EXPLANATORY MEMORANDUM TO

THE CORONAVIRUS ACT 2020 (EARLY EXPIRY) 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 12 temporary provisions. Nine of these are devolved, sections 8, 9, 24, 25 to 29 (schedule 15) and 71, for which the Secretary of State has obtained the necessary consent to expire on behalf of Wales, Scotland and Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 This instrument applies to the United Kingdom.

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, Scotland, Wales and Northern Ireland. However, one provision within this statutory instrument applies only to England and Wales (section 84), and two to England only (section 15, and schedule 12, and section 79).

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 Coronavirus Act 2020 (Early Expiry) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made to expire 12 of these temporary provisions from the Act. These are:

- Section 8 - Emergency Volunteering Leave
- Section 9 - Compensation for Emergency Volunteers
- Part 1 of schedule 12 (section 15) – Local Authority care and support

- Section 24 – Extension of time limits for retention of fingerprints and DNA profiles
- Section 25 – Power to require information relating to food supply chains
- Section 26 - Authorities which may require information
- Section 27 – Restrictions on use and disclosure of information
- Section 28 (schedule 15)– Enforcement of requirement to provide information
- Section 29 – Meaning of 'food supply' chain and related expressions.
- Section 71 – Signatures of Treasury Commissioners
- Section 79 – Business Improvement Districts (BIDs)
- Section 84 – Postponement of General Synod Elections

6.2 The intention to expire these provisions ***was*** made to Parliament by the Secretary of State for Health and Social Care (Official Report, 22 March 2021, cols. 1109- 1171). Expiry of these provisions was debated in both houses on 25 March 2021.

Expiry Regulations

Regulation 1

6.3 Regulation 1 explains citation, commencement, and interpretation.

Regulation 2

6.4 Regulation 2 expires nine provisions that extend and apply across the United Kingdom.

Regulation 3

6.5 Regulation 3 expires one provision that extends to England and Wales.

Regulation 4

6.6 Regulation 4 expires two provisions that apply in England only.

7. Policy background

What is being done and why?

7.1 As part of the one-year review of the Act, the Government conducted a thorough review of the 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.

7.2 This instrument brings forward the early expiration of twelve 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

Section 8 and 9: Emergency Volunteering Leave and Compensation for Emergency Volunteers.

7.3 These provisions were introduced and intended to come into force should the delivery of health service be at risk because of the pandemic. However, to date, despite the significant workforce pressure in health and social care, other measures such as the use of other agency and bank staff and the Bring Back Staff (BBS) scheme have been more appropriate to address the need for trained clinical staff. As such, these powers have not yet come into force, and it is assessed these provisions can be expired.

Section 24: Extension of time limits for retention of fingerprints and DNA profiles.

7.4 This provision established a regulation-making power so that biometrics (fingerprints and DNA profiles) held in the interests of national security could be retained for up to an additional six months beyond normal statutory retention deadlines (with the possibility of a further six-month extension; enabling retention for up to a maximum of 12 months). This provision has successfully mitigated the risk of critical national security capability being compromised because of the pandemic, including the risk of losing the biometrics of up to 150 individuals per month (many of whom could be subjects of national security interest). A further extension beyond the second set of regulations made under this power was not necessary and therefore section 24 will be expired as part of the one-year review as it has served its original purpose and no further regulations are to be made under it.

7.5 The second set of regulations made under this power – the Coronavirus (Retention of Fingerprints and DNA Profiles in the Interests of National Security) (No 2) Regulations 2020 – will be saved as they provide the current basis for retention of certain biometrics held in the interest of national security that would otherwise would have fallen to be destroyed between 1 October 2020 and 24 March 2021.

