EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (STEPS AND OTHER PROVISIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 585

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 amends the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (S.I. 2021/364) ("the Steps Regulations") to move all of England into Step 3 of the roadmap out of lockdown (see paragraph 7.1 below). It amends the Steps Regulations to remove the prohibition on travelling abroad without a legally permitted reason for doing so and the requirement for individuals to complete a travel declaration form indicating their reason for travelling abroad. It also makes further minor amendments to the content of the:

- Steps Regulations;
- Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020 (S.I. 2020/1008) ("the Obligations of Undertakings Regulations"); and
- Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (S.I. 2020/791) ("the Face Coverings in a Relevant Place Regulations").

2.2 This instrument also amends the:

- Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2021 (S.I. 2020/1375) ("the LAEP Regulations"); and
- Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (S.I. 2020/592) ("the Face Coverings on Public Transport Regulations")

to extend the expiry date to 20 June 2021.

2.3 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 severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) 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) ("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 these Regulations without a draft being so laid and approved. There is an obligation on the Government to ease restrictions as soon as reasonably possible when the previous stricter measures are no longer necessary. As this instrument relaxes or removes some of the existing restrictions so that the appropriate public health measures can be taken in response to the severe and imminent threat to public health which is posed by the incidence and spread of SARS-CoV-2, it is urgent for that reason.

3.2 This instrument was laid on 17 May 2021 and was published on www.legislation.gov.uk on 15 May 2021. This instrument will come into force on 17 May 2021. The Steps Regulations, which this instrument amends, are set to expire on 30 June 2021. The Steps Regulations provide that the Secretary of State must review the Steps measures applicable to England every 35 days. Provisions amending other existing legislation will be reviewed in accordance with the timescales already provided in those instruments.

3.3 The Step 3 measures which this instrument implements were debated in Parliament on 25 March 2021.

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 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 Parliamentary Under Secretary of State for Innovation at the Department of Health and Social Care, Lord Bethell of Romford, has made the following statement regarding Human Rights:

"In my view the provisions of the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (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 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 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 SARS-CoV-2.

6.5 In accordance with section 45R of the 1984 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 22 March 2021 the Government laid the Steps Regulations which set out a legislative framework for the rest of Step 1 and Steps 2 and 3 of the Roadmap out of lockdown. On 12 April 2021 the Steps Regulations were amended by the Health Protection (Coronavirus, Restrictions) (Steps and Local Authority Enforcement Powers) (England) (Amendment) Regulations 2021 (S.I. 2021/455) to move all of England from Step 1 to Step 2 and make minor amendments to the content of the Steps Regulations and the LAEP Regulations.

6.7 This instrument amends the Steps Regulations to move all of England from Step 2 to Step 3 and makes some additional amendments to the Steps Regulations; the LAEP Regulations; the Obligations of Undertakings Regulations; the Face Coverings on Public Transport Regulations; and the Face Coverings in a Relevant Place Regulations as summarised below.

6.8 Regulation 1 provides that this instrument comes into force on 17 May 2021 and sets out its application.

6.9 Regulations 2 and 5 extend the expiry date of the Face Coverings on Public Transport Regulations and LAEP Regulations to 20 June 2021.

6.10 Regulation 3 amends the Face Coverings in a Relevant Place Regulations to insert an exemption for wearing a face covering in community premises where the gathering is reasonably necessary for specified education and training purposes and takes place in an area set aside for the sole use of those undertaking the activities in the community premises, or in a separate or enclosed part of those premises.

6.11 Regulation 4 amends the Obligations of Undertakings Regulations to refer to groups permitted to gather under the Steps regulations rather than to ‘qualifying groups’.

6.12 Regulation 7(b) removes the reference to the Prince and Steward of Scotland from the definition of ‘Crown interest’.

6.13 Regulation 8 and regulation 11(2) amend the Steps Regulations to remove the prohibition on travelling abroad without a legally permitted reason for doing so and the requirement for individuals to complete a travel declaration form indicating their reasons for travelling abroad. Regulation 7(a) also removes the corresponding definitions from Regulation 2 of the Steps Regulations.

6.14 Regulation 9 amends the Steps Regulations to remove savings provisions in regulations 21 and 23 as their effect is provided for in section 16 of the Interpretation Act 1978.

6.15 Regulation 10 amends Schedule 3 of the Steps Regulations (which sets out the Step 3 restrictions) to:

- Increase the number of people permitted to attend an organised gathering outdoors to 50, subject to the existing limits on where this may take place;
- Allow students undertaking a higher education course to form a vacation household from 17 May 2021;
- Increase the limit on numbers permitted to attend support groups and parent and child groups from 15 to 30 and remove the provision that support groups should only take place in person where it is reasonably necessary;
- Remove the capacity limit for the number of people permitted to gather at a funeral.

6.16 Regulation 11(1) applies Step 3 restrictions, instead of Step 2 restrictions, to every area of England.

7. Policy background

What is being done and why?

