction and when it ends; and provide details of the right to appeal to a magistrates' court. The local authority issuing the direction must take reasonable steps to give advance notice to both a person carrying out any business within the restricted area and any person who owns occupies or is responsible for land within the restricted area.
- 6.14 Any person who owns, occupies or is responsible for land or premises within the public outdoor place subject to this direction may appeal to a magistrate's court or make representations to the Secretary of State regarding the direction.
- 6.15 Both local authorities and owners or others responsible for the area must take steps to prevent or restrict public access, and no person may enter or remain in the restricted area in contravention of a direction, unless they have a reasonable excuse. Reasonable excuse includes the persons being the owner or occupier of land or premises within the restricted area, a person needing enter the restricted area to gain access to the place they are living, to visit owners or occupiers, to avoid injury or escape risk of harm, for child contact arrangements, to fulfil a legal obligation or it being reasonably necessary for work purposes or for the provision of voluntary or charitable services, to facilitate a house move, to provide care to a vulnerable person or emergency assistance .
- 6.16 Where the public outdoor place forms part of Crown land, the local authority cannot give a direction in relation to that place without the agreement of the appropriate authority.
- 6.17 Regulation 9 requires when a person makes representations to the Secretary of State under regulation 4(9)(b), 5(9)(b) or 6(5)(b), the Secretary of State must consider the representations as soon as reasonably practicable and decide whether it would be appropriate to exercise the power in regulation 3(2). The Secretary of State must provide written reasons for the decision to the person who made the representations and the local authority which gave the direction to which the representations relate.
- 6.18 Under Regulation 10, if a local authority decides to give a direction under these powers to a person specified in the direction by name, the direction must be given in

writing to that person. Where a local authority decides to revoke such a direction, a notice of revocation must similarly be given to that person in writing. All other directions must be published on the website of the local authority. It does not need to be in any particular prescribed format. The local authority may also publish any direction in such other manner as the local authority considers appropriate to bring it to the attention of any person who may be affected by it.

- 6.19 Local authorities giving directions ('initiating authorities') are required under Regulation 11 to notify any local authority whose area is adjacent to the initiating authority's area when they give or revoke a direction under the Regulations. Further, where the initiating authority is: a London borough council, every other London borough council must be notified; a county council, any district councils in their area must be notified; adjacent to a council in Scotland or Wales, the adjacent council must be notified. When a local authority is notified, it must consider whether to exercise its own powers under these Regulations, and notify the initiating authority of its decision. Where the notified local authority is a county council for an area for which there is a district council, it must also notify the district council of the matter and its decision.
- 6.20 The instrument includes provision that a person who contravenes certain provisions of these Regulations, or directions made under these Regulations, commits an offence, punishable by a fine. It also includes provision that a local authority designated officer or a constable (including a police community support officer) may take such action as is necessary to enforce a direction made under the Regulations. A local authority designated officer will be able to issue a prohibition notice requiring a person not to continue to contravene a direction under the regulation 4(1) or 5(1). In relation to contraventions of a direction under regulation 5 relating to an event, or of regulation 7(3) relating to public outdoor places, a constable (including a police community support officer) may direct a person to leave the event or place, or may remove a person from the event or place, and in relation to an event, may direct the event to stop. Relevant local government officers and police officers will monitor compliance with these Regulations and the directions made under them. Businesses or individuals that are in breach of such a direction can be subject to prohibition notices and fines.
- 6.21 The instrument also provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal prosecution and conviction) may be issued by authorised persons (a constable, police community support officer, or a person designated by the relevant local authority, depending on the offence) to persons aged 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 other regulations mentioned below, 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. The other regulations are the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020, and the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020.
- 6.22 Regulation 16 provides that a person who is designated by the Secretary of State or a local authority for the purposes of issuing fixed penalty notices under the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 is to be treated as if they were designated for the purposes issuing fixed penalty notices under

these Regulations. Regulation 16 also provides that a person designated by the Secretary of State for the purpose of bringing proceedings for an offence under the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 is to be treated as if they were designated for the purposes of bringing proceedings for an offence under these Regulations.

- 6.23 Regulation 17 enables a county council for an area where there is also a district council to direct the district council to exercise any of the district council's functions a specified way. This may only be done when it is considered necessary and proportionate to prevent, protect against, delay or otherwise control the incidence or spread of coronavirus in the districts council's area. Further, the county council must first have regard to any advice given by its director of public health before issuing a direction.
- 6.24 These Regulations expire at the end of 17 January 2021.

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 as the Health Protection (Coronavirus, Restrictions) (England) Regulations 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 Consequent amendments and easements were made to these Regulations in line with the Government's recovery strategy for the Covid-19 pandemic. The Regulations were eventually revoked and replaced on 4 July by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, which further relaxed some of the previous national restrictions. Gradual easements from the 26 March restrictions have included reopening all non-essential retail, allowing for gatherings and overnight stays and gradually reopening the hospitality sector. These relaxations are possible due to the continuing falling of 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.
- 7.4 A new power was created as part of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, which provides a power for the Secretary of State to direct the closure of, or to restrict access to, a specified public outdoor place

(or specified type of public outdoor place), where this is necessary and proportionate to manage a serious and imminent threat to public health relating to coronavirus in England. This provided an interim step before these expanded powers come into effect.

7.5 As the Government's national Covid-19 measures are scaled back, the Prime Minister set out the Government's goal to enable as many people as possible to live their lives as close to normally as possible – in a way which is as fair and as safe as possible. To achieve this, he set out a need to move away from blanket, national measures, to targeted, local measures. This would include restrictions on open space, planned events and specific premises in local areas where the virus is spreading as required.

7.6 Previously, local authorities had a specific and distinct range of legal powers under public health, environmental health or health and safety laws which allowed them to temporarily close individual settings for a specific reason and period. These powers apply under a patchwork of triggers or, in some cases, require an application to a magistrate. These were not sufficient to enable local authorities to fully implement the measures potentially needed to prevent, protect against, delay or otherwise control the incidence or spread of coronavirus in their area.

7.7 This Statutory instrument will therefore ensure that a uniform suite of powers exists to enable local decision-makers to promptly take action to mitigate local Covid-19 outbreaks through a new and consistent set of regulations.

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 Not applicable.

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 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 not include a statutory review clause, however any directions made by local authorities under their powers in this instrument must be reviewed every 7 days.
- 14.2 The instrument ceases to have effect at the end of 17 January 2021.

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 Paul McCloaghrie, Director for the Joint Biosecurity Centre, email: Paul.Mccloaghrie@Go-Science.gov.uk, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Matt Hancock MP, Secretary of State for Health and Social Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.