

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS) (RESTRICTIONS ON HOLDING
OF GATHERINGS AND AMENDMENT) (ENGLAND) REGULATIONS 2020

2020 No. 907

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office 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 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 enforcement 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).
- 3.2 This instrument will amend the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684) (“the Principal Regulations”) and will make minor or consequential amendments to the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations (S.I. 2020/824) (“the Leicester Regulations”), the Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020 (S.I. 2020/822) (“the Blackburn and Bradford Regulations”), the Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020 (S.I. 2020/828) (“the North of England Regulations”) and the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (S.I. 2020/750). This instrument will be published on www.legislation.gov.uk on 27 August 2020 and comes into force on 28 August 2020.
- 3.3 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 (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. Further, the Principal Regulations themselves 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)

3.4 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 on Holding of Gatherings and Amendment) (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, 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 Principal Regulations, the Leicester Regulations, the Blackburn and Bradford Regulations and the North of England Regulations, which this instrument amends.

6.5 This instrument is made under section 45C to enable further 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 (SARSCoV-2).

6.6 This instrument inserts new regulations 5A and 5B into the Principal Regulations. Regulation 5A prohibits the holding of or involvement in the holding of gatherings of more than 30 people indoors which would meet the definition of a rave in section 63(1) of the Criminal Justice and Public Order Act 1994 if they took place in the open air. This prohibition is not subject to any exceptions.

6.7 Regulation 5B prohibits the holding of or involvement in the holding of gatherings of more than 30 people which take place in a private dwelling (including any garden, yard, passage, stair, outhouse or other appurtenance of the dwelling). Hotels and

certain other holiday accommodation, care homes, educational, military and prison accommodation are not included in the definition of “private dwelling”; the holding of or involvement in the holding of a gathering of more than 30 people is also prohibited on ships and boats, other than houseboats and those used for public transport. Subject to the exceptions set out in regulation 5B(4), holding of or involvement in the holding of gatherings of more than 30 people are also prohibited in a public outdoor place which falls within the definition set out in regulation 5B(3): 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.

- 6.8 Regulation 5B(4) permits the holding of or involvement in the holding of gatherings of more than 30 people if in the case of a gathering in a public outdoor place, the gathering is held on land operated by the organisations listed under 5B(3)(a) or as described in 5B(3)(b). There are a number of exemptions where larger gatherings are permitted, set out in 5B(4), including where the organiser or person concerned is one of the bodies set out in 5B(4)(a)(i) and has carried out a risk assessment which would satisfy the requirements under the health and safety for work regulations, whether or not the organiser is subject to those regulations and has taken all reasonable measures, taking into account that risk assessment, to limit the risk of transmission of the coronavirus. Gatherings in private dwellings, public outdoor spaces or on boats or ships are excluded where the gathering is necessary for training of or competition between elite sportspeople. The holding of or involvement in the holding of 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 to escape from harm; for education or childcare (or as part of supervised activities provided for children), or is necessary to fulfil a person’s legal obligation.
- 6.9 Participation in gatherings to which the new restrictions under regulation 5A and 5B apply is currently prohibited by regulation 5 of the Principal Regulations. There are also prohibitions on participation in certain gatherings under the Leicester Regulations, the Blackburn and Bradford Regulations and the North of England Regulations. Those Regulations prohibit gatherings of two or more people from different households (apart from linked households) in private dwellings in the protected areas and prohibit people living in the protected areas from participating in a gathering in a private dwelling outside the protected area, unless those meeting are from linked households. Restrictions on gatherings in places other than private dwellings are the same under these Regulations as under the Principal Regulations. This instrument includes provision that a person who contravenes the new restrictions in regulations 5A and 5B on holding or being involved in the holding of a prohibited gathering commits an offence, punishable by a fine.
- 6.10 This instrument also provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by authorised persons (constable, police community support officer, or person designated by a local authority or the Secretary of State) to persons aged 18 and over whom they reasonably believe have committed the offence of contravening the new restrictions in regulations 5A and 5B on holding prohibited gatherings. The amount of the fixed penalty is £10,000.

- 6.11 A fixed penalty notice issued in respect of these offences will not be taken into account for the purposes of calculating how many fixed penalty notices a person has received in respect of other offences under the Principal Regulations, or under the Leicester Regulations, the Blackburn and Bradford Regulations, the North of England Regulations, or the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (S.I. 2020/750).
- 6.12 This instrument also makes a minor amendment to the Principal Regulations and a minor amendment to the Blackburn and Bradford Regulations to correct errors, and is therefore, issued free of charge to all known recipients of those Regulations

7. Policy background

What is being done and why?

