EXPLANATORY MEMORANDUM TO

THE CORONAVIRUS ACT 2020 (EARLY EXPIRY) (NO. 2) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care ('DHSC') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Act through the early expiry of:

- Two provisions in relation to the whole of the UK;
- One provision in relation to England, Wales and Scotland;
- Three provisions in relation to England and Northern Ireland;
- One provision in relation to England and Wales;
- One provision and parts of a Schedule in relation to England; and
- One provision in relation to Northern Ireland

2.2 The Secretary of State has obtained the necessary consent to expire on behalf of Scotland and Northern Ireland for the appropriate provisions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations expire powers on behalf of, and with consent of, Northern Ireland and Scotland.

3.2 The Government has, received written consent from the relevant Scottish Ministers and Northern Ireland departments responsible for a provision expiring. The Regulations have not been signed by those Scottish Ministers or Northern Ireland departments as a signature is not required to give effect to the consent received.

3.3 It is considered that paragraphs 3.20.2 and 30.20.3 of Statutory Instrument Practice indicate that consent from devolved administrations does not need to be included in the signature block. The phrase "Minister or Department" in paragraph 3.20.2 clearly refers to a Minister of the Crown or a Department of Her Majesty's Government. The Northern Ireland Departments and the Scottish Ministers are not a "Minister or Department" in this sense.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Scotland, Wales and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland. However, part of one provision extends to England, Wales and Scotland (section 77(3)), one provision extends to England and Wales and Northern Ireland (section 78), three provisions extend to England and Wales (Part 1 of Schedule 16 (section 37(1)), Part 1 of Schedule 17 (section 38(1)), and section 56 (and Schedule

26)), three apply to England, (Parts 1 and 2 of Schedule 21 (section 51), Parts 1 and 2 of Schedule 22 (section 52)), and three extend to Northern Ireland (Part 3 of Schedule 16 (section 37(3), Part 5 of Schedule 21 (section 51), and Part 5 of Schedule 22 (section 52)).

4.3 This instrument also expires provisions on behalf of Scotland (section 23) and Northern Ireland (paragraphs 14 and 15 of Schedule 16 (section 37(3)), Parts 1 and 5 of Schedule 21 (section 51), Parts 1 and 5 of Schedule 22 (section 52) and section 58.

5. European Convention on Human Rights

5.1 The Secretary of State for Health and Social Care Sajid Javid MP has made the following statement regarding Human Rights:

"In my view the provisions of The Coronavirus Act 2020 (Early Expiry) (No. 2) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made to expire temporary provisions from the Act. These are:

- Section 23 for the whole of the UK, with consent of Scottish Ministers – Time limits in relation to urgent warrants etc under Investigatory Powers Act
- Schedule 16 (section 37), Part 1 for England, and paragraph 14 with the consent of the Northern Ireland Department for Education and paragraph 15 with the consent of the Northern Ireland Department for the Economy – Temporary closure of educational institutions and childcare premises
- Schedule 21 (section 51), Part 1 and Part 2 for England, and Part 1 and Part 5 with the consent of the Northern Ireland Department of Health– Powers relating to potentially infectious persons
- Schedule 22 (section 52), Part 1 and Part 2 for England, and Part 1 and Part 5 with the consent of the Northern Ireland Executive Office – Powers to issue directions relating to events, gatherings and premises.
- Section 56 (and Schedule 26) for England and Wales – Live links in magistrates' court appeals against requirement or restrictions imposed on a potentially infectious person
- Section 58 (and Schedule 28) so far as it extends to Northern Ireland only, with the consent of the Northern Ireland Department for Justice.
- Section 77(1) and (2) for the whole of the UK and Section 77(3) for England, Wales and Scotland – Up-rating of Working Tax Credit etc.
- Section 78 so far as it applies to England only – Local Authority Meetings

6.2 This SI will also seek the expiry of 19 of the 29 provisions which could be modified or disapplied (one of which can be both modified and disapplied) via a notice under Part 1 of Schedule 17 (section 38) of the Act relating to the temporary continuity of education, training, and childcare, in relation to England only.

