

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (LOCAL**  
**AUTHORITY ENFORCEMENT POWERS AND AMENDMENT) (ENGLAND)**  
**REGULATIONS 2020**

**2020 No. 1375**

**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 enables additional enforcement tools to be used by Local Authorities in England to reduce the public health risk posed by the spread of severe acute respiratory syndrome Coronavirus 2 (SARS-CoV-2) which causes the disease Covid-19. It also makes amendments to a number of Coronavirus regulations to further these aims.

**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). 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, 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).
- 3.2 The main provisions of this instrument introduce a Coronavirus Improvement Notice, Coronavirus Restriction Notice and a Coronavirus Immediate Restriction Notice which can be issued to any person who breaches specified requirements of named Coronavirus regulations (listed in regulation 2 of this instrument) by Local Authority officers. Breach of a Notice issued under these regulations is an offence, albeit liability for the same can be evaded by payment of a Fixed Penalty Notice.
- 3.3 This instrument was made on 30 November and will come into force on 2 December 2020 and is to be published on [www.legislation.gov.uk](http://www.legislation.gov.uk). This instrument ceases to have effect at the end of the period of 28 parliamentary sitting 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.
- 3.4 This instrument also makes a number of amendments to the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (the “Self-Isolation Regulations”) and the Health Protection (Coronavirus, Collection of Contact

Details etc and Related Requirements) Regulations 2020 (the “Collection of Contact Details Regulations”). The Self-Isolation Regulations and the Collection of Contact Details Regulations have a sunset clause and will expire at the end of the period of 12 months beginning on the day they come fully into force.

- 3.5 This instrument also makes amendments to the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684) (“the No. 2 Regulations”); the Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (SI 2020/568) (“the International Travel Regulations”), and the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (S.I. 2020/750) (“the No. 3 Regulations”). The No. 2 Regulations expire on 3 January 2021; the International Travel Regulations expiry at the end of the period of 12 months beginning on the day they come fully into force and the No. 3 Regulations expire at the end of 17 January 2021.

***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)***

- 3.6 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 Secretary of State for 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) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”), as inserted by the Health and Social Care Act 2008 (“the 2008 Act”), provides a legal basis for protecting the public from threats arising from infectious diseases and other risks. It 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.

- 6.2 This instrument is made under Part 2A powers of the 1984 Act and accordingly section 61 and 62 powers of entry and investigation apply.

- 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 may come from outside England and Wales.)

- 6.4 This instrument is made under section 45C, to support an effective response to reduce public health risks posed by the incidence and spread of SARS-CoV-2 and should be

seen as part of a wider set of measures under the 1984 Act helping to manage the Covid-19 disease transmission risks.

- 6.5 Provision is also made under section 45B of the 1984 Act which enables the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) to make regulations for preventing danger to public health from conveyances (or the persons or articles on those conveyances) arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. This in respect to the amendment to the International Travel Regulations.
- 6.6 Provision is also made under section 45F, for the creation of offences, giving Local Authority officers a power to issue a fixed penalty notice offering the recipient the opportunity to discharge liability to conviction in respect of an offence of breaching a Coronavirus Improvement Notice, Coronavirus, Immediate Restriction Notice or a Coronavirus Restriction Notice. The coronavirus regulations to which these new Notices apply are listed in regulation 2 of this instrument.
- 6.7 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.
- 6.8 The Secretary of State in making this instrument considers that the restrictions and requirements they impose are proportionate to what is sought to be achieved by imposing them, namely the goal of reducing the risk of transmission of Covid-19.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The amendments to the 1984 Act made by the 2008 Act comprehensively modernised the legal framework for health protection. Part 2A of the 1984 Act, as inserted by the 2008 Act, takes an “all hazards” approach to health protection, where the criterion for action is based on the potential of an infection or contamination to present significant harm to humans, rather than on specific infectious diseases.
- 7.2 The Prime Minister made a statement to Parliament on the 23 November 2020 to announce the government’s Covid-19 Winter Plan. The ONS estimates that between 15 to 21 November 2020 an estimated 633,000 people within the community population in England had Coronavirus, equating to around 1 in 85 people. The Winter Plan includes applying the most stringent measures, such as no household mixing, the closure of pubs/restaurants except for takeaways and guidance on traveling in and out of that area, to tier 3 areas where Covid-19 is the most prevalent. In this statement the Prime Minister also announced that the Government would also strengthen the enforcement ability of local authorities.
- 7.3 The policy aim is to provide greater enforcement of safety measures in businesses. Following engagement with local authorities, the instrument is designed to give additional powers to assist in the control of the spread of coronavirus. These additional powers enable local authorities to quickly request improvement, close or restrict unsafe activity in premises that do not meet Covid-19-secure requirements listed in regulation 2 of this instrument.
- 7.4 Enforcement authorities will continue to take a proportionate approach to breaches identified but the regulations give options to enforcement authorities before closing premises, ensuring that businesses are given the opportunity to improve compliance,

