

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (STEPS AND OTHER PROVISIONS) (ENGLAND) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 705

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) 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) (Steps) (England) Regulations 2021 (S.I. 2021/364) (“the Steps Regulations”) to extend the expiry date to the end of 18 July 2021 and adjusts some of the restrictions within Step 3 for examples amending restrictions on wedding ceremonies and receptions, commemorative events and funerals; and makes an amendment to the Secretary of State’s power to disapply restrictions for research purposes.
- 2.2 This instrument also extends, to the end of 18 July, the expiry dates of:
 - a. the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (“the Face Coverings on Public Transport Regulations”);
 - b. the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (“the No.3 Regulations”); and
 - c. the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 (“the LAEP Regulations”).
- 2.3 This instrument also amends the definition of “linked households” in the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2021.

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. The overall improvements in tackling the pandemic since the beginning of the Roadmap have shown a strong positive trajectory towards a position in which lifting the Step 3 restrictions remains a viable option in the short term, if not immediately.
- 3.2 However, the Government was clear that moving to the next Step of the Roadmap would always be dependent on the data supporting this move and the four tests being met. The data supported moving all of England from Step 2 to Step 3 from 17 May

2021, and the Government had hoped to be able to progress to Step 4 from 21 June 2021. The current data, however, does not support the move to Step 4 as not all of the four tests have been met.

- 3.3 This therefore means that it is necessary to maintain the current restrictions (with some minor modifications) for a further four weeks (subject to continuous consideration of the epidemiological data). England will remain at Step 3 and the Steps Regulations will be extended until 18 July 2021. This will allow more people to receive vaccinations and thus to support the objective of lifting the remaining restrictions when it is safe to do so.
- 3.4 It is therefore the opinion of the Secretary of State that, by reason of urgency, it is necessary to make this instrument without a draft being laid and approved by both houses. The interval between making these Regulations and their coming into force enables Parliament to debate them, prior 21 June and avoid an unnecessary and dangerous discontinuity. This enables the Government to take necessary steps to protect the public's health from the severe and imminent threat posed by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- 3.5 This instrument was made and laid on 15 June 2021 and published on www.legislation.gov.uk later that day. This instrument will come into force at 11.55pm on 20 June 2021 subject to approval in both Houses. The Steps Regulations, which this instrument amends, are now set to expire on 18 July 2021.
- 3.6 The Step 3 measures were debated in Parliament.

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)

- 3.7 This instrument applies to England only, including in the case of regulations 2 and 3, 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 Secretary of State for Health and Social Care at the Department of Health and Social Care, the Rt. Hon. Matt Hancock MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) 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 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 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 SARS-CoV-2.
- 6.5 In accordance with section 45R of the 1984 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 22 March 2021, the Government laid the Steps Regulations which set out a legislative framework for the rest of Step 1 and Steps 2 and 3 of the Roadmap out of lockdown. On 12 April 2021, the Steps Regulations were amended by the Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 (S.I. 2021/455) to move all of England from Step 1 to Step 2 and make minor amendments to the content of the Steps Regulations and the LAEP Regulations. On 17 May 2021, the Steps Regulations were amended by the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) Regulations 2021 (S.I. 2021/585) to move all of England from Step 2 to Step 3 and make minor amendments to the content of Step 3, the Face Coverings on Public Transport Regulations, and the LAEP Regulations, and the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 (S.I. 2020/1008).
- 6.7 This instrument extends the application of the Steps Regulations, the Face Coverings on Public Transport Regulations, the No.3 Regulations and the LAEP Regulations to the end of 18 July 2021.
- 6.8 Regulation 1 provides that this instrument comes into force at 11.55pm on 20 June 2021 and sets out its application.
- 6.9 Regulation 2 amends the Steps Regulations to change the expiry date from 30 June 2021 to the end of 18 July 2021 and makes other amendments to the Steps Regulations.
- 6.10 Regulation 2(2) amends the Steps Regulations to permit further piloting to inform the development of options for the safe lifting of the restrictions. In addition to continuing research, this phase of the pilots permits options further research on transmission and trialling of the certification service, including exemptions arrangements.
- 6.11 Regulation 2(4) changes the Steps Regulations to remove express numerical limits on numbers who may attend a wedding or civil partnership, a reception for a wedding or civil partnership, or a commemorative event following a person's death. The gathering organiser or manager must still take the required precautions in relation to the gathering in order for the exceptions to apply. The provision extends the premises at which such events can take place, so that they can take place anywhere apart from indoors in a private dwelling (save in relation to deathbed weddings that meet the relevant criteria). The provision expands the premises that funerals can take place to

include outdoor areas in private dwellings. It also makes minor drafting changes to correct technical errors where appropriate.

