

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS)
(BIRMINGHAM, SANDWELL AND SOLIHULL) REGULATIONS 2020

2020 No. 988

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of 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 allows 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 areas of Birmingham, Sandwell and Solihull.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22). This instrument is 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 this instrument without a draft being so laid and approved. This is 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 instrument will come into force on 15 September 2020 and will be published on www.legislation.gov.uk on 14 September 2020. The instrument ceases 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 instrument itself provides that it expires 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 Minister of State (Minister for Social Care), Helen Whatley, has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) Birmingham, Sandwell and Solihull) 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 (S.I. 2020/684) (the “National Regulations”); the Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020 (S.I. 2020/822); the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020 (S.I. 2020/824); the Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020 (S.I. 2020/828); and the Health Protection (Coronavirus, Restrictions) (Bolton) Regulations (S.I. 2020/974).

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 imposes 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 Birmingham City Council, Sandwell Metropolitan Borough Council and Solihull Metropolitan Borough Council.

6.7 Regulation 4 requires the restrictions imposed by this instrument to be reviewed at least once every 14 days. The first review will be carried out by 29 September 2020.

6.8 Regulation 4 also provides that where the Secretary of State makes a direction to remove one or more local authority area from the protected area, that direction must be published and notice of the direction given to the London Gazette or alternatively, the notice may be published in another manner considered appropriate by the Secretary of State to bring the direction to the attention of those who may be affected by it.

- 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 Regulations 7 and 8 provide that a person who contravenes the restrictions on gatherings in private dwellings in regulation 5, 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. 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.
- 6.12 Regulation 9 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 this instrument. 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 this instrument or other regulations listed in regulation 9(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.
- 6.13 Police officers will monitor compliance with this instrument. Where a gathering is held in contravention of this instrument, 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.
- 6.14 Regulation 10 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.
- 6.15 Regulation 11 provides that a person designated by the Secretary of State under the relevant provisions in the National Regulations is to be treated as if they were designated for the purposes of this instrument.
- 6.16 Regulations 12 to 17 provide for consequential amendments to: the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020; the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020; the Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020; the Health Protection (Coronavirus, Restrictions) (Leicester) (No. 2) Regulations 2020; the Health Protection (Coronavirus, Restrictions) (North of England) Regulations 2020; and the Health Protection (Coronavirus, Restrictions) (Bolton) 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 that disease, the Prime Minister announced further restrictions which came into force 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. In line with Step 2 and 3 of the Government's recovery strategy for the Covid-19 pandemic, several amendments were made to these Regulations in June 2020, before they were revoked and replaced on July 4 through the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations. These Regulations have since been amended several times (11 and 13 July (as one set of amendments), 25 July, 15 August, 28 August 2020).
- 7.2 An amendment to the National Regulations came into force on 14 September which introduced new limits of six people from multiple households for social gathering, both indoors and outdoors both in public and private space. These regulations also apply to geographic areas of Birmingham City Council, Sandwell Metropolitan Borough Council and Solihull Metropolitan Borough Council.
- 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, this instrument will prevent gatherings that include more than one household or linked household in private dwellings in the protected area.
- 7.4 Alongside these Regulations, 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 2018/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 2018.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

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 Birmingham, Sandwell and Solihull, England under this instrument.

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 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this instrument is to review the instrument every two weeks. The instrument includes a statutory review clause.
- 14.2 A statutory review clause is included in this instrument. This instrument ceases to have effect at the end of the period of six months beginning on the day on which it comes into force. Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by this instrument every 14 days. The first review will be carried out by 24 September 2020.

15. Contact

- 15.1 Tim.charlton@dhsc.gov.uk at the Joint Biosecurity Centre can be contacted with any queries regarding this instrument.
- 15.2 Paul McCloghrie, Director at the Department of Health and Social Care; Email: Paul.McCloghrie@dhsc.gov.uk can confirm that this explanatory memorandum meets the required standard.
- 15.3 Helen Whatley MP, Minister of State for Care at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.