6.2.1 The provisions recommended for expiry, which could be disapplied under Schedule 17, are:

a) Section 512(3)(b) and (c)(ii) of the Education Act 1996
b) Section 87 of the School Standards and Framework Act 1998

c) Section 43 of the Children and Families Act 2014
d) Section 44(1) of the Children and Families Act 2014
e) Section 13 (2)(b) of the Education Act 2005

The provisions recommended for expiry, which could be modified under Schedule 17, are:

a) the Further and Higher Education Act 1992, section 44,
b) the Further and Higher Education Act 1992, section 51A,
c) the Education Act 1996, section 14,
d) the Education Act 1996, sections 15ZA to 15ZC,
e) the Education Act 1996, sections 508A to 508F and Schedule 35C,
f) the Education Act 1996, sections 512 to 512ZB,
g) the School Standards and Framework Act 1998, section 70,
h) the School Standards and Framework Act 1998, section 88D,
i) the School Standards and Framework Act 1998, section 99,
j) the Education Act 2005, section 13,
k) the Childcare Act 2006, sections 7 and 7A,
l) the Childcare Act 2006, section 12,
m) the Education and Skills Act 2008, section 124(2),
n) the Education and Skills Act 2008, section 125(2), and
o) the Children and Families Act 2014, section 42.

6.3 The nineth two-monthly report on the Act, published on 22 September, highlighted the intention to expire these provisions. This was also set out in the Autumn/Winter plan, published on 14 September, and in the Secretary of State for Health and Social Care's oral statement on the same day.

Expiry Regulations

Regulation 1

- Regulation 1 explains citation, commencement, and interpretation.

Regulation 2

- Regulation 2 expires provisions that extend across the United Kingdom.

Regulation 3

- Regulation 3 expires provisions that extend to England, Wales and Scotland.

Regulation 4

- Regulation 4 expires provisions that extend to England and Wales.

Regulation 5

- Regulation 5 expires provisions so far as they apply in in England.

Regulation 6

- Regulation 6 expires provisions so far as they extend to Northern Ireland.

7. Policy background

What is being done and why?

7.1 The Coronavirus Act 2020 (the Act) is a UK Act of Parliament and gained Royal Assent on the 25 March 2020. The Act has been an essential part of the Government's response to the pandemic. The Act enables action in five keys areas by increasing the available health and social care workforce; easing and reacting to the burden on frontline staff; supporting people; containing and slowing the virus; and managing the deceased with respect and dignity.

7.2 The Government's intention has always been to seek a balance between ensuring there are measures supporting recovery, individuals, businesses, bolstering the workforce and public health, whilst removing powers that are no longer necessary or proportionate. A two-year life span for the temporary provisions in the Act was chosen to ensure many of the powers remain available for a reasonable length of time as well as the option for provisions to be expired early (section 90(1)) or suspended (section 88 (1)) and revived (section 88 (3)).

7.3 The Act also includes (in part 2) a number of arrangements to facilitate accountability and transparency such as two-monthly reports to Parliament on the status of the non-devolved provisions, six-monthly reviews and renewal votes in the House of Commons and a one-year debate on the Act.

7.4 As part of the third six-month review of the Act, the Government conducted a thorough review of the temporary, non-devolved provisions to ensure they remain necessary and proportionate, and that there was a robust justification for those provisions being retained. Although legally not required where the Government is taking decisions to expire provisions in relation to England, the Government also engaged with the Devolved Administrations to achieve a four-nations approach where possible. Where appropriate, consent was sought to expire provisions on behalf of their respective nations.

7.5 This instrument brings forward the early expiration of several provisions contained within the Act, as summarised below. It has been assessed that these are no longer necessary to respond to the pandemic.

Regulation 2

<u>Section 23: Time limits in relation to urgent warrants etc under Investigatory Powers Act.</u>

- This provision was introduced to enable the time allowed for urgent warrants to be reviewed by a Judicial Commissioner, and how long they can last before they need to be renewed, to be varied. It is assessed that the sufficient resilience has been built up within the system to ensure that the section 23 power would not be required in future and that therefore this power can be expired. As section 23 was included in the Scottish Legislative Consent Motion, the Government has received consent from Scottish Ministers to expire on behalf of Scotland.

<u>Section 58 (and Schedule 28) Powers in relation to transportation, storage and disposal of dead bodies etc in relation to Northern Ireland only.</u>

- The provisions under Schedule 28 were introduced to support the death management system if difficulties arose as a result of the pandemic. There are

several provisions on death management, covering information about capacity and powers to direct local authorities, as well as directions to address lack of capacity. The Government has received consent from Northern Ireland Ministers to expire this power on their behalf in this statutory instrument.

Section 77(1) and Section 77(2): Up-rating of Working Tax Credits etc

- This measure allowed for the rate of Working Tax Credit to be increased by an additional £1,045 a year above the rate of £1,995 previously announced in a Written Ministerial Statement on 4 November 2019 (HCWS75), to £3,040 a year for 2020/2021.
- Section 77(1) temporarily increased the basic element of Working Tax Credit, for the whole of the tax year 2020/21, so that working households on low incomes were financially supported through the pandemic. The increase was up to £1,045 dependent on claimants' circumstances.
- Section 77(2) ensured that HM Treasury Ministers disregarded the increased rate of Working Tax Credit when they conducted their annual review in Autumn 2020 into whether benefit rates had maintained their value in relation to the general level of prices. However, as this power was time-limited to the 2020/21 tax year, it has now served its purpose and the intention is to expire this power.