- 6.12 Regulation 3(2) amends the Face Coverings on Public Transport Regulations to change the definition of 'linked household' to reflect that in the Steps Regulations.
- 6.13 Regulation 3(3) amends the Face Coverings on Public Transport Regulations to change the expiry date from 20 June 2021 to the end of 18 July 2021.
- 6.14 Regulation 4 (1) amends the No. 3 Regulations to change the expiry date from 17 July 2021 to the end of 18 July 2021.
- 6.15 Regulation 4(2) amends the LAEP Regulations to change the expiry date from 20 June 2021 to the end of 18 July 2021.

7. Policy background

What is being done and why?

- 7.1 On 22 February 2021 the Government set out the COVID-19 Response – Spring 2021¹ to chart a roadmap out of lockdown. This roadmap outlines four steps for cautiously easing restrictions and four tests against which the decision to proceed to the next step will be based. These tests are:
 - The vaccine deployment programme continues successfully.
 - Evidence shows vaccines are sufficiently effective in reducing hospitalisations and deaths in those vaccinated.
 - Infection rates do not risk a surge in hospitalisations which would put unsustainable pressure on the NHS.
 - Our assessment of the risks is not fundamentally changed by new Variants of Concern.
- 7.2 The epidemic data outlines that following the Step 3 relaxations and the B.1.617.2, or Delta, variant becoming the dominant strain, the transmission rate has increased. The case numbers are increasing for all age groups under 70 in England but in particular for those aged 10-39. There are also early signs that hospital bed occupancy by people who have COVID-19 is increasing.
- 7.3 The Government's assessment of the four tests is that the current data does not support a move to Step 4. The assessments of the four tests are:
 - The vaccine deployment programme continues successfully:
 - England met the target of offering a second dose to JCVI cohorts 1-4 by mid-May. It is likely that we will meet the mid-July target of offering cohorts 5-9 a second dose early.
 - Based on current target, NHS projects we will likely be able to offer a first dose to all adults (i.e. open bookings) by July, but the vaccinations will probably take place early in August due to supply constraints.
 - Over 93% of those aged 40 and over have received at least one dose. Vaccine coverage is lower in London, in more deprived areas, in non-white ethnic groups, and in care home staff.

¹ COVID-19 Response - Spring 2021 - GOV.UK (www.gov.uk)

- Evidence shows vaccines are sufficiently effective in reducing hospitalisations and deaths in those vaccinated:
 - Transmission of Alpha by a vaccinated individual to household members is reduced by 35-50% (for symptomatic cases).
 - One dose of either vaccine reduces hospitalisations by ~80%.
 - Two doses of the Pfizer vaccine provide 90-95% protection against hospitalisation caused by severe disease.
 - There is decreased vaccine effectiveness against symptomatic disease for Delta compared to Alpha, but this increases after two doses.
- Infection rates do not risk a surge in hospitalisations which would put unsustainable pressure on the NHS:
 - Infection rates and hospitalisations are at low levels but are now increasing and growth is accelerating.
 - The level of non-COVID emergency demand is at the highest level since March 2020.
 - Modelling indicates there is a risk of a sharp rise in hospitalisations, with some scenarios exceeding previous peaks. The ratio of cases to hospitalisations remains a key uncertainty.
- Our assessment of the risks is not fundamentally changed by new Variants of Concern:
 - Delta is now present across the country, accounting for over 90% of cases.
 - R is estimated to be 40-80% higher for Delta than for Alpha.
 - Possible 2-fold increased risk of hospitalisation with Delta compared to Alpha (early data covering unvaccinated and vaccinated individuals).
 - What we think we know on Delta significantly changes the risks, although this could change.

7.4 This instrument therefore extends the Steps Regulations (with modifications) for four weeks, in order to gather more evidence that the four tests can be met. This delay in further relaxations will also allow more people to receive vaccinations thereby further reducing these risks.

