

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (STEPS ETC.)
(ENGLAND) (REVOCATION AND AMENDMENT) REGULATIONS 2021

2021 No. 848

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- 2.1 This instrument revokes the following regulations, so they are no longer in force from the end of 18 July 2021:
- the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (S.I. 2021/364) (“the Steps Regulations”);
 - the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (S.I. 2020/592) (“the Face Coverings on Public Transport Regulations”);
 - the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (S.I. 2020/791) (“the Face Coverings in a Relevant Place Regulations”);
 - the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 (S.I. 2020/1005) (“the Collection of Contact Details Regulations”);
 - the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 (S.I. 2020/1008) (“the Obligations of Undertakings Regulations”);
 - the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 (S.I. 2020/1375) (“the LAEP Regulations”).
- 2.2 The instrument also revokes a number of other regulations which would be spent as a result of the revocation of these regulations.
- 2.3 This instrument amends the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (S.I. 2020/750) (“the No. 3 Regulations”) to extend the expiry date to the end of 27 September 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. It is of 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.

- 3.2 This instrument amends and extends one instrument so that local authorities retain powers to respond to local serious and imminent public health threats as a response to the spread of SARS-CoV-2. The No. 3 Regulations act as an important public health tool for local authorities in their local coronavirus outbreak management, compliance and enforcement activities. The No. 3 Regulations would otherwise expire at the end of 18 July 2021 and therefore this instrument is urgent. This instrument also removes six of the existing instruments and a number of instruments which made amendments to them. In order that the provisions are in force for no longer than necessary the lifting of those restrictions is also urgent.

- 3.3 This instrument was laid on 15 July 2021 and was published on www.legislation.gov.uk later that day. This instrument will come into force at 11.55pm on 18 July 2021.

- 3.4 This instrument will cease to have effect at the end of the period of 28 days beginning with the day it was made (but excluding any period of more than 4 days in which both Houses are adjourned) unless, during that period, it is approved by a resolution of each House of 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)

- 3.5 This instrument applies to England only, including in the case of the revocations of the Steps Regulations and Face Coverings on Public Transport Regulations, and instruments amending those regulations, 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, the Rt. Hon. Sajid Javid MP, has made the following statement regarding Human Rights:
- “In my view the provisions of the Health Protection (Coronavirus, Restrictions) (Steps Etc) (England) (Revocation and 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 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 and the extension of the No. 3 Regulations will enable public health measures to be taken by local authorities 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, amend the Face Coverings in a Relevant Place Regulations and make minor amendments to the content of Step 3, the Face Coverings on Public Transport Regulations, the LAEP Regulations, and the Obligations of Undertaking Regulations.
- 6.7 At 11.55pm on 20 June, the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/705) came into force extending the expiry date of the Steps Regulations, Face Coverings on Public Transport Regulations and LAEP Regulations to the end of 18 July 2021. The instrument also adjusted some of the restrictions within Step 3 and made minor amendments to the Face Coverings on Public Transport Regulations.
- 6.8 This instrument revokes the Steps Regulations, the Face Coverings on Public Transport Regulations, the Face Coverings in a Relevant Place Regulations, the LAEP Regulations, the Collection of Contact Details Regulations and the Obligations of Undertaking Regulations so that they will no longer be in force at the end of 18 July 2021. In addition, this instrument also amends the No. 3 Regulations to extend the expiry date of those regulations to the end of 27 September 2021.
- 6.9 Regulation 1 provides that this instrument comes into force at 11.55pm on 18 July 2021.
- 6.10 Regulation 2 revokes the following regulations:
- the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021;
 - the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020;
 - the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020;

- the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020;
 - the Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020;
 - the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020.
- 6.11 Regulation 3 provides that the regulations listed in the Schedule are revoked. The regulations listed in the Schedule are regulations where the only remaining operative provisions are amendments to those regulations revoked by regulation 2, which would therefore be spent by operation of regulation 2.
- 6.12 Regulation 4 extends the expiry date of the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 to the end of 27 September 2021.
- 6.13 Regulation 5 saves the effect of any amendments made by the Regulations revoked by this instrument where these amendments were made to instruments still in force.

