

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (LEICESTER)
(AMENDMENT) (NO. 2) REGULATIONS 2020

2020 No. 787

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 amends the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 (“the Leicester Regulations”), which provided for a number of public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Leicestershire, 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 so laid and approved so that public health measures imposed by the Leicester Regulations continue to be necessary and proportionate 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 come into force at midnight on 24 July 2020 and were published on www.legislation.gov.uk on 23 July 2020. 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. Further, the Leicester Regulations provide that they expire at the end of the period of six months beginning with the day on which they 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 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 the areas of Leicester City Council and the Borough of Oadby and Wigston falling within the protected area as defined in Regulation 1 of the Leicester Regulations.

5. European Convention on Human Rights

5.1 The Secretary for 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) (Leicester) (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. 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 inside or outside England and Wales.

6.4 A number of regulations under section 45C have been made, including regulations relating to (SARS-CoV-2) and Covid-19, such as the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (S.I. 2020/350), (the “Restrictions Regulations”), their subsequent amending regulations, and the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684) (“the England Regulations”) and their subsequent amending regulations.

6.5 The Leicester Regulations came into force from 4 July 2020. This instrument required the closure of some businesses and placed restrictions on movement and gatherings from midnight on 4 July 2020 in the protected area in and around Leicester, as defined in Regulation 1 of those Regulations. This instrument was made under section 45C of the 1984 Act 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 syndrome coronavirus 2 (SARS-CoV-2).

6.6 The Leicester Regulations were amended on 18 July 2020, to change the geographical scope of the protected area to the City of Leicester and the Borough of Oadby and Wigston only, following a review by public health experts.

6.7 This instrument makes a number of changes to the Leicester Regulations to enable and support gradual relaxation of restriction measures whilst amending, but crucially, keeping in place public health measures to continue to reduce public health risks posed by the incidence and spread of SARS-CoV-2. The relaxations will facilitate

Leicester's economic recovery by opening non-essential retail premises. The amendments to the Leicester Regulations being made include:

- 6.8 Regulation 3: To enable those businesses or services which are required to be closed under Part 2 of Schedule 3 to carry on a business of offering goods for sale or for hire in a shop which is separate from the premises used for the closed business.
- 6.9 Regulation 4: Amended to allow for reopening of non-essential retail. As amended regulation 4(1) relates solely to libraries. Libraries may not reopen except for click and collect services but may open a shop or café or restaurant (for takeaway service only) which is separate from the premises and accessible from outside. As the business closure provisions (apart from libraries) in regulation 4(1) have been removed Part 3 of Schedule 3 (which lists exceptions to those business closure provisions) has also been removed.
- 6.10 Regulation 4: Amended to enable self-contained shops in places of worship which can be accessed from outside the premises to open and cafes and restaurants (which meet the same conditions) to offer takeaway service.
- 6.11 Regulation 4: Amended to allow the holding of indoor markets in community centres.
- 6.12 Regulation 4: Amended to clarify that community centres can open for the purposes of providing any supervised activity for a child provided by any other person.
- 6.13 Regulation 6: Amended to provide an exception to the gatherings limit for members of a household or linked households attending a drive-in cinema in a car or other vehicle.
- 6.14 Regulation 6: Amended to clarify that a gathering beyond the restrictions set out in regulation 6(1) may be deemed reasonably necessary for the purposes of providing any supervised activity for a child provided by any other person.
- 6.15 Schedule 3 is amended:
- 6.16 To allow betting shops to open.
- 6.17 To allow retail galleries where the majority of the art on display is for sale to open.
- 6.18 To allow the outdoor areas of zoos, safari parks, aquariums and outdoor visitor attractions at farms or other animal attractions to open.
- 6.19 To allow drive-in cinemas to open.
- 6.20 To allow auction houses to open.
- 6.21 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.
- 7.2 On 21 March 2020, the government took legislative measures with the making of the Health Protection (Coronavirus, Business Closure) Regulations 2020 (S.I. 2020/327).