7.5 Consequently, England will remain at Step 3 for a further 4 weeks (subject to further review). This instrument therefore extends the expiry date of the Steps Regulations from 30 June 2021 to the end of 18 July 2021.

7.6 The Secretary of State announced the decision to remain at Step 3 for a further 4 weeks on Monday 14 June 2021.

7.7 The Secretary of State is required to review the measures imposed by the Steps Regulations every 35 days, with the first review due by Monday 19th July 2021.

7.8 The regulations also amend the Step 3 measures in the Steps Regulations to remove the capacity limits for wedding and civil partnership ceremonies, receptions, and commemorative events and extend the premises in which they can occur, in order to mitigate some of the negative impacts of remaining at Step 3 for a further 4 weeks.

7.9 From 11.55pm on 20 June, in England, the gathering limit of 30 attendees at wedding and civil partnership ceremonies, receptions and commemorative events is being lifted. The organisers or managers of such gatherings will need to undertake the

required precautions, including taking reasonable steps to limit the transmission of COVID-19 with regard to relevant government guidance. This guidance, where appropriate, will include consideration of COVID-secure capacity limits for the venue for an event. This will apply to all venues, including in the gardens of private homes, with the exception of indoors in private homes (subject to exceptions for deathbed weddings). Funerals will now also be able to be held in the gardens of private homes.

- 7.10 The Events Research Programme (ERP) is running pilot events to inform decisions in relation to Step 4 of the roadmap. These pilot events explore how different approaches - for example, in connection with social distancing, ventilation, or test-on-entry protocols - could help reopen events at fuller capacities. The instrument ensures the continuation of a policy designed to ensure that future events included in the UK Government's research programme can provide additional evidence and mitigations for Government, event organisers and consumers. This will enable a range of interventions to be tested and will, therefore, contribute significantly to the development of options to enable the restrictions to be lifted safely.
- 7.11 The instrument extends the provisions of the Face Coverings on Public Transport Regulations to the end of 18 July 2021, continuing the requirement for passengers to wear a face covering on public transport and in taxis and private hire vehicles unless they are exempt or have a reasonable excuse. This is intended to reduce the risk of transmission.
- 7.12 The instrument extends the No.3 regulations (which were due to expire on 17 July) to the end of 18 July 2021, continuing the powers that enable a local authority to restrict or close premises, restrict or prohibit specified events (or events of a specified description) in its area and restrict or close specified public outdoor places (or public outdoor places of a specified description), provided the local authority concludes it is necessary and proportionate to manage the transmission of the virus and that a serious and imminent risk to public health is evidenced.
- 7.13 The LAEP Regulations continues to provide Local Authorities with powers to enable Local Authority enforcement officers to issue improvement and restriction notices to premises that are not meeting COVID-secure business obligations. This instrument amends the expiry of the LAEP Regulations so that expiry date is the same as the Steps Regulations. This is needed so that local authorities can continue to take timely action against businesses that are not compliant with relevant parts of the Steps Regulations.
- 7.14 The instrument extends the period the Face Covering on Public Transport, No.3 Regulation and LAEP regulations apply for to the end of 18 July 2021. This will allow for all these Regulations to be considered as part of an assessment of what legal powers will be required in Step 4 to ensure that we can continue to address any future spread of the virus.

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 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 includes information in relation to the restrictions currently in place across the whole of England. It also provides guidance on closures and restrictions on movements and gatherings under these regulations, as well as on the wearing of face coverings.

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 at the end of 18 July 2021, a Regulatory Impact Assessment is not required and would be disproportionate.

12.2 The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020, have been in place for over a year. However a Regulatory Impact Assessment has not been prepared for this extension as it falls under the Civil Contingencies Exclusion of the Better Regulation Framework and the Better Regulation Executive will not seek to enforce the current administrative requirement for validating impacts for temporary emergency COVID-19 legislation in advance of the wider reform of the better regulation.

12.3 For the Face Coverings on Public Transport Regulations, an Impact Assessment is not required as these measures do not constitute a 'regulatory provision' for the purposes of the Small Business, Enterprise and Employment Act 2015.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Steps Regulations, which this instrument amends, must be reviewed by the Secretary of State at least every 35 days. The Steps Regulations will expire and cease to have effect at the end of 18 July 2021.

15. Contact

15.1 Dr Beatrice Fannon at the Department of Health and Social Care, email: beatrice.fannon@dhsc.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Tim Baxter, 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 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.