

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND)
REGULATIONS 2020

2020 No. 350

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 for the purpose of enabling a number of public health measures to be taken to reduce 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 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). The Regulations came into force at [12.00pm on 26 March 2020] and were published on www.legislation.gov.uk [later that day]. The Regulations cease to have effect at the end of the period of 21 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 regulations themselves 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 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) 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 regulations which this instrument is replacing (S.I. 2020/327).
- 6.5 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 severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- 6.6 This instrument requires the enforcement of the closure of some businesses and restrictions on others from 12.00pm on 26 March 2020. Regulation 4(1) requires the closure of drinking establishments including bars, pubs and nightclubs, and food and drink venues for consumption on site (excluding hospitals, schools, care homes, homeless services and prison canteens, armed forces canteens and workplace canteens where no practical alternative is possible) but they may provide a service for collection or delivery of food for consumption off the premises. Regulation 4(4) requires closure of entertainment venues including cinemas, theatres, concert halls and bingo halls; museums and galleries; spas, hairdressing and massage parlours; casinos and betting shops; all indoor leisure and sports facilities including gyms, playgrounds, funfairs, libraries, community centres and outdoor markets (non-food). Regulation 5(1) requires businesses offering goods for sale or for hire or providing library services to cease to do so except in response to orders received online, telephone or by mail order – the types of business specified in Part 3 of Schedule 1 are exempt from these restrictions, and regulation 5(2) excludes hot and cold food collection and delivery from the closures restrictions. Regulation 5(3) to (4) requires that hotels and similar establishments only remain open to cater for permanent residents, persons in a hotel etc because they are moving home or attending a funeral and persons unable to return home (for example overseas visitors unable to return to their home country or

key workers who are having to work away from home). Regulation 5(5) to (8) places restrictions on places of worship and crematoriums.

- 6.7 The instrument includes provision that a person who contravenes this regulation commits an offence, punishable by a fine. It also includes provision that a person, designated by the Secretary of State may take such action as is necessary to enforce a closure or restriction imposed by the regulation including issuing a prohibition notice requiring a person not to continue to contravene a requirement of the Regulations.
- 6.8 Environmental Health, Trading Standards and police officers will monitor compliance with these regulations. Businesses that breach them will be subject to prohibition notices, and potentially unlimited fines.
- 6.9 This instrument also prohibits anyone from leaving the place where they are living without reasonable excuse. Examples of reasonable excuse are specified in the regulations, such as the need to provide care or assistance, to travel for the purposes of work and to access critical public services. The instrument also bans public gatherings of more than two people.
- 6.10 As with business closures, the instrument includes provision that a person who contravenes these stay at home and non-participation in public gatherings requirements commits an offence, punishable by a fine. A relevant person, being a constable, police community support officer or person designated by the Secretary of State, may direct a prohibited gathering to disperse, direct or remove persons so gathering to the place they live or take such other action as is necessary to enforce the prohibition. Where a person is outside of the place where they live without reasonable excuse, a relevant person may similarly direct or remove that person to the place they live.
- 6.11 The instrument also provides that a fixed penalty notice (a notice which enables a person to discharge their liability to criminal conviction) may be issued by authorised persons (constable, local authority or person designated by a local authority) to persons over 18 whom they reasonably believe has committed an offence under the Regulations. The amount of the fixed penalty is £60, reduced to £30 if paid within 14 days. If a person has already received a fixed penalty notice, the amount of the fixed penalty is £120 doubling on each further repeat offence up to a maximum of £960, and there will be no discount for repeat offenders paying within 14 days.
- 6.12 The Secretary of State has designated police officers and local authority officers under regulation 4 (1) and (2) of the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (“the Business Closure Regulations”) and these designations will continue for the purposes of the new Regulations.

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 Monday 16 March, 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 75% reduction in non-household contact. This decision reflected clinical advice that the spread of infection is likely where people are in close contact for more than 15 minutes.

- 7.3 Early data, including from Transport for London and Google, on compliance is 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, is already stretched in London where critical care occupancy stands at 79 per cent. Further measures were taken with regulations being made on 21 March 2020, namely the Health Protection (Coronavirus, Business Closure) Regulations 2020.
- 7.4 It has however been considered necessary to increase compliance with the working at home and social distancing guidance in order to limit the further spread of the disease.
- 7.5 The Prime Minister addressed the nation on 23 March 2020 to announce the need for further restrictions. These new regulations provide a consolidated set of the previous restrictions and closures and extend them to a longer list of businesses and premises delivering non-essential services, as well as 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.
- 7.6 There are two main reasons to introduce these new Regulations. Firstly, that it is critical for the UK Government to take all reasonable steps to prevent the community transmission of disease, where possible. Severe acute respiratory coronavirus 2 (SARS-CoV-2) was recently declared by World Health Organisation a Public Health Emergency of International Concern. It is also essential that the Government retains public trust in its public health protection measures. This level of trust will be critical to ensuring that the public continues to engage and comply with interventions designed to protect individuals and communities if transmission of the virus within the UK increases in the coming weeks.
- 7.7 We note that there are other global precedents for these types of powers and actions. France, Italy and Spain have each recently mandated the closure of non-essential businesses and other venues, as well as placed limitations on movements and gatherings, to limit community spread of severe acute respiratory coronavirus 2 (SARS-CoV-2).

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 under these regulations.

12. Impact

- 12.1 An Impact Assessment has not been prepared for this instrument because of the need to make and lay the instrument urgently to encourage self-isolation and minimise the risks to public health arising from Covid-19, however, Office of National Statistics data indicates that these closures will affect 13.1% of the UK's business units.

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 include a statutory review clause.
- 14.2 The instrument ceases to have effect at the end of the period of six months beginning on the day on which it comes into force. Prior to its expiry, the Secretary of State must review the need for restrictions imposed by these regulations every 21 days. The first review will be carried out before the expiry of the period of 21 days, with the first review taking place by 15th April 2020.

15. Contact

- 15.1 Michelle Warbis at the Ministry of Housing, Communities and Local Government. Telephone: 07958611482; Email: michelle.warbis@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Emran Mian, Director General for Decentralisation and Growth at the Ministry of Housing, Communities and Local Government at the Ministry of Housing, Communities and Local Government Telephone: 07974 736562; 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.