

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND)
(NO. 4) REGULATIONS 2020

2020 No. 1200

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 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 This 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 This instrument was made on 3 November 2020 and was published on www.legislation.gov.uk later that day. It is intended that this instrument will come into force on 5 November 2020. Having been made under the emergency procedure, it will automatically cease to have effect at the end of the period of 28 days beginning with the day on which it is made unless, during that period, it is approved by a resolution of each House of Parliament. However, the instrument also contains provision which provides that it expires at the end of the period of 28 days beginning with the day on which it comes into force – see para 7.20 below.
- 3.3 In keeping with the commitment made by the Secretary of State to the House of Commons on 30 September (Hansard cols. 288-289), the intention is that this instrument will be debated in the Commons after it has been made, and before it has come 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)

- 3.4 This entire instrument applies to England only, including 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. Matt Hancock MP has made the following statement regarding Human Rights:

“In my view the provisions of the Health Protection (Coronavirus, Restrictions) (England) (No. 4) 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, 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 outside England and Wales.

6.4 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).

6.5 In accordance with section 45R of the 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 This instrument imposes a nationwide lockdown for 28 days in order to prevent the spread of Coronavirus, thus easing NHS capacity and ensuring that the health system is not overwhelmed during the winter months. It is expected that, at the end of that period, the previous local alert levels introduced in October will once again be brought into force. This policy is subject to review.

6.7 This instrument therefore revokes the following Regulations—

- the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020 (S.I. 2020/1103), other than Schedule 3 to those Regulations;
- the Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020 (S.I. 2020/1104), other than Schedule 3 to those Regulations;

- the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 (S.I. 2020/1105), other than Schedule 3 to those Regulations.

7. Policy background

What is being done and why?

- 7.1 Data from the Office of National Statistics COVID-19 infection survey for the most recent week of the study (17 -25 October) estimates that an average of 568,100 people had COVID-19 in the community in England – over 30% higher than their estimate from the previous week and equivalent to 1 in 100 people. This is in line with estimates from the latest interim results from the Real-time Assessment of Community Transmission (REACT) Study, led by Imperial College. The Government’s expert modelling group SPI-M estimates that the reproduction rate, or R rate, for the UK is between 1.1 – 1.3, with the epidemic estimated to grow between 2% and 4% per day, with potentially faster growth in certain areas. R remains above 1 with high prevalence of disease across much of the country. A positive growth rate still reflects an epidemic that is growing rapidly, and the trend is for higher growth in areas of lower prevalence.
- 7.2 Without further significant restrictions, the number of infections will continue to increase, leading to more deaths, risking the NHS becoming overwhelmed and damaging the economy.
- 7.3 This instrument therefore imposes a nationwide lockdown for a period of 28 days in order to slow the spread of COVID-19, thus easing NHS capacity and ensuring that the health system is not overwhelmed during the winter months.

Financial support for businesses

- 7.4 The furlough scheme will be extended to run from 5 November 2020 to 2 December 2020. This provision is not covered by this instrument.

Guidance for Vulnerable Persons

- 7.5 The Government recommends that Clinically Extremely Vulnerable people to minimise social contact. This provision is not covered by this instrument.

The restrictions

- 7.6 This instrument introduces a number of social restrictions and business closures.
- 7.7 Regulation 5 sets out a restriction on people leaving the place where they are living without reasonable excuse. Examples of reasonable excuses include the exceptions listed in Regulation 6. This does not apply to someone who is homeless.
- 7.8 The Regulation 6 exceptions include:
- For necessary purposes:
 - to obtain or access supplies and/or services from businesses and services that are open for oneself, one’s household, or a vulnerable person;
 - to access banking services;
 - to take exercise or visit a public open place for the purposes of open air recreation;

- to attend a place of worship;
- to attend an event commemorating Remembrance Sunday or Armistice Day;
- to undertake activities in relation to buying, renting, selling or letting property;
- to visit a member or members of a linked household (known as a ‘bubble’);
- to collect takeaway food or goods that have been ordered for collection; or
- to recycle or dispose of waste.
- For work, care and legal purposes;
- For the purposes of education and training;
- For emergency assistance;
- For accessing critical public services and services provided by voluntary or charitable services;
- So that elite athletes can train or compete;
- To attend to personal medical needs, or to visit those giving birth or in hospital or care;
- To give respite or support to other people, or to access it for oneself;
- To visit a relative or friend on their deathbed, including if for their wedding, or to attend their funeral;
- To look after children (for example, to take them to school, or to see their siblings, or to meet a prospective adopter);
- To provide for the welfare of pets;
- To return home, where the person is on holiday immediately before this instrument comes into force;
- To visit a family member or friend in prison.

7.9 Regulations 7 to 9 set out the restrictions on the participation in gathering. Gatherings of more than two people are prohibited in public outdoor places and gatherings of two or more people are prohibited in all other places, unless an exception applies.

