

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

2020 No. 824

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 the City of Leicester, England. This instrument revokes and replaces the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 (“the First Leicester Regulations”).

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 imposed in Leicester by these Regulations in replacement of the First Leicester 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 come into force at midnight on 3rd August 2020 and were published on www.legislation.gov.uk on 3rd August 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 for 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) (Leicester) (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. 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”), their subsequent amending regulations, and the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684) (“the England Regulations”), their subsequent amending regulations and the First Leicester Regulations and their subsequent amending regulations.

6.5 The First Leicester Regulations came into force from 4 July 2020. That instrument required the closure of some businesses and placed restrictions on movement and gatherings from midnight on 4 July 2020 in the protected area in and around Leicester, as defined in Regulation 1 of those Regulations. That instrument was 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 revokes and replaces the First Leicester Regulations and enables 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).

6.7 This instrument requires the closure of some businesses (listed in the Schedule) and imposes restrictions on gatherings in the “protected area”. The “protected area” is defined in regulation 1(4) of the instrument as the area of Leicester City Council.

6.8 Regulation 2 revokes the First Leicester Regulations and three subsequent amending Regulations, although they continue to apply to any offence committed under the First Leicester Regulations before these Regulations came into force.

- 6.9 Regulation 3 requires the restrictions imposed by the Regulations to be reviewed at least once every 14 days. The first review will be carried out by 17th August. The regulation allows for the Secretary of State to terminate any restriction or requirement by direction where the Secretary of State no longer considers the restriction or requirement to be necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England with the coronavirus.
- 6.10 Regulation 4(1) requires the closure of businesses in the protected area which are listed in the Schedule.
- 6.11 Regulation 4(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.
- 6.12 Regulation 4(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 4(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.
- 6.13 Regulation 5 prohibits gatherings of two or more people from different households (apart from linked households) in private dwellings in the protected area and prohibits people living in the protected area from participating in a gathering in a private dwelling outside the protected area, unless those meeting are from linked households. There are specific exemptions, including but not limited to work purposes, education and the provision of emergency assistance. Hotels and certain other holiday accommodation, care homes, educational, military and prison accommodation are not included in the definition of “private dwelling”.
- 6.14 Regulation 6 sets out the circumstances in which households may choose to be linked households.
- 6.15 Regulation 7(1) prohibits a gathering of more than 30 people which takes place on a vessel (other than a houseboat or a vessel used for public transport) or in a public outdoor place which satisfies the conditions set out in regulation 7(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.
- 6.16 Regulation 7(3) 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 7(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 1999, and the organiser has taken all reasonable measures to limit the risk of transmission of the coronavirus, taking into account the risk assessment.
- 6.17 There are also exemptions for a gathering of more than 30 people where the person concerned is an elite sportsperson, 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.

- 6.18 Regulation 7(4) also prohibits a gathering in the protected area 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.
- 6.19 Regulations 8 and 9 provide that a person who contravenes regulation 4, 5 or 7 without reasonable excuse commits an offence. They also include a provision that a constable, police community support officer, or person designated by the Secretary of State may take necessary action in order to enforce any requirement imposed by regulation 5 or 7. A person designated by the local authority may take necessary action to enforce in relation to regulation 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.
- 6.20 Regulation 10 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 other Regulations listed in regulation 10(9), 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.
- 6.21 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 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.
- 7.2 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.

- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 In response to the high number of positive Covid-19 tests in Leicester in June 2020, the government announced a local lockdown in order to limit the further spread of the disease. The First Leicester Regulations came into force on at midnight on 4 July 2020, with restrictions that apply to the protected area in Leicester and to those who live within it. Regulations 4 and 5 of the England Regulations did not apply to the protected area in Leicester under the First Leicester Regulations.
- 7.7 Following a review by public health experts, the Secretary of State announced on 17 July 2020 that all additional lockdown restrictions would end in areas outside of Leicester City and the Borough of Oadby and Wigston on 18 July. He set out that additional restrictions would continue in this revised protected area of Leicester City and the Borough of Oadby and Wigston, where prevalence of the virus is higher. However, he announced that some restrictions would be lifted in the protected area from 24 July; non-essential businesses in the protected area were permitted to reopen on this date. The First Leicester Regulations were amended to put those easements into effect.
- 7.8 Following a review by public health experts, the Secretary of State announced on 1 August 2020 that restrictions from the Borough of Oadby and Wigston would be lifted and they would return to national social distancing guidelines, other than for clinically extremely vulnerable people who should continue shielding. The Borough of Oadby and Wigston was therefore removed from the scope of the First Leicester Regulations by the Health Protection (Coronavirus, Restrictions) (Leicester) (Amendment) (No. 3) Regulations 2020, which came into force on 1 August 2020. He set out that additional businesses and venues would be allowed to re-open in Leicester City from 3 August, in line with the national changes of 4 July, but other restrictions would remain in

place, retaining more restrictions on businesses and greater restrictions on gatherings in private dwellings than in the rest of England.

7.9 These regulations therefore revoke the First Leicester Regulations, as amended, and impose restrictions only in the “protected area” of the City of Leicester.

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 the City of Leicester, 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 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.

13.2 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 17th August 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 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.