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.
- 7.2 The data was reviewed against the four tests four week's after the decision on 14th June 2021 to pause the move to Step 4. Following this review of the data, an assessment of progress against the four tests is set out below and this was considered satisfactory to allow the move to Step 4:
- The vaccine deployment programme continues successfully:
 - Since announcing a four week pause at Step 3 on 14 June 2021 and as of 10 July 2021, 3,529,521 first and 3,557,363 second doses have been administered in England.
 - We met our target of offering all adults a first dose early and remain on target to have two thirds of adults double jabbed by 19 July 2021.
 - Up until 12 July 2021, 87.3% of the UK adult population had received one dose (45,978,017) and 66.4% (34,997,491) had received two doses.
 - Evidence shows vaccines are sufficiently effective in reducing hospitalisations and deaths in those vaccinated:
 - Confidence in vaccine effectiveness against the Delta variant has increased significantly.
 - 88.1% of the adult population have COVID-19 antibodies from either infection or vaccination, compared to 16.1% from infection alone. More than 95% of those over 40 have antibodies.
 - For the Delta variant, PHE estimates that vaccine effectiveness against symptomatic disease is ~35% after one dose of Pfizer or AstraZeneca. After two doses, this increases to ~79%.

¹ [COVID-19 Res ponse - Spring 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/covid-19-response-spring-2021)

- Further, one dose of either vaccine reduces hospitalisations by ~80%. A second dose boosts protection to ~96%. Protection against hospitalisation is similar for the Alpha and Delta variants.
 - For the Alpha variant, transmission by a vaccinated individual to household members is reduced by 35-50% (for symptomatic cases).
 - Infection rates do not risk a surge in hospitalisations which would put unsustainable pressure on the NHS:
 - Nationally, infections have increased sharply, and admissions are steadily increasing following slows in the rate of increase last week.
 - The ratio of cases to hospitalisations has continued to decrease in recent weeks and is at the lowest level since the beginning of the pandemic and significantly lower than previous peaks.
 - SPI-M modelling suggests that the scale of the next wave in hospital admissions is highly uncertain and extremely sensitive to behaviour change, but most modelled scenarios have peaks lower than in previous waves.
 - Our assessment of the risks is not fundamentally changed by new Variants of Concern:
 - Delta accounts for c.99% of cases in England. Variants of Concern (VoC) and Variants Under Investigation (VUI) excluding Delta remain at a very low level.
 - The Delta AY.1 mutation (provisionally assigned a VoC), has the potential for increased transmissibility and immune escape when compared to Delta. Investigation is underway.
 - The risks Delta poses has not changed significantly since the last review point but has been mitigated by delaying Step 4 for four weeks and delivering an additional c.7m vaccine doses as of 10 July 2021.
- 7.3 The Prime Minister announced the move to Step 4 on Monday 12 July 2021, one weeks' notice before the changes would take effect.
- 7.4 The revocation and extension of the regulations mentioned in paras 2.1 and 2.2, initiates Step 4 of the roadmap. Hence, the Health Protection (Coronavirus, Restrictions) (Steps etc.) (England) (Revocation and Amendment) Regulations 2021 and decision not to extend the regulations due to expire on 18 July 2021 (save for the No.3 Regulations), implements the following policy changes:

Revoking the Steps Regulations

- 7.5 This removes remaining restrictions on social contact and gatherings, including the rule of 6/2 households indoors, and up to 30 individuals outdoors. Revocation of the Steps Regulations also permits the reopening of all businesses that remain closed: nightclubs, dance halls, discotheques, dance floors/spaces for dancing, sexual entertainment venues/hostess bars, and shisha bars.
- 7.6 The rationale for revoking the Step Regulations rather than allowing them to expire is to save the effects of amendments made by the Steps Regulations to other instruments that are currently in force (which is achieved by Regulation 5 of this instrument).

Revoking the Face Coverings (Public Transport) Regulations

- 7.7 This removes the requirement for people to wear face coverings when using public transport services (unless they have a reasonable excuse).

