

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (AMENDMENT) (NO. 2) REGULATIONS 2020

2020 No. 500

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for 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 makes provision clarifying and amending a number of public health measures under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (S.I. 2020/350) (“the Restrictions Regulations”) to ensure a proportionate and appropriate response to the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England which causes the disease Covid-19.

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). The Regulations are 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 the order without a draft being laid and approved so that proportionate and necessary 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 Regulations came into force at 00.01 a.m. on 13 May 2020 and were published on www.legislation.gov.uk on 12 May 2020. The Regulations amend the Restrictions Regulations for the second time. The Regulations cease 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. They do not change the requirement for review of the restrictions and requirements in the Restrictions Regulations which will expire at the end of six months beginning with 26 March 2020 (the day on which the Restrictions Regulations 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 In the view of this Department the entire instrument applies to England only.
- 3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject matter of this entire instrument would be within the devolved legislative competence of:

- the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament
- the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales; and
- the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly.

3.4 The Department has reached this view because it considers that the primary purpose of this instrument relates to the protection of public health, which is within the devolved legislative competence of the three Devolved Administrations.

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 Matt Hancock MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) 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, for use in rare circumstances where voluntary cooperation cannot be obtained. 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 outside England and Wales.

6.4 A number of regulations under section 45C have been made, including the Health Protection (Coronavirus, Business Closure) (England) Regulations (S.I. 2020/327), the Restrictions Regulations (S.I. 2020/350) which revoked and replaced S.I 2020/327 and the first amendments to the Restriction Regulations (S.I. 2020/447).

6.5 The instrument makes a number of changes to the Restrictions Regulations to clarify and better enable the public health measures in those Regulations to achieve the intended purpose of reducing public health risks posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) whilst ensuring key services remain open and accessible where required. They also include a number of small relaxations of the restrictions. In particular:

- Regulation 5(4) is amended to clarify that a person responsible for carrying on a business consisting of the provision of accommodation, may carry on their business to provide accommodation to any critical worker who is part of the effort to deal with Covid-19 whose need for accommodation is connected to their work. The list of critical workers is as defined in the guidance ‘Critical workers who can access schools or educational settings’ released by the Cabinet Office and the Department for Education on 19 March 2020 which is available on gov.uk.
- Regulation 6(2) is amended to clarify that it is a reasonable excuse to leave, or be outside of, the house to
 - a. collect goods from any business which have been purchased in advance by phone, online or by post, and providing customers do not enter the premises, as described in regulation 5(1);
 - b. visit public open space for the purposes of open air recreation, either alone, with members of their household or with one member of another household, to promote their physical or mental health or emotional wellbeing. Public open space includes public gardens, land which is “open country”¹, and land which is “access land”²;
 - c. take part in activities associated with moving house, including visiting estate or letting agents, viewing properties to buy or rent, visiting a show home, or undertake any activities required for the sale or rental of a property
 - d. use a waste and recycling centre
- Regulation 10(6) and 10(7) are amended to increase the amount of the fixed penalty notices (FPNs) which may be issued to a person aged 18 or over where they are reasonably believed to have committed an offence under the Regulations. The amount of an FPN will be increased from £60 to £100 for the first offence, which will halve to £50 if paid within 14 days following the date of the notice. In the case of a second FPN the amount specified on the FPN will be £200, and in subsequent FPNs this will double until a maximum value of £3200 is reached.
- Schedule 2, is amended:
 - a. To allow garden centres to re-open
 - b. To allow outdoor sports courts to open

6.6 The police and local authorities will continue to monitor compliance with the regulations, including the amendments set out in this S.I.

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.

¹ For the purposes of Part 5 of the National Parks and Access to the Countryside Act 1949(a)

² For the purposes of Part 1 of the Countryside and Rights of Way Act 2000(b)

- 7.2 On Monday 16 March 2020, the Government advised citizens across the country to begin working from home where possible, and to minimise social interactions, including by not visiting pubs, restaurants, clubs and theatres, with the aim of achieving a 75% reduction in non-household contact. This decision reflected clinical advice that the spread of infection is likely where people are in close contact with people carrying the disease for more than 15 minutes.
- 7.3 Early data, including from Transport for London and Google, on compliance were mixed. Public polling data showed that social distancing behaviours were increasing, but slowly. NHS capacity, whilst expected to be manageable across England in the coming weeks, was stretched in London and the Midlands. In response, legislative measures were taken with the making on 21 March 2020 of the Health Protection (Coronavirus, Business Closure) Regulations 2020 (S.I. 2020/327).
- 7.4 It was later considered necessary to increase compliance with the working at home and social distancing guidance in order to limit the further spread of the disease, therefore the Prime Minister addressed the nation on 23 March 2020 to announce the need for further restrictions. The Restrictions Regulations provided a consolidated set of the previous restrictions and closures, extending them and requiring persons to stay home by prohibiting people from leaving the place they live except for very limited purposes (such as shopping for basic necessities, exercise, to seek medical assistance or to provide care or assistance) and banning public gatherings of more than two people. These came into force at 1pm on 26 March 2020.
- 7.5 The Restrictions Regulations sought to prevent the community transmission of disease, Severe acute respiratory coronavirus 2 (SARS-CoV-2), where possible and to enable the Government to retain public trust in its public health protection measures. This level of trust continues to be critical to ensuring that the public continues to engage and comply with interventions.
- 7.6 On 21 April 2020 amendments were made to the Restriction Regulations to correct an error and to make a number of minor and clarificatory changes to those regulations which addressed concerns as to effective implementation raised by key stakeholders, such as government departments, trade bodies and county councils following introduction of the measures. These amendments came into force at 11am on 22 April 2020.
- 7.7 This Statutory Instrument makes a number of further amendments set out above in paragraph 6.5. These amendments respond to new issues, including around ensuring key services remain open and accessible where required, as raised by key stakeholders, such as government departments, trade bodies, county councils following introduction of the measures. The measures have been considered by scientific advisors who agree that they are likely to have a negligible impact on transmission rates. They also include a number of small relaxations of the restrictions, whilst encouraging continued compliance, aligned with the Prime Minister's plan, set out on Sunday 10 May.

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 There are no plans to consolidate the Regulations.

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 be updated to include information in relation to closures and restrictions on movements and gatherings under these Regulations.

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 This instrument amends the Restrictions Regulations and the expiry and review provisions set out in that instrument will continue to apply: the Regulations cease to have effect at the end of the period of six months beginning on 26 March 2020 (the day on which the Restrictions Regulations came into force). Prior to its expiry, the Secretary of State must review the need for restrictions and requirements imposed by these Regulations every 21 days. The first review was carried out by 16 April 2020, the second by 7 May 2020 and the next review will be carried out by no later than 28 May 2020.

15 Contact

15.1 The Covid 19 Closures Team at the Ministry of Housing, Communities and Local Government; Email: closuresteam.covid19@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Emran Mian, Director General at the Ministry of Housing, Communities and Local Government. Email: Emran.Mian@communities.gov.uk can confirm that this Explanatory Memorandum meets the required standard.

15.3 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.