

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ALL TIERS)
(ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 53

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 amends the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (“the All Tiers Regulations”) (S.I. 2020/1374), which enable a number of public health measures to be taken to reduce the public health risks posed by the spread in England of acute severe respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease Covid-19.
- 2.2 This instrument makes minor amendments to the All Tiers Regulations to clarify that:
- The exemption to leave home to collect goods from businesses operating click and collect also applies to libraries;
 - Elite sports competitions are permitted;
 - Cafes and canteens in all post-16 education and training settings can remain open;
 - Marriages and conversions under the Marriage (Same Sex Couples) Act 2013 are permitted.

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) (“the 1984 Act”). This instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. It is of 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 because the purpose of this instrument is to clarify the existing substantive regulations which were made so that public health measures can be taken in response to the severe and imminent threat to public health which is posed by the incident and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This instrument therefore carries the same degree of urgency.
- 3.2 This instrument was laid on 19 January 2021 and was published on www.legislation.gov.uk later that day. This instrument will come into force on 20 January 2021 and the All Tiers Regulations, which this instrument amends, expire on 31 March 2021. The Secretary of State must review whether each area that is part of Tier 2, Tier 3 or Tier 4 should continue to be part of that area at least once every 14 days. The Secretary of State must review the need for the restrictions in the All Tiers

Regulations at least once every 28 days. This instrument will cease to have effect at the end of the period of 28 days beginning with the day on which it is made unless, during that period, it is approved by a resolution of each House of Parliament.

- 3.3 On 30 September 2020 the Secretary of State made a commitment to the House of Commons that wherever possible for significant national measures with effect in the whole of England or UK-wide, votes would be held before such regulations come into force (Hansard cols. 288-289). As these are minor amendments to clarify the existing regulations they do not constitute significant national measures and it is not necessary for a debate to be held before these regulations come into force.
- 3.4 This instrument corrects errors in the All Tiers Regulations, and so is being issued free of charge to all known recipients of those regulations.

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)

- 3.5 This entire instrument applies to England only, including English airspace and the English territorial sea.

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 Parliamentary Under Secretary of State for Innovation at the Department for Health and Social Care, Lord Bethell of Romford has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 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, provides a legal basis to protect the public from threats arising from infectious diseases, or contamination from chemicals or radiation. Part 2A 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 protections 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 of infection or contamination can come from outside England and Wales.
- 6.4 This instrument is made under section 45C 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 coronavirus 2 (SARS-CoV-2).

- 6.5 In accordance with section 45R of the Act, the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament.
- 6.6 On 2 December 2020 a revised tiering system was introduced by the All Tiers Regulations.
- 6.7 On 16 and 19 December 2020 the All Tiers Regulations were amended by the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020 (S.I. 2020/1533) and the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1572) to move some local authority areas between tiers.
- 6.8 On 20 December 2020 the All Tiers Regulations were amended by the Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 (S.I. 2020/1611) to introduce an additional tier of restrictions (“Tier 4”) and move some local authority areas into Tier 4.
- 6.9 On 26 December 2020 the All Tiers regulations were amended by the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/1646) to move further local authority areas into higher tiers. That instrument also made some consequential amendments to other legislation. Amendments were also made to include a new exception for leaving home in Tier 4 to allow for visits to be made to an aquarium, zoo or safari park; or outdoor animal attractions at a farm, wildlife centre or any other place where animals are exhibited to the public as an attraction.
- 6.10 On 31 December 2020 the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/1654) moved additional local authority areas from Tiers 2 and 3 to Tiers 3 and 4 and made further technical amendments to the All Tiers Regulations.
- 6.11 On 6 January 2021 the Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 (S.I. 2021/8) amended some Tier 4 restrictions and made all areas of England subject to Tier 4 in order to achieve a national lockdown. That instrument also extended the expiry date of the All Tiers regulations to 31 March 2021.
- 6.12 Regulation 1(2) provides that this instrument comes into force on 20 January 2021.
- 6.13 Regulations 2(2) to 2(7) amend regulations 2(1), 3(11) and 4 of and Schedules 1 to 3 to the All Tiers Regulations to remove the provision for a linked Christmas household (‘Christmas bubble’) and other related provisions.
- 6.14 Regulations 2(5), 2(6), 2(7) and 2(8) amend the exemptions to Tier 1, 2, 3 and 4 gathering limits in Schedules 1 to 3A to the All Tiers Regulations to add the Marriage (Same Sex Couples) Act 2013 to the list of Acts governing permitted marriages, civil partnerships and conversions. These regulations also make amendments to the All Tiers Regulations to ensure that it is clear that cafes and canteens in providers of post-16 education or training are exempt from the restrictions on hospitality in all Tiers and that this is not limited to where they are in educational accommodation at these providers.
- 6.15 Regulation 2(7) also inserts an exemption from the closure of sports facilities in Tier 3 for the purposes of elite sports competitions to reflect the corresponding exemption in

the gatherings provisions for elite sports competition. Regulation 2(8) mirrors this for Tier 4.

- 6.16 Regulation 2(8) also clarifies that the exception allowing people to leave home to collect pre-ordered goods in Tier 4 includes collecting items from libraries.

7. Policy background

What is being done and why?

- 7.1 The three tiers introduced on 2 December 2020 were:

- Tier 1: Medium Alert which are the baseline measures nationally and represent the minimum level of restrictions considered appropriate given the current levels of circulation of the virus;
- Tier 2: High Alert, which places further restrictions on social contact aimed primarily at targeting areas of high transmission; and
- Tier 3: Very High Alert, which goes further in restricting social contact to continue to address household to household transmission and places further restrictions and closures on businesses, as a proportionate response to the heightened transmission risk.

- 7.2 On 20 December 2020 an additional tier was introduced:

- Tier 4: Stay at Home, which establishes a ‘stay at home’ requirement in law, further restricting gatherings and closing additional businesses including non-essential retail as a result of a rapid rise in cases due to the new variant of Covid-19.

- 7.3 On 6 January 2021 Tier 4 restrictions were strengthened and all of England made subject to the amended Tier 4 in order to achieve a national lockdown. The expiry date of the All Tiers regulations was also extended to 31 March 2021.

- 7.4 This instrument makes drafting changes to the Tier 4 restrictions to clarify that:

- The exemption to leave home to collect goods from businesses operating click and collect also applies to libraries;
- Elite sports competitions are permitted;
- Cafes and canteens in all post-16 education and training settings can remain open;
- Marriages and conversions under the Marriage (Same Sex Couples) Act 2013 are permitted.

- 7.5 This instrument also reflects these changes where applicable in Tier 1, Tier 2 and Tier 3 and removes the ‘Christmas bubble’ provision and related provisions as they no longer have effect.

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 geographic areas subject to closures and restrictions on movements and gatherings under the All Tiers regulations as amended by this instrument.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government's response to Covid-19. As this instrument will cease to have effect on 31 March 2021 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 All Tiers Regulations must be reviewed by the Secretary of State at least every 28 days.

14.2 The allocation of areas into Tiers 2, 3 and 4 must be reviewed by the Secretary of State every 14 days.

14.3 The All Tiers Regulations that this instrument amends cease to have effect on 31 March 2021 when they will expire.

15. Contact

15.1 Christina Head at the Department of Health and Social Care Telephone: 07761328305 or email: christina.head@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kevin Dodds, Deputy Director for Social Distancing Strategy, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Lord Bethell of Romford, the Parliamentary Under Secretary of State for Innovation at the Department for Health and Social Care can confirm that this explanatory memorandum meets the required standard.