- 7.8 The rationale for revoking these regulations is that the success of the vaccination programme means that at Step 4 we can move away from strict legal restrictions and towards personal responsibility and informed judgement. The legal requirement to wear face coverings will be replaced with cautious guidance, advising that we expect and recommend face coverings are worn in crowded areas such as public transport

Revoking the Face Coverings (Relevant Places) Regulations

- 7.9 This removes the requirement to wear a face covering in relevant indoor settings.
- 7.10 The rationale for this is that the success of the vaccination programme means that at Step 4 we can move away from strict legal restrictions and towards personal responsibility and informed judgement. Removing laws on face coverings is aligned with this move.

Revoking the Obligations of Undertakings Regulations

- 7.11 This removes the requirement for businesses and venues to take bookings for certain groups sizes only, ensure distance between tables in hospitality settings, display signage and the prohibitions on preventing someone wearing a face covering.
- 7.12 The rationale for this is that from the end of 18 July 2021, as a result of regulations concerning social distancing no longer being in place, there is no longer a need to retain in legislation the restrictions which oblige businesses to take measures to ensure customers follow these rules by managing group bookings and instigating a required distance between customers tables in hospitality settings. From the end of 18 July 2021, as a result of revocation of the Face Coverings in a Relevant Place Regulations, the prohibition on preventing someone from wearing a face covering will no longer apply and therefore it is appropriate to remove the requirements relating to signage and information in relation to face coverings.

Revoking the Collection of Contact Details Regulations

- 7.13 These regulations remove the legal requirement for designated venues to ask customers, visitors and staff to “check in” when visiting their premises (individuals can check in by scanning the NHS QR code poster via their NHS COVID-19 app or by providing their contact details). However, these venues will be encouraged in guidance to keep these processes in place, which will allow attendees to check in, should they wish to do so. This will support NHS Test and Trace to alert people who may have been exposed to COVID-19 after an outbreak, and they will be advised to book a test as soon as possible.
- 7.14 The rationale for revocation of these regulations is that success of the vaccination programme means that at Step 4 we can move away from strict legal restrictions and towards personal responsibility and informed judgement. The move to allow

voluntary “check in” and collection of contact details at venues aligns with this change.

Expiring the LAEP Regulations

- 7.15 These regulations remove the provisions which allow local authority officers to issue a Coronavirus Improvement Notice, Coronavirus Restriction Notice and a Coronavirus Immediate Restriction Notice to persons contravening restrictions under certain pieces of coronavirus legislation, most of which are being revoked by this instrument.
- 7.16 The rationale for this revocation is that the powers provided by these regulations are no longer needed. This is because they enable the enforcement of provisions that are being revoked. The No. 3 Regulations will continue to allow local authorities to take action where an outbreak or risk of outbreak is linked to premises or an event.

Extending No. 3 Regulations

- 7.17 The extension will ensure that local authorities retain powers to respond to local serious and imminent public health threats as a result of the spread of coronavirus. The No. 3 Regulations will continue to act as an important public health tool for local authorities in their local coronavirus outbreak management, compliance and enforcement activities. This is particularly important in light of the revocation of the other restrictions mentioned above and the continued increase of coronavirus cases 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 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. This guidance will include information in relation to the easing of restrictions across the whole of England and of the end to closures and restrictions on gatherings under these regulations as well as on the wearing of face coverings.

12. Impact

- 12.1 This instrument revokes six instruments which will cease to have effect from 11.55pm on the 18th July 2021 and so a Regulatory Impact Assessment is not required and would be disproportionate. This is because obligations on businesses are being removed rather than imposed.

- 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 framework.
- 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, Face Coverings on Public Transport Regulations, LAEP Regulations, Face Coverings in Relevant Places Regulations, Collection of Contact Details Regulations and Obligations of Undertaking Regulations are being revoked, will no longer be in force at the end of 18 July 2021 and will not require further review.
- 14.2 The No. 3 Regulations do not include a statutory review clause. Any directions made by local authorities using their powers must be reviewed every 7 days. The No. 3 Regulations are due to expire and cease to have effect at the end of 27 September 2021.
- 15. Contact**
- 15.1 Rachel Mogg at the Department of Health and Social Care: Email: rachel.mogg@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 Sajid Javid MP, the Secretary of State for Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.