- 7.1 The Principal Regulations (and their subsequent amendments) have been disapplied in relation to a number of local areas, which are subject to separate restrictions.
- 7.2 **Leicester:** Local restrictions were first imposed on Leicester City and the surrounding area to come into effect on 4 July 2020 through separate Regulations. These regulations were subsequently amended on 18, 25 July and 1 August 2020. These regulations were replaced on 3 August 2020 by the Leicester Regulations to align the gatherings limits with the Principal Regulations (apart from in private dwellings in which gatherings are only permitted with members of a single/linked household), and to allow for several easements to the hospitality and leisure sectors to bring the protected area in line with national easements as per 4 July 2020. Further easements to business closures were provided for by amendments which came into force on 19 August 2020. Current restrictions in Leicester City will be reviewed no later than 31 August 2020.
- 7.3 **Blackburn with Darwen and Bradford:** Local restrictions were first imposed on Blackburn with Darwen and Luton to come into effect on 25 July 2020 to exclude these protected areas from national easements to indoor sports and leisure facilities. These regulations were subsequently replaced on 1 August 2020, so Luton was removed from the protected area and replaced by Bradford. Further amendments were made to remove some wards within Blackburn with Darwen Borough Council from the protected area which came into force on 26 August 2020.
- 7.4 **North of England:** Local restrictions were first imposed in parts of the North West and West Yorkshire to come into effect on 5 August 2020 to prohibit interhousehold mixing in private dwellings or gardens through separate regulations. These regulations also amended the Blackburn and Bradford Regulations to impose an equivalent restriction on gatherings in these areas. A subsequent amendment to the regulations, brought Preston into the protected area from 8 August 2020. Following a review it was decided that the business easements in the Principal Regulations should not apply to the North of England and so the regulations were amended to create its own business closures regime coming into force on 15 August 2020. Further amendments were made to remove Wigan and Rossendale from the protected area covered by these Regulations which came into force on 26 August 2020.
- 7.5 The current restrictions on gatherings in the Principal Regulations and in the protected areas under the Leicester Regulations, the Blackburn and Bradford Regulations and the North of England Regulations only extend to participation at certain gatherings.

- 7.6 This instrument introduces a new offence specifically for holding or being involved in the holding of, unlawful gatherings of more than 30 people. The offence will be punishable on summary conviction with a fine. A higher Fixed Penalty Notice (FPN) of £10,000 may be issued to a person aged 18 or over who is reasonably believed to have committed the offence; due to the serious public health risk that holding or being involved in the holding of these events poses. This will apply to gatherings of more than 30 people indoors which would meet the definition of a rave in the Criminal Justice and Public Order Act 1994 if they took place in open air. This will also apply to gatherings of over 30 people in private dwellings, on boats, or in public outdoor spaces that are not part of the premises of, or managed as a visitor attraction by, a business, charitable, benevolent or philanthropic institution or a public body. There will be a broad exemption to the public outdoor spaces prohibition and the boats prohibition for events organised by a business, charitable, benevolent or philanthropic institution, public body or political body, where a risk assessment has been undertaken and steps have been put in place to limit transmission. The offence will be applicable to anyone who plays an active part in making the event happen, as well as the organiser, and will apply in the whole of England, including the protected areas.
- 7.7 The offence will provide a deterrent effect to those who are currently breaking the law, as well as acknowledging that actively facilitating others to break the law by holding an illegal gathering poses more serious public health risks than merely participating in such a gathering.

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).

9. Consolidation

- 9.1 There are no plans to consolidate the Principal Regulations.

10. Consultation outcome

- 10.1 Police and the Crown Prosecution Service have been consulted in relation to this instrument and are content.

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 requirements brought about by these amendments.

12. Impact

- 12.1 This instrument amends the Principal Regulations, the Leicester Regulations, the Blackburn and Bradford Regulations, the North of England Regulations and the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (S.I. 2020/750). As such it 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 Regulations which are amended 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.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause.

14.2 This instrument amends the Principal Regulations and the expiry and review provisions set out in that instrument will continue to apply: the Principal Regulations cease to have effect at the end of the period of six months beginning on 4th July 2020 (the day on which the Principal 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 Principal Regulations every 28 days. The first review was carried out on 31 July 2020. The second review must be carried out by 28 August.

14.4 This instrument also makes consequential or minor amendments to the Leicester Regulations, the Blackburn and Bradford Regulations and the North of England Regulations. The expiry and review provisions set out in each of those instruments will continue to apply: each of those Regulations will cease to have effect at the end of the period of six months beginning on the day on which the relevant Regulations came into force. Prior to their expiry, the Secretary of State must review the need for restrictions and requirements imposed by each of the sets of Regulations every 14 days.

15. Contact

15.1 Heena Mohammed at the Home Office (Telephone: 07551675328/ Email: heena.mohammed@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Luke Edwards, Director of Fire and Resilience at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Matt Hancock MP, Secretary of State at the Department for Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.