This decision sought to prevent the community transmission of disease, Severe acute respiratory coronavirus 2 (SARS-CoV-2). In order to limit the further spread of the disease, the Prime Minister announced further restrictions which came into force at 1pm on 26 March 2020, prohibiting people from leaving the place they live except for very limited purposes and banning public gatherings of more than two people. The legislative elements of these restrictions were given effect in the Restrictions Regulations.

- 7.3 On 22 April 2020 and on 12 May 2020, amendments to the Restrictions Regulations came into force to make several minor and clarificatory changes to those regulations which addressed concerns raised by key stakeholders. This included ensuring key services such as waste and recycling centres, remained accessible where required, and reopening garden centres.
- 7.4 In line with Step 2 of the government's recovery strategy for the Covid-19 pandemic, several amendments were made in June 2020. This included reopening all non-essential retail, except for businesses and venues where the transmission risk was still too high, as well as outdoor areas of animal attractions. The stay at home Regulation 6 in the Restrictions Regulations was also removed, with a relaxation of the restrictions on gatherings and overnight stays for single occupancy households.
- 7.5 As part of Step 3 of the government's recovery strategy for the Covid-19 pandemic, the government announced the opening of the hospitality sector from 4 July 2020. The Prime Minister also announced on 23 June 2020 further relaxations in relation to gatherings to come into force in parallel. These further relaxations were possible due to the continued fall of the transmission rate and decreasing rates of hospitalisation and fatalities. The Chief Medical Officers downgraded the UK's Covid-19 Alert Level from four to three, meaning that we no longer faced a virus spreading exponentially, though it remains in general circulation. The Prime Minister noted that if rates increased again, relaxations would be reversed as appropriate.
- 7.6 Amendments to the Restrictions Regulations to achieve these relaxations would have been significant and as such, the Restrictions Regulations, and the subsequent four amendments, were revoked, except for Regulation 2. The new England Regulations to replace them came into force on 4 July 2020, with some provisions coming into force at 00:01 and some provisions coming into force at 06:00 on that date.
- 7.7 In response to the high number of positive Covid-19 tests in Leicester in June 2020, the government announced a local lockdown in order to limit the further spread of the disease. The Leicester Regulations came into force on at midnight on 4 July 2020, with restrictions that apply to the protected area in Leicester and to those who live within it. Regulations 4 and 5 of the England Regulations do not apply to the protected area in Leicester under the Leicester Regulations.
- 7.8 Following a review by public health experts, the Secretary of State announced on 17 July 2020 that all additional lockdown restrictions would end in areas outside of Leicester City and the Borough of Oadby and Wigston on 18 July. He set out that additional restrictions would continue in this revised protected area of Leicester City and the Borough of Oadby and Wigston, where prevalence of the virus is higher. However, he announced that some restrictions would be lifted in the protected area from 24 July; non-essential businesses in the protected area will be permitted to reopen on this date. These regulations put those easements into effect.

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 Not applicable.

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 closures and restrictions on movements and gatherings in Leicester, England under these regulations.

12. Impact

12.1 The Leicester Regulations as amended by this instrument are 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.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the amendment to these regulations permits small non-essential retail and certain other small businesses, whose activities were restricted by being in the protected area, to reopen at the earliest opportunity.

13.3 Some businesses, including small businesses, which must remain closed will continue to be affected by the Leicester Regulations, and these amending Regulations. There are a number of Government-run financial schemes that will support these businesses through continued restrictions.

13.4 The basis for the final decision on what action to take to assist small businesses: we judge that there is no such action needed, since one of the effects of the regulations is to assist businesses including small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review this every two weeks. The Leicester Regulations, which these Regulations amend, include a statutory review clause.

14.2 The Leicester Regulations cease to have effect at the end of the period of six months beginning on the day on which they came into force. Prior to their expiry, the Secretary of State must review the need for restrictions and requirements imposed by the Leicester Regulations, as amended by these Regulations, every 14 days. The first review will be carried out by 18 July 2020.

15. Contact

- 15.1 The 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 Paul McCloghrie, Director at the Department of Health and Social Care; Email: Paul.Mccloghrie@dhsc.gov.uk 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.