Part 1 of Schedule 21 (section 51): Powers relating to potentially infectious persons in relation to England and Northern Ireland

- Part 1 of Schedule 21 sets out information relating to how Parts 2 to 5 of Schedule 21 are interpreted. Schedule 21 provides powers in relation to potentially infections persons in England and Northern Ireland respectively. Part 1 is being expired in relation to England (Part 2) and Northern Ireland (Part 5) only.

Part 1 of Schedule 22 (section 52): Powers relating to events, gatherings and premises in relation to England and Northern Ireland

- Part 1 of Schedule 22 sets out information relating to how Parts 2 to 5 of Schedule 22 are interpreted. Schedule 22 provides powers to issue directions relating to events, gatherings and premises in England and Northern Ireland respectively. Part 1 is being expired in relation to England (Part 2) and Northern Ireland (Part 5) only.

Regulation 3

Section 77(3): Up-rating of Working Tax Credits etc

- Section 77(3) ensured the Secretary of State for Work and Pensions disregarded a corresponding £20 a week up-lift in the Universal Credit standard allowance when she undertook her annual review of benefits and pensions in Autumn 2020. However, as this power was time-limited to the 2020/21 tax year, it has now served its purpose and the intention is to expire this power.

Regulation 4

Section 56 (and Schedule 26): Live links in magistrates' court appeals against requirements or restrictions imposed on a potentially infectious person

- This provision allows for appeals to magistrates' courts against restrictions or requirements on potentially infected persons to be heard by live link unless the court directs otherwise. The court may, for example, direct that one or more parties should not participate by video link, or that they may participate by telephone if that is in the interests of justice. To date this power has not been used and it is assessed that it is appropriate to expire it given the intention to expire Part 2 of Schedule 21.

Regulation 5

Section 78: Local Authority Meetings

- This provision enabled all local authority meetings held before 7 May 2021 to be held remotely, including allowing remote access by members of the public, and it removed the requirement for local authorities to hold a 2020 annual meeting. As the power was time-limited until 7 May 2021 and is no longer operable, it is assessed this provision should now be expired early from the Act.

Parts 1 of Schedule 16 (section 37): Temporary closure of educational institutions and childcare premises.

- This provision gives powers to direct the temporary closure of a school, further or higher education institution, or registered childcare provider, or to restrict access to them, where tests in the Act are met. As the Secretary of State for Education has not used these powers and instead, to date, has relied on guidance to limit attendance at education settings, it is assessed it is appropriate to expire these provisions.

Part 1 of Schedule 17 (section 38): Temporary continuity directions etc: education, training and childcare

- This provision gives the power to disapply or modify specified existing requirements or restrictions contained in education and childcare legislation and (where appropriate) equivalent provisions in institutional funding agreements, where tests in the Coronavirus Act 2020 are met.
- Having reviewed the use of the notices and the requirements needed for the Department for Education's Contingency Framework, this SI will remove 19 of the possible 29 provisions which could be modified or disapplied (one of which could be both modified and disapplied) via a notice. The powers being retained ensure the continued ability to enable an effective response to the pandemic as the use of these powers can provide protections to the sector/individuals and ensure the effective delivery of the Department for Education's Contingency Framework.
- The provisions recommended for expiry, which could be disapplied under Schedule 17, are:
    a) Section 512(3)(b) and (c)(ii) of the Education Act 1996
    b) Section 87 of the School Standards and Framework Act 1998

c) Section 43 of the Children and Families Act 2014
d) Section 44(1) of the Children and Families Act 2014
e) Section 13 (2)(b) of the Education Act 2005

- The provisions recommended for expiry, which could be modified under Schedule 17, are:
  a) the Further and Higher Education Act 1992, section 44,
  b) the Further and Higher Education Act 1992, section 51A,
  c) the Education Act 1996, section 14,
  d) the Education Act 1996, sections 15ZA to 15ZC,
  e) the Education Act 1996, sections 508A to 508F and Schedule 35C,
  f) the Education Act 1996, sections 512 to 512ZB,
  g) the School Standards and Framework Act 1998, section 70,
  h) the School Standards and Framework Act 1998, section 88D,
  i) the School Standards and Framework Act 1998, section 99,
  j) the Education Act 2005, section 13,
  k) the Childcare Act 2006, sections 7 and 7A,
  l) the Childcare Act 2006, section 12,
  m) the Education and Skills Act 2008, section 124(2),
  n) the Education and Skills Act 2008, section 125(2), and
  o) the Children and Families Act 2014, section 42.

