EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (NO. 3) AND (ALL TIERS) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2020 No. 8

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 all of England currently in Tiers 1, 2 or 3 into Tier 4. It also makes some amendments to the Tier 4 restrictions in order to achieve a national lockdown. This includes:

- removing outdoor recreation as an exception from the restrictions on leaving home;
- restricting takeaway and click and collect of alcohol from hospitality businesses;
- closing zoos, aquariums, safari parks and outdoor animal attractions, outdoor sports facilities and retail travel agents; and
- restricting childcare (other than early years provision) and supervised activities for children to vulnerable children and children of critical workers and removing the exemption to the gatherings restrictions for parent and child groups.

It also changes the expiry date of the All Tiers Regulations to 31 March 2021.

2.3 This instrument also amends the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020 (S.I. 2020/750) ("the No.3 Regulations") to extend these regulations by six months so that they expire on 17 July 2021 and remove the ability for a police community support officer (PCSO) to use 'reasonable force' in enforcing the No. 3 Regulations.

2.4 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 laid on 5 January 2021 and was published on www.legislation.gov.uk later that day. This instrument will come into force on 6 January 2021 and the All Tiers Regulations, which this instrument amends, will now expire on 31 March 2021. 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. The No. 3 Regulations, which this instrument also amends, will now expire on 17 July 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.

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) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 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 18 July 2020 the No. 3 Regulations came into force. Regulation 19 mandated the expiry of those Regulations on 17 January 2021.

6.7 On 2 December 2020 a revised tiering system was introduced by the All Tiers Regulations.

6.8 On 16 and 19 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.

6.9 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.

6.10 On 26 December 2020 the All Tiers regulations were amended by the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/1646) to move further local authority areas into higher tiers. That instrument also made some consequential amendments to other legislation. Amendments were also made to include a new exception for leaving home in Tier 4 to allow for visits to be made to 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.

6.11 On 31 December 2020 the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/1654) moved additional local authority areas from Tiers 2 and 3 to Tiers 3 and 4 and made further technical amendments to the All Tiers Regulations.

6.12 On 4 December the Chief Medical Officers raised the Covid-19 Alert Level to level 5. This instrument achieves a national lockdown by amending some Tier 4 restrictions and making all areas of England subject to Tier 4.

6.13 Regulation 1(2) provides that this instrument comes into force on 6 January 2021.

6.14 Regulation 2 changes the expiry date of the No. 3 Regulations to 17 July 2021 and removes the ability for a police community support officer (PCSO) to use 'reasonable force' in enforcing the No. 3 Regulations.

6.15 Regulation 3(2) changes the expiry date of the All Tiers Regulations to 31 March 2021.

6.16 Regulation 3(4) removes outdoor recreation and visiting outdoor animal attractions from the exceptions to leaving home in Tier 4; and removes outdoor sports grounds and sports facilities from the public outdoor places that people can leave home to use for the purposes of exercise. It also amends the exceptions for leaving home in relation to childcare to provide that, while all people may leave home to access early years childcare, the reasonable excuse to leave home for later years provision or supervised activities for children only applies to the children of critical workers or vulnerable children.

6.17 Regulation 3(5) and 3(6) mirror these changes in the exemptions to the gathering restrictions in Tier 4.

6.18 Regulation 3(7) removes the exception for under 18s to participate in outdoor sports gatherings.

6.19 Regulation 3(8) allows outdoor sports facilities to be used for specific purposes including elite sports, registered childcare or supervised activities for children and by schools.

6.20 Regulation 3(9) restricts hospitality businesses from selling alcohol for takeaway or click and collect.

6.21 Regulation 3(10) adds aquariums and zoos, including safari parks, animal attractions, outdoor sports courts or amenities and retail travel agents to the businesses restricted in Tier 4.

6.22 Regulation 3(11) removes parent and child groups from the list of exceptions to closures of libraries and community halls.

6.23 Regulation 3(12) removes businesses selling or supplying natural Christmas trees from the businesses allowed to remain open in Tier 4.

6.24 Regulation 3(13) amends Schedule 4 to make every area of England apart from the territorial waters and airspace subject to Tier 4 restrictions.

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 initially applied 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 As a result of the exponential rise in cases and pressure on the NHS, this instrument makes every area of England subject to Tier 4 restrictions and changes the expiry date of the All Tiers Regulations to 31 March 2021.

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

- Removing exceptions for outdoor recreation, outdoor sports gatherings for under 18s and outdoor sports (other than for specific exceptions);
- Permitting childcare and supervised activities to only be used for children of critical workers and vulnerable children and removing the exception for parent and child groups;
- Closing zoos and all animal attractions, outdoor sports venues and retail travel agents;
- Restricting the sale of alcohol by hospitality businesses for takeaway and click and collect.

7.6 The No. 3 Regulations came into force on 18th July 2020 and are due to expire on 17th January 2021. They give powers to local authorities to issue directions imposing restrictions, requirements or prohibitions in relation to:

- individual premises;
- events; and
- public outdoor places.

7.7 The recent increases in Covid-19 transmission have required continued use of the No. 3 Regulations. To date, 260 directions have been made by 70 local authorities. They have been used to manage a variety of different situations including stopping festivals,

closing barber shops and restaurants, requiring businesses to follow Covid-secure guidance and restricting how people gather outside premises.

7.8 Given this context, the decision has been made to extend the No3 regulations for 6 months in order to provide continuity to local authorities and ensure that they have a robust power to use when needed, to reduce transmission risks in their areas, and to protect public health.

7.9 This instrument also removes the ability for a police community support officer (PCSO) to use 'reasonable force' in enforcing the No. 3 Regulations (bringing the provisions in line with similar coronavirus regulations which removed similar PCSO powers).

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 31 March 2021 for the All Tiers Regulations and 17 July 2021 for the No. 3 Regulations 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 will now cease to have effect on 31 March 2021 when they will expire. The No. 3 Regulations that this instrument also amends will now cease to have effect on 17 July 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.