EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ALL TIERS) (ENGLAND) (AMENDMENT) (NO. 3) REGULATIONS 2020

2020 No. 1646

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 in England of acute severe respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease Covid-19.

2.2 This instrument amends Schedule 4 of the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ("the All Tiers Regulations") (S.I. 2020/1374) to move some local authority areas from Tier 1 to Tier 2, some areas from Tier 1 and Tier 2 into Tier 3, and some areas from Tier 2 and Tier 3 into Tier 4. It also makes some amendments to the Tier 4 restrictions, including correcting minor drafting errors. This instrument also makes consequential amendments to other legislation. Overall these amendments are being made to ensure that appropriate levels of intervention are made in the right places to manage Covid-19 outbreaks and help suppress the virus.

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) ("the 1984 Act"). This instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. It is of 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 severe and imminent threat to public health which is posed by the incident and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

3.2 This instrument was made on 24 December 2020 and was published on www.legislation.gov.uk later that day. This instrument will come into force on 26 December 2020 and the All Tiers Regulations, which this instrument amends, will expire on 2 February 2021. This instrument will 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. The Secretary of State must review whether each area that is part of Tier 2, Tier 3 or Tier 4 should continue to be part of that area at least once every 14 days. The Secretary of State

must review the need for the restrictions in the All Tiers Regulations at least once every 28 days, with the first review to be carried out by 30 December 2020.

3.3 On 30 September 2020 the Secretary of State made a commitment to the House of Commons that wherever possible for significant national measures with effect in the whole of England or UK-wide, votes would be held before such regulations come into force (Hansard cols 288-289). Owing to the speed with which the Government must take this emergency action to control the virus and save lives it is not possible for a debate to be held before these regulations 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) (All Tiers and Obligations of Undertakings) (England) (Amendment) (No. 3) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 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 diseases, or contamination from chemicals or radiation. Part 2A 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 protections 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 of infection or contamination 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 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 On 2 December 2020 a revised tiering system was introduced by the All Tiers Regulations.

6.7 On 14 and 16 December 2020 the All Tiers Regulations were amended by the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) Regulations 2020 (S.I. 2020/1533) and the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1572) to move some local authority areas between tiers. These changes came into force on 16 and 19 December 2020 respectively.

6.8 On 20 December 2020 the All Tiers Regulations were amended by the Health Protection (Coronavirus, Restrictions) (All Tiers and Obligations of Undertakings) (England) (Amendment) Regulations 2020 (S.I. 2020/1611) to introduce an additional tier of restrictions ("Tier 4") and move some local authority areas into Tier 4.

6.9 Regulation 1(2) provides that this instrument comes into force on 26 December 2020.

6.10 Regulation 2(1) – (6) makes various amendments to the All Tiers Regulations including correcting minor drafting errors.

6.11 Regulation 2(2) removes the definition of 'permitted outdoor sports gathering' from regulation 2(1) of the All Tiers Regulations to correct a minor drafting error.

6.12 Regulation 2(3) amends definitions in regulation 2(2) of the All Tiers Regulations to include references to the Paris Olympic and Paralympic Games. This has the effect of bringing those events within the exemptions for elite athletes.

6.13 Regulation 2(4) corrects a minor drafting error in regulation 3(2) of the All Tiers Regulations.

6.14 Regulation 2(5) inserts a new exemption into paragraph 12(2)(a) of Schedule 3 to the All Tiers Regulations which allows holiday accommodation providers in Tier 3 to provide accommodation for the purposes of access to, and contact between, children and parents where they do not live with each other. A similar exemption is inserted in relation to hotel accommodation in Tier 4 by regulation 2(6)(y).

6.15 Regulation 2(6) largely corrects minor drafting errors in Schedule 3A to the All Tiers Regulations. This includes a number of changes in relation to childcare to correct drafting errors, including inserting an exception to the gatherings limits for schools. More substantial amendments are outlined in the following paragraphs.

6.16 Regulation 2(6)(d) amends Schedule 3A to the All Tiers Regulations to include a new exception for leaving home in Tier 4 as paragraph 2(2)(da), which is to visit: outdoor attractions at an aquarium, zoo or safari park; or outdoor animal attractions at a farm, wildlife centre or any other place where animals are exhibited to the public as an attraction. An amendment is also made to permit these attractions to open in Tier 4 by regulation 2(6)(aa) and (bb).