except for in instances where a closure of the premises is necessary and proportionate to reduce the spread of coronavirus.

- 7.5 This instrument also makes amendments to several other coronavirus regulations, which are set out in detail below. They play an important role to play in slowing or preventing a rise in the rate of reproduction (R) of Covid-19 and reducing the total number of infected people. A number of amendments are now necessary to further these aims.

### ***This instrument***

- 7.6 As set out above, this instrument enhances the range of tools available to local authorities to enforce existing national measures, which are explained in detail below. In particular, a more staged process of enforcement is introduced, which responds to feedback from practitioners.

### ***Local Authority Enforcement Powers***

#### *Coronavirus Improvement Notices*

- 7.7 Regulation 3 enables a local authority designated officer to issue a Coronavirus Improvement Notice (CIN), requiring a person who is breaching, or has breached, one of those provisions (listed in regulation 2 of this instrument) to end that breach and ensure it will not be repeated. Such a notice is not to be issued in relation to essential infrastructure. This will often be the first step for local authority enforcement officers to encourage businesses to remedy unsafe practices. A CIN will be applied for a minimum of 48 hours; its actual duration will be at the discretion of the local authority enforcement officer.
- 7.8 In determining what the CIN can require, the recipient will be notified of what provision is not being met, and while the officer may specify how the provision can best be met, this will depend upon the specific nature of the requirement, to reflect instances where the specifics of a measure are not imposed.
- 7.9 An early review can be requested by the recipient of the notice, if early compliance is achieved. Failure to comply with a CIN during its operational period could lead to an FPN of £2,000 and/or a Coronavirus Restriction Notice being issued.

#### *Coronavirus Immediate Restriction Notice*

- 7.10 Regulation 4 enables a local authority designated officer to issue a Coronavirus Immediate Restriction Notice (CIRN) on a person the officer believes is breaching, or has breached, one of the statutory provisions (listed in regulation 2 of this instrument) and there is a future risk of exposure to Coronavirus. Such a notice is not to be issued in relation to essential infrastructure. The notice is to require either closure or part-closure of the premises and/or the breach to be stopped. Any requirement must be necessary and proportionate for the purpose of minimising the risk of exposure to Coronavirus.
- 7.11 The notice has effect for 48 hours. The regulation lists what the notice must include and provides for review of the notice which may lead to withdrawal of the notice or the issue of a further notice under these Regulations.
- 7.12 A Coronavirus Immediate Restriction Notice (CIRN) can be issued by enforcement officers where rapid action is needed to close premises without first issuing a CIN to

reduce the spread of the virus. Where necessary, a local authority can decide to issue a CRN at the end of the 48 hours, so that the premises is required to close for a further 7 day period.

- 7.13 Failure to comply with a CIRN will result in an FPN of £4,000 being issued, which can be issued multiple times for each breach.

