

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS ON
GATHERINGS) (NORTH OF ENGLAND) REGULATIONS 2020

2020 No. 828

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 parts of the North of 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 these 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 on 5 August 2020 and will be published on www.legislation.gov.uk on 4 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 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 on Gatherings) (North of 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. 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 COVID-19, such as the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684) (the “England Regulations”), the Health Protection (Coronavirus, Restrictions) (Leicester) No. 2 Regulations 2020 (S.I. 2020/824) (the “Leicester Regulations”) and the Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020 (S.I. 2020/822) (the “Blackburn with Darwen and Bradford Regulations”).

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 These Regulations impose restrictions in relation to a defined geographical area or “protected area”. The “protected area” is defined in regulation 2 of the instrument as the areas of Tameside Metropolitan Borough Council, Bolton Metropolitan Borough Council, Bury Metropolitan Borough Council, Manchester City Council, Oldham Metropolitan Borough Council, Rochdale Borough Council, Salford City Council, Stockport Metropolitan Borough Council, Trafford Metropolitan Borough Council, Wigan Metropolitan Borough Council, Pendle Borough Council, Hyndburn Borough Council, Burnley Borough Council, Calderdale Metropolitan Borough Council and Kirklees Metropolitan Borough Council.

6.7 Regulation 4 requires the restrictions imposed by the Regulations to be reviewed at least once every 14 days. The first review will be carried out by 19th August 2020.

6.8 Regulation 4 also provides that the Secretary of State must publish a direction terminating a restriction if the Secretary of State considers that the restriction is no longer necessary to prevent, protect against, control or provide a public health

response to the incidence or spread of infection in England with the coronavirus. The Secretary of State may also give a direction to provide that any one or more specified local authority may also give a direction to provide that any one or more specified local authority areas no longer fall within the protected area.

- 6.9 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”.
- 6.10 Regulation 6 sets out the circumstances in which households may choose to be linked households.
- 6.11 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.
- 6.12 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.
- 6.13 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.
- 6.14 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.
- 6.15 Regulations 8 and 9 provide that a person who contravenes regulation 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. 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 5 or 7.

- 6.16 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.
- 6.17 Police officers will monitor compliance with these regulations. 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 police officer, or person designated by the Secretary of State, commits an offence and may thereby be issued a fine.
- 6.18 Regulation 11 provides that proceedings for an offence under this instrument may be brought by the Crown Prosecution Service and any person designated by the Secretary of State.
- 6.19 Regulation 12 provides that a person designated by the Secretary of State under the relevant provisions in the England Regulations is to be treated as if they were designated for the purposes of this instrument.
- 6.20 Regulation 13 amends the Blackburn with Darwen and Bradford Regulations to provide for the same gatherings restrictions as are set out in regulations 5 and 7 of this instrument, and to provide for linked households in those areas.
- 6.21 Regulations 15 to 18 provide for consequential amendments to the England Regulations, the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020, the Blackburn with Darwen and Bradford Regulations, and the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020.

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, further restrictions came into force at 1pm on 26 March 2020 through 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. These Regulations were then amended several times (22 April, 12 May, 1 June, 15 June) to enable relaxation of certain public health measures to reopen garden centres and non-essential retail, and to relax certain restrictions on stay at home measures, gatherings, and overnight stays.
- 7.2 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 and further relaxations on gatherings from 4 July through the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations. These Regulations have since been amended twice (11 July, 24 July) to enable the reopening of close contact services, and swimming pools, gyms and indoor sports facilities.

7.3 Data shared by Public Health England and the Joint Biosecurity Centre indicated that the incidence rates of COVID-19 in the protected area were significantly above the national average, and the number of cases was increasing. The data also indicated that household transmission, either within the household or due to transmission between households, constituted a high proportion of COVID-19 transmissions. In response to this, restrictions were introduced to prevent gatherings that include more than one household in private dwellings in Leicester, contained in the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020 which came into force on 3 August 2020, and are now introduced through this Instrument in the protected area, and in Bradford and Blackburn with Darwen through amendment of Blackburn with Darwen and Bradford Regulations.

7.4 Alongside the Regulations, Government guidance was given to those living in or visiting the protected area, advising against gatherings at indoor public places. Guidance was also issued to businesses to not facilitate such gatherings. Care homes were also advised to only allow visits in exceptional circumstances. Though no restrictions were placed on travel, the Government advised people to not travel with other households as it does elsewhere in England.

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 restrictions on gatherings in parts of the North of 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 does not apply to activities that are undertaken by small businesses.

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 19th August 2020.

15. Contact

15.1 Roger.clarke@cabinetoffice.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.