7.10 Regulation 10 sets out the prohibition on organising a gathering of more than 30 people which is equivalent to an indoor rave, and it also prohibits the organisation or facilitation of gatherings of more than 30 people taking place in private dwellings, on vessels or in a public outdoor place. Gatherings on public outdoor places which are operated by or part of the premises used for the operation of a business or a charitable or philanthropic institution, or part of the premises used for the operation of a public body, are not included in the offence. Gatherings organised by a business, a charitable or philanthropic institution, a public body or a political body are not included in the offence where that body has taken the required precautions. Gatherings exempt under regulation 11 are also not covered by the offence.

7.11 Regulation 11 sets out the exceptions to the restrictions on gatherings – and includes:

- Where all the persons in the gathering are members of the same household or linked households;
- Where the gathering is reasonably necessary for certain critical activities – for example work, education, care, or moving house;

- Discharging legal obligations or participating in legal proceedings;
 - Where the gathering takes place in criminal justice accommodation;
 - Participating in a support group;
 - Attending a birth, permitted marriage, or funeral, commemorative event following a person's death or visiting a dying person;
 - Enabling elite athletes to train or compete;
 - Looking after children (for example, to take them to school, or to see their siblings, or to meet a prospective adopter);
 - For Remembrance Sunday and Armistice Day events.
- 7.12 Regulations 12 and 13 set out what a linked household – or ‘bubble’ – looks like and how it should operate.
- 7.13 Regulation 12 continues the existing concept of a Linked Household, or ‘support bubble’. This enables a household comprising a single adult (with or without children) to form a supportive link with another household (there is no restriction on the size of the second household). Having formed this Linkage, neither household may form another such Linkage with any other household.
- 7.14 Regulation 13 continues the idea of a childcare bubble, to permit informal childcare.
- 7.15 Part 4 of (and the Schedule to) this instrument sets out the businesses to be closed for the duration of the restrictions, and also the exceptions. These exceptions, subject to certain restrictions, include takeaway services for hospitality venues, training facilities for elite sportspersons, necessary accommodation for permitted activities, education and training, places of worship and community centres (for permitted activities), and libraries (for permitted activities).
- 7.16 Essential retail will remain open, as listed in part 3 of the Schedule. Non-essential retail, hospitality and other entertainment and leisure venues will be closed, as listed in the Schedule. However, although hospitality will be restricted to delivery, click and collect, drive through and takeaway, the following are exempted from closure requirements:
- Workplace canteens where there is no other practical alternative for workers;
 - Cafes and canteens in hospitals, schools, care homes, military/naval/air force or MoD facilities;
 - Venues serving food for voluntary or charitable purposes.
- 7.17 Part 5 sets out the enforcement and penalty regime.
- 7.18 Regulation 19 sets out that businesses that breach these obligations can be subject to prohibition notices, and fines. Regulation 20 specifies the offences – including the failure to comply with notices and directions given under Regulation 19.
- 7.19 Regulation 21 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, police community support officer, or person designated by a local authority or the Secretary of State) to persons 18 or over whom they reasonably believe have committed an offence under the Regulations. The amount of the fixed penalty for the offences other than business restrictions offences and the organisation of gatherings offence is £200, reduced to £100 if paid within 14 days. If a person has already received a fixed penalty notice, under these regulations, those which it

revokes, or other listed regulations in relation to coronavirus, the amount of the fixed penalty is then £400 instead, doubling on each further repeat offence up to a maximum of £6,400 and there will be no discount for repeat offenders paying within 14 days. The amount of the fixed penalty for the business restriction offences is £1,000, increasing for subsequent offences to a maximum of £10,000. The amount of the fixed penalty for the organising a gathering offences is £10,000.

- 7.20 Part 6 stipulates that this instrument ceases to have effect after 28 days beginning on the day on which it comes into force. The policy intention is to reinstate a regime functionally identical to the tiered local alert one that this instrument replaces.
- 7.21 In the schedules, Part 1 lists the business and services that are subject to the restrictions set out in Regulation 15. Part 2 sets out the business and services that are closed by Regulation 16. Part 3 lists the essential businesses and services exempted by Regulation 18.

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 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 and this guidance will include information in relation to geographic areas subject to closures and restrictions on movements and gatherings under this instrument.

12. Impact

- 12.1 This instrument is a temporary measure, which is part of the Government's response to COVID-19, lasting only four weeks. 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 does not include a statutory review clause.
- 14.2 This instrument ceases to have effect at the end of the period of 28 days, beginning on the day on which it comes into force.

15. Contact

- 15.1 Neil Townley at the Department of Health and Social Care Telephone: 0207 210 5244 or email: neil.townley@dhsc.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Tim Baxter, Incident Director, DHSC Incident Response Team, at the Department of Health and Social Care 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.