#### Coronavirus Restriction Notice

- 7.14 Regulation 5 enables a local authority designated officer to issue a Coronavirus Restriction Notice (CRN) on a person the officer believes has not complied with a Coronavirus Improvement Notice and that non-compliance involves a risk of exposure to Covid-19. Such a notice is not to be issued in relation to essential infrastructure. The notice is to require either closure or part-closure of the premises and/or the breach to be stopped. Any requirement must be necessary and proportionate for the purpose of minimising the risk of exposure to Covid-19.
- 7.15 The notice has effect for 7 days. The regulation lists what the notice must include and provides for review of the notice which may lead to withdrawal of the notice or the issue of a further notice under these Regulations
- 7.16 Failure to comply with a CRN will result in an FPN of £4,000 being issued, which can be issued multiple times for each breach.

#### Offences and Fines

- 7.17 Regulation 7 provides that prosecutions of an offence under part 2 of these regulations may be brought by a local authority, the Crown Prosecution Service and any person designated by the Secretary of State. Regulation 8 provides that a local authority designated officer may issue an FPN on a person, as set out in para 7.9, 7.13 and 7.16.

#### Appeal and Withdrawal

- 7.18 Safeguards are built into the system. Regulation 9 provides that an appeal against a Coronavirus Improvement Notice, Coronavirus, Immediate Restriction Notice or a Coronavirus Restriction Notice issued under these Regulations, or a review of such a notice, can be made to a magistrates' court within 28 days of the notice being issued or the review decisions being notified to the person on whom the notice was issued. It provides that the provisions of the Magistrates' Court Act 1980 (c. 43) apply to that appeal.

#### ***Other Regulation Changes***

##### Removing the Reasonable Force Provision from persons other than constables

- 7.19 This instrument amends enforcement provisions of the Self-Isolation Regulations; the International Travel Regulations; and the No. 2 Regulations such that the power to remove a person and use reasonable force when doing so, is removed from persons other than constables.

##### Amendments to the No. 2 Regulations

- 7.20 Paragraph 3 of the Schedule makes amendments to the No. 2 Regulations, including the amendment to regulation 7 (regarding the reasonable force provision outlined in para 7.19 above). In addition, paragraph 3 amends regulation 9 of the No. 2 Regulations which makes provision for an authorised person to issue a fixed penalty

notice to any person who the authorised person reasonably believes has committed an offence under the No. 2 Regulations, and is (in the case of an individual) aged 18 or over.

Amendments to the No. 3 Regulations

7.21 This instrument also amends the No.3 Regulations.

- Paragraph 7 of the Schedule amends regulation 2(4) of the No. 3 Regulations to require a local authority to have regard to any advice given to it by either its director of public health (or interim or acting director of public health) or a registered public health consultant (approved by its director of public health) in determining whether to give a direction under regulation 4(1), 5(1) or 6(1) of the No. 3 Regulations. Paragraph 12 of the Schedule makes a corresponding amendment to regulation 17(4) of the No. 3 Regulations in respect of a county council in determining whether to give, vary or revoke a direction under that regulation. This amendment will increase the number of public health practitioners who can advise local authorities and improve the timeliness of decision-making.
- Paragraphs 8, 9 and 10 of the Schedule amend regulations 4, 5 and 6 of the No. 3 Regulations respectively, requiring appeals to the magistrates' court or representations to the Secretary of State about directions given under the No. 3 Regulations to be made within a period of 28 days beginning with the day on which the direction was issued. Where a local authority has reviewed an existing direction and decided not to revoke the direction, the 28-day time period will begin with the day on which that review determination was made. This time period safeguards the position of those affected by directions whilst ensuring appeals or representations are made before, during in or shortly after the active period of the direction.
- Paragraph 11 of the Schedule makes amendments to regulation 14 of the No. 3 Regulations in relation to fixed penalty notices. The amendment to regulation 14(1) makes provision for an authorised person to issue a fixed penalty notice to any person who the authorised person reasonably believes has committed an offence under the No. 3 Regulations and is (in the case of an individual) aged 18 or over. The amendment to regulation 14(12)(a) provides that a person designated by a local authority can issue a fixed penalty notice for an offence under regulation 13(1)(e) of the No. 3 Regulations of failing to comply with a prohibition notice.