7.1 On 22 February 2021 the Government set out the Covid-19 Response – Spring 2021[1] to chart a roadmap out of lockdown. This roadmap outlines four steps for cautiously easing restrictions and four tests against which the decision to proceed to the next step will be based. The data was reviewed against the four tests four weeks after the implementation of Step 2 and progress was considered satisfactory to allow the move to Step 3.

7.2 In addition, on 10 May 2021 the UK Chief Medical Officers and NHS National Medical Director agreed that the UK Covid-19 alert level, which communicates the current risk at a UK-wide level, should move from level 4 to level 3. This was thanks to the efforts of the UK public in social distancing and the impact observed from the vaccination programme meaning that case numbers, deaths and Covid-19 hospital pressures have fallen consistently. The Prime Minister announced the move to Step 3 (and changes to Step 3 restrictions) on Monday 10 May 2021, giving one weeks' notice before the measures would take effect.

7.3 The Secretary of State is required to review the measures imposed by the Steps Regulations every 35 days, with a review due by Friday 14 May 2021. This review resets the clock and the next review will therefore be due by Friday 18 June 2021.

7.4 This instrument moves every area in England from being subject to Step 2 restrictions to Step 3. At Step 3 the significant changes, as set out in the Steps Regulations, include:

- Six people or two households may gather indoors and up to 30 people outdoors;
- Most significant life events, including weddings, are permitted with up to 30 attendees;

[1] COVID-19 Response - Spring 2021 - GOV.UK (www.gov.uk)

- All remaining outdoor entertainment may reopen as well as indoor hospitality, entertainment, adult group sport and exercise classes, and remaining holiday accommodation.

7.5 New measures applicable at Step 3 (from 17 May 2021) include:

- Provisions restricting international travel have been removed;
- The limit for the offence of organising or facilitating a gathering in outdoor settings has been increased from 30 to 50 people;
- Students can form a vacation household, as in Steps 1 and 2;
- Support groups are no longer restricted to operating in person only where 'reasonably necessary' and, along with parent and child groups, have an increased limit of 30 people. This will allow more people to access support, including in person;
- The numerical limit on people permitted to gather for the purpose of attending a funeral has been removed. Guidance will set out the approach that should take to determine capacity limits in different venues.

7.6 In addition, some minor amendments have been made to clarify drafting following a report from the Joint Committee on Statutory Instruments. These amendments remove savings provisions as well as a reference to 'the Prince and Steward of Scotland'.

7.7 This instrument also amends the Obligations of Undertakings Regulations to ensure consistency with groups permitted to gather under the Steps Regulations.

7.8 This instrument also amends the Face Coverings in a Relevant Place Regulations to provide an exemption for gatherings reasonably necessary for specified education and training purposes in community premises. This mirrors the policy for schools and further education providers but diverges from the policy for out-of-school settings that operate from a school, further education provider, or their own private premises. The public health rationale for the difference in position is that there is increased potential for children from different schools or further education providers to mix within out-of-school settings. When using community premises, schools and further education providers are advised to keep children in the same consistent class or year group bubbles that pupils are assigned to whilst on school premises. This therefore reduces the risk of pupils from different classes or year group bubbles mixing.

7.9 This instrument also extends the expiry date of the LAEP Regulations and the Face Coverings on Public Transport Regulations to 20 June 2021 so that existing requirements do not expire prior to the earliest date at which the move to Step 4 could occur.

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.

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 the easing of restrictions across the whole of England and closures and restrictions on movements and gatherings under these regulations as well as the wearing of face coverings.

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 at the end of 30 June 2021, a Regulatory Impact Assessment is not required and would be disproportionate.

12.2 For the Face Coverings on Public Transport Regulations a Regulatory Impact Assessment is not required as these measures do not constitute a 'regulatory provision' for the purposes of the Small Business, Enterprise and Employment Act 2015.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Steps Regulations, which this instrument amends, must be reviewed by the Secretary of State at least every 35 days. The Steps Regulations will expire and cease to have effect on 30 June 2021.

14.2 The Face Coverings on Public Transport Regulations, Face Coverings in a Relevant Place Regulations and Obligations of Undertakings Regulations, which this instrument also amends, must each be reviewed by the Secretary of State at least every 6 months.

14.3 The LAEP Regulations, which this instrument also amends, and the Face Coverings on Public Transport Regulations will now expire and cease to have effect on 20 June 2021.

14.4 The Face Coverings in a Relevant Place Regulations expire and cease to have effect on 23 July 2021.

14.5 The Obligations of Undertakings Regulations expire and cease to have effect on 16 September 2021.

15. Contact

15.1 Rachel Mogg at the Department of Health and Social Care Telephone: Email: rachel.mogg@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tim Baxter, 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 Lord Bethell of Romford, Parliamentary Under Secretary of State for Innovation at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.