

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (BLACKBURN WITH DARWEN AND LUTON) REGULATIONS 2020

2020 No. 800

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), which causes the disease Covid-19, in Blackburn with Darwen and Luton, England.

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). These 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 order without a draft being so laid and approved so that public health measures imposed by these Regulations continue to be necessary and proportionate 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 on 25 July 2020 and will be published on www.legislation.gov.uk on 24 July 2020. 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 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 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) (Blackburn with Darwen and Luton) 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. 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 inside or outside England and Wales.

6.4 A number of regulations under section 45C have been made, including regulations relating to (SARS-CoV-2) and Covid-19, such as the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (S.I. 2020/350), (the “Restrictions Regulations”) and their subsequent amending regulations; and the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684) (“the England Regulations”) and their subsequent amending regulations; and the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 and their subsequent amending regulations (S.I. 2020/685).

6.5 This instrument is made under section 45C of the 1984 Act 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 requires the closure of some businesses (listed in Schedule 1) and imposes restrictions on gatherings (both inside and outside) of more than 30 people in the “protected area” – defined in regulation 1(4) as the area of Blackburn with Darwen Borough Council and the area of Luton Borough Council.

6.7 Regulation 2 requires the restrictions imposed by the Regulations to be reviewed every 14 days. The first review will be carried out by 8th August 2020.

6.8 Regulation 3(1) requires the closure of businesses in the protected area which are listed in Schedule 1.

6.9 Regulation 3(2) provides exemptions for the following uses: any suitable premises used for businesses or services listed in the Schedule to host blood donation sessions; training facilities by elite sportspersons; and indoor fitness and dance studios professional dancers and choreographers as required.

- 6.10 Regulation 3(5) allows the person responsible for the businesses or providing a service listed in the Schedule to operate a shop, restaurant or café where it is separate to the premises used for the closed business or venue, and to make deliveries and respond to orders received for goods and services. For the purposes of regulation 3(5), shops, cafes or restaurants are separate from the premises if they are in a self-contained unit and it is possible for a member of the public to enter it from the outside the premises.
- 6.11 Regulation 4 prohibits a gathering of more than 30 people which take place in a private dwelling, on a vessel (other than a houseboat or a vessel used for public transport) or on land which satisfies the conditions set out in regulation 4(2). Hotels and certain other holiday accommodation, care homes, educational, military and prison accommodation are not included in the definition of “private dwelling”.
- 6.12 Regulation 4(3)(a) permits a gathering of more than 30 people in a public outdoor place or on a boat or ship where that gathering is organised by a person of the sort mentioned in regulation 4(2) or a political body, the organiser has carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations, and the organiser has taken all reasonable measures to limit the risk of transmission of the coronavirus, taking into account the risk assessment.
- 6.13 There are also exemptions for a gathering of more than 30 people where the person concerned is an elite sports person, their coach or their 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.
- 6.14 Regulation 4(4) also prohibits a gathering of more than 30 people indoors which would be a gathering of the kind mentioned in section 63(1) of the Criminal Justice and Public Order Act 1994 (powers to remove persons attending or preparing for a rave) if the gathering took place in open air.
- 6.15 Regulations 5 and 6 provide that a person who contravenes regulation 3, 4 or 5 without reasonable excuse commits an offence. They also include a provision that a person designated by a local authority or the Secretary of State may take necessary action in order to enforce any requirement imposed by regulation 3 or 4. This includes issuing a prohibition notice to prevent an individual from continuing to contravene a requirement of the Regulations, and to prosecute against any individual who obstructs a person designated by the Secretary of State and directing a gathering or attendees of the gathering to disperse where they are gathered in contravention of regulation 4.
- 6.16 Regulation 7 provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by a relevant person 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 the Restrictions Regulations or the England Regulations, 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 Environmental Health, Trading Standards and police officers will monitor compliance with these regulations. Businesses that breach them can be subject to prohibition

notices, and potentially unlimited fines. Where a gathering is held in contravention of these Regulations, any person in the gathering may be directed to disperse or return to the place where they are living. An individual who contravenes a direction given by a person designated by the Secretary of State, commits an offence and may thereby be issued a fine.

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. The legislative elements of these restrictions were given effect in the Restrictions Regulations.
- 7.3 On 22 April 2020 and on 12 May 2020, amendments to the Restrictions Regulations came into force to make several 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 animal attractions. The stay at home Regulation 6 in the Restrictions Regulations 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 2020. 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 continued fall of the transmission rate and decreasing rates of hospitalisation and fatalities. The Chief Medical Officers downgraded the UK’s Covid-19 Alert Level from four to three, meaning that we no longer faced a virus spreading exponentially, though it remains in general circulation. The Prime Minister noted that if rates increased again, relaxations would be reversed as appropriate.
- 7.6 Amendments to the Restrictions Regulations to achieve these relaxations would have been significant and, as such, the Restrictions Regulations, and the subsequent four amendments, were revoked, except for Regulation 2. The new England Regulations to replace them came into force on 4 July 2020, with some provisions coming into force

at 00:01 and some provisions coming into force at 06:00 on that date. Further amendments were made to the Regulations in the Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 2) Regulations 2020 (“the Amendment Regulations”), which also come into force on 25 July. The Amendment Regulations permit the following to re-open across England: indoor swimming pools, including facilities at water parks; indoor fitness and dance studios; and indoor gyms and sports courts and facilities. However, these changes will not apply to Blackburn with Darwen and Luton (as provided for in Regulation 9(1)(a) of these Regulations).

7.7 In response to the elevated number of positive Covid-19 tests in Blackburn with Darwen and Luton in July 2020, the government announced that there would be ongoing restrictions in order to limit the further spread of the disease. These Regulations come into force on 25 July 2020, with restrictions that apply to the protected area in Blackburn with Darwen and Luton and to those who live within it.

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 in Blackburn with Darwen and Luton, England, 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.

13.2 Some businesses, including small businesses, which must remain closed will be affected by these Regulations. There are a number of Government-run financial schemes that will support these businesses through continued restrictions.

13.3 The basis for the final decision on what action to take to assist small businesses: we judge that there is no further such action needed, since government has provided a number of financial support schemes.

14. Monitoring & review

- 14.1 The instrument includes 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 14 days. The first review will be carried out by 8th August 2020.

15. Contact

- 15.1 The Closures Team at the Ministry of Housing, Communities and Local Government (ClosuresTeam.Covid19@communities.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Paul McCloghrie, Director at the Department of Health and Social Care (Paul.Mccloghrie@dhsc.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.