<u>Part 2 of Schedule 21 (sections 51): Powers relating to potentially infectious persons</u>

- These powers provide Public Health Officers (PHOs), who are public health professionals designated for these purposes by the Secretary of State or relevant ministers in the devolved administrations, constables and immigration officers, with powers to control the spread of Covid-19 in the UK. In England, these powers have only been used 10 times by Public Health Officers, and not since October 2020. The Government's assessment is that there is limited benefit in retaining the measures set out in Schedule 21 of the Act at this stage in the pandemic. The intention is therefore to expire the powers.
- In order to activate this power a declaration must be made that (a) the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health, and (b) the powers conferred by this Part of this Schedule will be an effective means of delaying or preventing significant further transmission of coronavirus. Such a declaration was made for England on 10 February 2020 under the Health Protection (Coronavirus) Regulations 2020 (SI 2020/129). As per section 4(2) under Schedule 21, once the Secretary of State is no longer of the view referred to in this declaration, it must be revoked. As Schedule 21 is being expired, the declaration will also be revoked.

<u>Part 2 of Schedule 22 (section 52): Powers relating to events, gatherings and premises</u>

- These provisions give the Secretary of State the power to prohibit or restrict events and gatherings, and to close premises, if the public health situation should require such actions. To date, most legal restrictions relating to Covid-

19 have been implemented through the Public Health (Control of Diseases) Act 1984, and therefore these powers have not been used.

Regulation 6

Part 3 (14) and (15) of Schedule 16 (section 37): Temporary closure of educational institutions and childcare premises.

- The Government has received consent from Northern Ireland Ministers to expire the parts of this provision which relate to the temporary closure of schools (Part 3 (14)) and of further and higher education institutions (Part 3 (15)) through this statutory instrument.

Part 5 of Schedule 21 (sections 51): Powers relating to potentially infectious persons

- The Government has received consent from Northern Ireland Ministers to expire this power on their behalf through this statutory instrument.

Part 5 of Schedule 22 (section 52): Powers relating to events, gatherings and premises

- The Government has received consent from Northern Ireland Ministers to expire this provision on their behalf through this statutory instrument.

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 2018.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 Consultation was held with the Welsh Government, Scottish Government, and the Northern Ireland Executive to discuss the expiry of devolved provisions. As a result, the relevant devolved administrations consented to the expiry where appropriate of various provisions.

11. Guidance

11.1 The Government has published a table setting out the status of each measure in the Act which can be found at https://www.gov.uk/government/publications/coronavirus-act-2020-status/coronavirus-act-2020-status-table.

11.2 Additionally, guidance in relation to Covid-19 can be found at www.gov.uk/coronavirus.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument.

12.2 The extensions made by this instrument fall under the Civil Contingencies Exclusion of the Better Regulation Framework and the Better Regulation Executive will not seek to enforce the current administrative requirement for validating impacts for temporary emergency Covid-19 legislation in advance of the wider reform of the better regulation framework.

12.3 It is expected that expiring these provisions will have no, or a negligible, impact on the private, voluntary, or public sector.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 Schedule 16, and section 37, relating to the temporary closure of educational institutions and childcare premises, have never been used as, to date, the Government has relied on guidance to limit attendance. Therefore, expiring the provision is not expected to have an impact on activities that are undertaken by small businesses.

13.3 Schedule 22, and section 52, relating to events, gatherings and premises have not been used to date. Powers under the Public Health (Control of Disease) Act 1984 have been relied on during the Covid-19 pandemic where imposing restrictions relating to events, gatherings and premises. Therefore, expiring the provision is not expected to have an impact on activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans to monitor or review this instrument. The Act is subject to six-monthly Parliamentary reviews and two-monthly reports are laid in Parliament on the status of the non-devolved provisions in the Act.

14.2 The Secretary of State for Health and Social Care Sajid Javid MP has made the following statement regarding business activity:

"In my view it is not appropriate for the Coronavirus Act 2020 (Early Expiry) (No.2) Regulations 2021 to contain a review provision."

14.3 This instrument will not expire. Part 2 of the Act is not subject to expiration, as per s89(2)(m). As these regulations are made using powers under s90 in Part 2, they will not expire.

15. Contact

15.1 The Department of Health and Social Care email: CSDEnquiries@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tim Baxter, Deputy Director for the Covid-19 Strategy Directorate, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Sajid Javid MP, Secretary of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.