6.17 Regulation 2(6)(i) amends the provision at paragraph 2(14) of Schedule 3A to the All Tiers Regulations limiting the reasons for which parents can use supervised activities for their children in Tier 4 to include where those supervised activities are necessary to enable the parent or person with parental responsibility to attend a medical appointment or address a medical need.

6.18 Regulation 2(6)(m) adds to paragraph 2 of Schedule 3A to the All Tiers Regulations an exception for leaving home in Tier 4 where the person in question is attending a picket. An exemption to the Tier 4 gatherings provisions in relation to picketing is also inserted by regulation 2(6)(u).

6.19 Regulation 2(6)(x) amends paragraph 12(1) of Schedule 3A to the All Tiers Regulations to insert exceptions to the Tier 4 business closures to allow animal welfare activities to continue in indoor arenas at riding centres and to allow certain personal care businesses to continue to provide medical and health services. Regulation 2(ii) also amends paragraph 17(o) of Schedule 3A to the All Tiers Regulations to clarify that medical and health services incorporate personal care services and treatments required by those with disabilities.

6.20 Regulations 2(7) - (9) make numerous amendments to Schedule 4 of the All Tiers Regulations to move local authority areas into Tier 2, Tier 3 and Tier 4 areas.

6.21 Regulations 3, 4 and 5 make minor amendments to the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020/684), the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 (S.I. 2020/750), and the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 (S.I. 2020/1375) respectively.

7. Policy background

What is being done and why?

7.1 The three tiers introduced on 2 December 2020 were:

- Tier 1: Medium Alert which are the baseline measures nationally and represent the minimum level of restrictions considered appropriate given the current levels of circulation of the virus;
- Tier 2: High Alert, which places further restrictions on social contact aimed primarily at targeting areas of high transmission; and
- Tier 3: Very High Alert, which goes further in restricting social contact to continue to address household to household transmission and places further restrictions and closures on businesses, as a proportionate response to the heightened transmission risk.

7.2 On 20 December 2020 an additional tier was introduced:

- Tier 4: Stay at Home, which establishes a 'stay at home' requirement in law, further restricting gatherings and closing additional businesses including non-essential retail as a result of a rapid rise in cases due to the new variant of Covid-19,

7.3 Decisions on which tier will initially apply in each area were announced on 2 December 2020 and are primarily based on 5 key indicators:

- Case detection rates in all age groups;
- Case detection rates in the over 60s;
- The rate at which cases are rising or falling;
- Positivity rate (the number of positive cases detected as a percentage of tests taken); and
- Pressure on the NHS, including current and projected occupancy.

It was envisaged that areas could move between tiers.

7.4 Considering the rapid rise in positive cases in several areas and the likely progression of the new variant, a more preventative strategy was agreed on 23 December 2020.

This moves further local authority areas from Tier 1 to Tier 2, some areas from Tier 1 and Tier 2 into Tier 3, and some areas from Tier 2 and Tier 3 into Tier 4.

7.5 This instrument also makes some changes to the Tier 4 restrictions including:

- an exemption to the gatherings restrictions for schools;
- adding specific clarity on the stay at home exemption for providing care for vulnerable people that this includes people with a disability;
- ensuring local authorities have the same enforcement powers in tier 4 as in all the other tiers;
- enabling personal care treatments to continue where they are considered treatment for genuine medical and health reasons; and
- extending the exemptions to accommodation closures to allow a parent to stay where necessary in order to have contact with a child who does not live with them.
- Enable people to visit zoos, safari parks and other outdoor animal attractions in tier 4.

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 An Impact Assessment has not been prepared for this instrument because it is a temporary measure which is part of the Government's response to Covid-19. As this instrument will cease to have effect on 2 February 2021 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 The All Tiers Regulations must be reviewed by the Secretary of State at least every 28 days.

14.2 The allocation of areas into Tiers 2, 3 and 4 must be reviewed by the Secretary of State every 14 days.

14.3 The All Tiers Regulations that this instrument amends cease to have effect on 2 February 2021 when they will expire.

15. Contact

15.1 Christina Head at the Department of Health and Social Care Telephone: 07761328305 or email: christina.head@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Harriss, Deputy Director for Social Distancing Strategy, 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.