

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

2020 No. 788

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) Regulations (S.I. 2020/684) (the Original Regulations) came into force at 00.01 on 4 July 2020 except in relation to public houses, bars and social clubs for which associated provisions came into force at 06:00 on 4 July 2020.
- 3.2 This instrument will amend the Regulations for the second time. The previous amendment Regulations (The Health Protection (Coronavirus, Restrictions) (No.2) (England) (Amendment) Regulations 2020) permitted the opening of: outdoor swimming pools and water parks (from 11 July 2020); nail bars and salons, tanning booths and salons, spas and beauty salons, massage parlours, tattoo parlours, and body and skin piercing services (from 13 July 2020).
- 3.3 These provisions will come into force at 00.01 on 25 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 (subject to extension for periods of dissolution, prorogation or adjournment for more than four days) unless, during that period, the instrument is approved by a resolution of each House of Parliament. The Original Regulations will still expire at the end of six months beginning with 4 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)

- 3.4 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) (Amendment) (No.2) 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 On July 11 and 13 changes were made to enable the reopening of outdoor swimming pools and water parks; nail bars and salons, tanning booths and salons, spas and beauty salons, massage parlours, tattoo parlours, and body and skin piercing services.
- 6.7 This instrument makes further changes to Schedule 2 to allow the following businesses and venues to re-open on 25 July 2020:
- a. indoor swimming pools, including indoor facilities at water parks
 - b. indoor fitness and dance studios

- c. indoor gyms and sports courts and facilities
- 6.8 This instrument also makes some minor amendments and consequential amendments to the Original Regulations as follows:
 - a. The definition of “childcare” in regulation 1(5) is amended
 - b. Reference to those businesses being reopened and exceptions as to when those businesses could have been used is removed from Regulation 4(2)(b) and (c) and by deleting regulation 4(3) respectively
 - c. Typographical errors in regulations 5(6)(b), 6(12)(d)(iii) and 9(1)(a) are amended.
- 6.9 The police and local authorities will continue to monitor compliance with the Regulations, including the amendments set out in this statutory instrument.

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 considered to be 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.
- 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 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 from four to three by the Chief Medical Officers, meaning that we no longer face a virus spreading exponentially although it remains in general circulation.

- 7.6 In line with the Government's recovery strategy, further amendments were made to the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations to allow outdoor swimming pools and waterparks to reopen on 11 July, and nail bars and salons, tanning booths and salons, spas and beauty salons, massage parlours, tattoo parlours, and body and skin piercing services from July 13.
- 7.7 The Prime Minister gave an oral statement on 17 July to set out the next chapter in the UK's Government's COVID-19 recovery strategy. As part of this the Prime Minister announced that gyms and other indoor sports facilities are due to open from 25 July. He also stated that further relaxations, including the reopening of conference and exhibition centres from 1 August, could be made if prevalence remains around or below current levels.
- 7.8 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 Original 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 the relaxations to restrictions and requirements brought about by these amendments.
- 12. Impact**
- 12.1 This instrument is an amendment to the Original Regulations and as such is a temporary provision forming part of the Government's response to Covid-19, lasting a maximum of six months from the date on which the Original Regulations took effect. 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.
- 13.2 The basis for the final decision on what action to take to assist small businesses: we judge that there is no such action needed, since one of the effects of the Regulations is to assist businesses including small businesses.
- 14. Monitoring & review**
- 14.1 The instrument does include a statutory review clause.

- 14.2 This instrument amends the Original 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 04 July 2020 (the day on which the Original Regulations came into force).
- 14.3 Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by the Original Regulations every 28 days. The first review will be carried out by 31 July 2020.

15. Contact

- 15.1 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 for Decentralisation and Growth at the Ministry of Housing, Communities and Local Government 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.