Amendments to the Collection of Contact Details Regulations

7.22 This instrument makes a number of changes to these regulations:

- Brings forward designations to ensure local authorities are appropriately designated to enforce these powers.
- Excludes relevant venues not accessible to the public, for example, workplace canteens only open to staff.
- The instrument adds betting shops to the Schedule of Services in scope of the Regulations and removes art fairs.
- Amends the relevant premises definition. It makes clear that where only part of the premises provides a service or activity in the Schedule, only that part is in scope. It also clarifies what is to happen in multi-use premises which are used to

provide more than one type of service or activity listed in the Schedule, i.e. where premises exist within another designated venue (the “main premises”). The main premises will be required to request contact details and display an official NHS QR code poster at the entrance, as will any premises within those main premises which are providing a service in Part 1 of the Schedule e.g. a café within a museum. This is because of the increased risk in transmission in hospitality venues and the need to be able to adequately contact trace anyone who may have been exposed to the virus.

- Excludes venues when they are in use as a polling station during an election.
- Corrects a number of drafting errors, including to clarify that a lead member of a group (up to a maximum of six people) only needs to provide their contact details to the venue, not those for all members of the group.

#### Amendments to the Self-Isolation Regulations

7.23 The instrument makes a number of changes to these regulations including:

- Allows for Fixed Penalty Notices (FPNs) for the offences of obstructing a person who is carrying out their functions under the regulations or refusing to comply with enforcement actions under the regulations (such as a request to return to your place of isolation). This will enable more effective enforcement.
- Brings forward designations to ensure persons such as local authorities are appropriately designated to enforce these powers.
- To update the laddering approach for Fixed Penalty Notices (FPNs) other than the FPNs referred to in 7.9, 7.13 and 7.16.
- Includes a definition of a local authority. The amendment will mean that where there is a two-tier local authority, both the county council and the district council will have functions under the regulations.
- Provides an exemption to the requirement to self-isolate for the purposes of appropriately authorised research into the transmission, diagnosis or prevention of coronavirus. It is important to conduct such research and develop new approaches to break chains of transmission and protect the long-term health of the public. This exemption will be limited to research approved by appropriate bodies specified in the regulations. It will mean, for example, that where a person has tested positive and is participating in research which involves regular testing, they will not be under a duty to self-isolate if they receive a positive test result within 90 days of a previous result. Where someone is otherwise under a duty to self-isolate, the exemption will mean that that duty does not apply where they are taking part in approved research.
- Clarifies how notifications are currently sent regarding the requirement to self-isolate.
- Amends the provision regarding the bodies who may notify a requirement to self-isolate to remove the reference to those employed or engaged in the health service in Scotland. Persons in the Devolved Administrations will be subject to the duty and/or guidance in that Devolved Administration.

**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 Not applicable.

**10. Consultation outcome**

10.1 There has been no public consultation in relation to this instrument, but the intention to make this instrument has been shared. This instrument has been drafted in close collaboration with local authorities over recent months.

**11. Guidance**

11.1 The Government has published guidance in relation to Covid-19 at [www.gov.uk/coronavirus](http://www.gov.uk/coronavirus) and this guidance will include information in relation to closures and restrictions on gatherings 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 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 The instrument ceases to have effect at the end of the period of 6 months beginning on the day on which it comes into force.

**15. Contact**

15.1 Adam Szczotka and the SDSD Enquiries [SDSDEnquiries@dhsc.gov.uk](mailto:SDSDEnquiries@dhsc.gov.uk) can be contacted with any queries regarding this instrument

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

15.3 The Rt Hon Matt Hancock MP, Secretary of State for Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.