Sections 25-29 (and schedule 15): Food Supply Provisions

7.6 These provisions give the appropriate authority the power to require information from persons within, or connected to, a food supply chain, but not from individuals. The power can only be used to ascertain whether there is a food supply disruption (or risk of disruption), or the nature of such a disruption, and if the person has already failed to provide the information voluntarily or has provided false or misleading information. To date, the food industry has been very collaborative in sharing data and information, which has enabled Government to support efforts in maintaining food supply effectively during the Covid-19 response. It has been assessed that this voluntary sharing of information will continue. As these powers have not been commenced and food supply has been resilient, these powers are no longer deemed necessary and will be expired.

Sections 71: Signature of Treasury Commissioners

7.7 This measure was introduced to ensure that Her Majesty's Treasury can always transact its business. It means that during a Covid-19 emergency period where any instrument or act must be signed by the Commissioners of HM Treasury it will be possible for a single Commissioner or a single Treasury Minister to sign instruments and act on behalf of the Commissioners. However, it is assessed that this power is no longer required at this stage in managing the pandemic.

Regulation 3

Section 84: Postponement of General Synod Elections

7.8 This provision allows HM the Queen, by Order in Council and at the request of the Archbishops of Canterbury and York, to postpone the dissolution of the General Synod of the Church of England and so to postpone elections to the General Synod, which were due to take place in summer 2020.

7.9 Two Orders in Council have been made under section 84. The first order postponed the dissolution of the General Synod to 31st July 2021 and provide for members of the Synod to continue in office accordingly. The second Order made equivalent provision for the Cathedrals Fabric Commission for England, whose own membership terms hinge on the terms of the General Synod.

7.10 The Church of England and the Government agree the provision has served its purpose and may be expired.

7.11 The Orders in Council made under section 84 are saved under this instrument, to preserve their effect and forestall any doubts which might otherwise arise about their effect.

Regulation 4

Part 1 of schedule 12 (section 15): Local Authority care and support

7.12 The Care Act easements enabled local authorities to continue to meet the most urgent and acute needs in the face of Covid-19 by relaxing some duties on local authorities, allowing them to prioritise care and support more effectively than was possible under the Care Act 2014. In England, eight local authorities-used these powers between April 2020 and June 2020. No local authorities in England have used them after 29 June 2020. The social care workforce has remained resilient under significant pressure and continued to deliver these duties without the need to operate under easements. Local authorities are in a better position now in terms of planning, support and use of mutual aid than they were when the easements provision was introduced.

7.13 Part 1 of schedule 12 removed certain duties from the provision of social care by local authorities. Certain necessary effects will continue post expiry in accordance with section 89(2)(r) of the Act.

Section 79: Business Improvement Districts (BIDs)

7.14 This provision was introduced as there was an increased risk to Business Improvement Districts (BIDs), which are local business partnerships established through voting of local businesses, that were going to re-ballot during the pandemic. All BIDs that were extended under this provision have re-balloted and so the power is no longer required beyond when the regulations expire on 31 March 2021.

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 Assembly to discuss the expiry of devolved provisions. As a result, the devolved administrations consented to the expiry.

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 The Impact Assessment notes it is expected that expiring the twelve 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 Sections 25-29, and schedule 15, relating to food supply information provisions, have never come into force as, to date, information has been supplied voluntarily by those involved in the food supply chain. Therefore, expiring the provision is not expected to have an impact on activities that are undertaken by small businesses.

13.3 Section 79 was introduced as there was an increased risk to Business Improvement Districts (BIDs) that were due to re-ballot during the pandemic. However, as all BIDs that were extended under this provision have re-balloted and the power is no longer required beyond when the regulations expire on 31 March 2021, expiring this provision should have no 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 Matt Hancock MP has made the following statement regarding business activity:

"In my view it is not appropriate for the Coronavirus Act 2020 (Early Expiry) 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 section 89(2)(m). As these regulations are made using powers under section 90 in Part 2, they will not expire.

15. Contact

15.1 Yasmin Roye at the Department of Health and Social Care email: yasmin.roye@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Harriss, Deputy Director for the Social Distancing Strategy Directorate, 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 at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.