EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS) (WEARING OF FACE COVERINGS IN A RELEVANT PLACE AND RESTRICTIONS: ALL TIERS) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 247

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.

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) (All Tiers) (England) Regulations 2020 ("the All Tiers Regulations") (S.I. 2020/1374) and the Health Protection (Coronavirus) (Wearing of Face Coverings in a Relevant place) Regulations 2020 ("the Face Coverings Regulations"). These Regulations enabled 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 the Face Coverings Regulations and the All Tiers Regulations to ensure that voting in polls held in accordance with an Act and supporting activities in the weeks preceding the polls, such as campaigning and nominations, take place in way which minimises transmission risk, while still allowing for meaningful campaigning.

2.3 DHSC has considered that the amendment to the Face Coverings Regulations may deter people from visiting relevant premises. To mitigate against this some face coverings will be made available at the polling station for those who do not have one and individuals who are otherwise entitled to vote may not be prevented from doing so for not wearing a face covering.

2.4 This instrument also facilitates the 2021 Census (which will take place on 21 March) by ensuring digital access to public services from community centres to enable people without access to the internet at home to complete their Census returns.

2.5 This instrument also expands the eligibility criteria for wraparound childcare and expands the list of reasonable excuses to leave home in Tier 4. It adds outdoor recreation, as a reason that individuals can leave the home and gather with their household, linked household or one other person from another household in a public outdoor place for open air recreation.

2.6 This instrument also amends the All Tiers Regulations to require that all travellers from embarkation points intending to leave the Common Travel Area (CTA) complete a travel declaration form and present that form to relevant persons when directed to do so. This instrument introduces fixed penalty notices (FPNs) for failure to comply with these requirements.

2.7 This instrument also makes minor amendments to the All Tiers Regulations to clarify policy and ensure consistency.

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. The purpose of the original instruments was to enable public health measures to be taken in response to the severe and imminent threat to public health posed by the incident and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). There is an obligation on the Government to ease restrictions as soon as reasonably possible when the previous stricter measures are no longer necessary.

3.2 This instrument was laid on 5 March 2021 and was published on www.legislation.gov.uk later that day. This instrument will come into force at 00:01 on 8 March 2021. The All Tiers Regulations, which this instrument amends, are set to expire on 31 March 2021. This instrument also amends the Face Coverings Regulations which will expire 1 year after they came into force on 24 July 2020.The All Tiers Regulations provide that 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, and the need for the restrictions in the All Tiers Regulations at least once every 28 days.

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)

3.3 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 Parliamentary Under Secretary of State for Innovation at the Department for 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) (Wearing of Face Coverings in a Relevant Place and Restrictions: All Tiers) (England) (Amendment) Regulations 2021are compatible with the Convention rights."

6. Legislative context

Background

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 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.

6.8 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 new exceptions for leaving home in Tier 4.

6.9 On 6 January 2021 the Health Protection (Coronavirus, Restrictions) (No. 3) and (All Tiers) (England) (Amendment) Regulations 2021 (S.I. 2021/8) amended some Tier 4 restrictions and made all areas of England subject to Tier 4 in order to achieve a national lockdown. That instrument also extended the expiry date of the All Tiers regulations to 31 March 2021.

6.10 On 29 January 2021 the Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021 (S.I. 2021/97) introduced a new fixed penalty notice for attending a gathering of more than 15 people that takes place in a private dwelling, educational accommodation or as an indoor rave.

6.11 The Face Coverings Regulations were introduced on 24 July 2020 and require individuals to wear a face covering when in a "relevant place". A relevant place means any premises, or any part of premises, listed in Schedule 1; or a transport hub which is indoors.

6.12 The exemptions and "reasonable excuse" remain a part of the Face Covering Regulations so individuals in these premises will not be required to wear a face covering if they meet the criteria set out in regulation 3(2) and/or regulation 4.

Legislative Changes

6.13 Regulation 1(2) provides that this instrument comes into force on 8 March 2021.

6.14 Regulation 2(2) amends regulation 5(7) of the Face Covering Regulations to insert that the power in regulation 5 may not be exercised to prevent a person not wearing a face covering from voting in a polling station where that person is otherwise entitled to do so.

6.15 Regulations 2(3) and 2(4) amend Schedules 1 and 3 of the Face Covering Regulations by including the following premises as relevant places where face coverings must be worn:

- premises which contain a polling station for an election or referendum which is held in accordance with a statutory provision; and
- premises which are being used for the counting or opening of votes in an election or referendum which is held in accordance with a statutory provision

6.16 Regulation 3(2) amends regulation 2 of the All Tiers Regulations to insert additional definitions.

6.17 Regulations 3(3)-3(5) amend regulations 9, 10 and 12 of the All Tiers Regulations. Regulation 3(3) includes enforcement powers in relation to a relevant person who may direct a person travelling to, or present at, an embarkation point to produce a declaration form and if they fail to, the relevant person may direct them to return to where they live. Regulation 3(4) makes it an offence to contravene the requirement to produce a declaration of travel form. Regulation 3(5) introduces an FPN of up to £200 for failing to complete the declaration of travel form correctly or present it to a relevant person when directed.

6.18 Regulation 3(6) inserts regulation 13A Self Incrimination which provides that information provided in accordance with the declaration of travel form may not be used as evidence against that person in criminal proceedings outside of the All Tiers Regulations.

6.19 Regulation 3(7) amends Schedule 3A in the All Tiers Regulations to include outdoor recreation as a reasonable excuse to leave home and gather in Tier 4.

6.20 Regulation 3(7) also allows later years childcare and supervised activities for children to be used to enable all parents or carers to work, search for work or undertake education or training, or attend a permitted support group or medical appointment.

6.21 Regulation 3(7) also provides a deadline of 29 April 2021 for students to return home once or to return to their student accommodation from 8 March 2021.

6.22 Regulation 3(7) also inserts exemptions to the stay at home requirements, in order to enable people to:

- participate in the candidate nomination process for statutory elections, or the petition process for local referendums;
- to undertake campaigning by or for candidates for statutory elections and campaigns for statutory referendums; and
- to observe some of the processes in such an election or referendum such as the counting of votes.

6.23 Regulation 3(7) also inserts exemptions to the gathering restrictions to allow two people to gather, including:

- in common areas of multiple occupancy residences, for the purposes of participating in the candidate nomination process or referendum petition process;
- for the purpose of campaigning by or for candidates for statutory elections and campaigns for statutory referendums; or
- for the purpose of observing electoral processes.

6.24 Regulation 3(7) also inserts PART 1A: Declaration on leaving the United Kingdom in regulation 9 of the All Tiers Regulations after paragraph 2 inserts a requirement that a person at an embarkation point must have with them a completed declaration form stating their reason for travelling outside the CTA. Regulation 3(6) details the requirements for completing a declaration of travel form correctly.

6.25 Regulation 3(7) also provides that community centres which must otherwise be closed may open for the purposes of facilitating digital access to public services, including the 2021 Census.

6.26 Regulation 3(8) inserts PART 4A: Persons exempt from the requirement to produce a declaration on leaving the United Kingdom after Schedule 4 which lists the exemptions to the requirement for completing a declaration of travel form.

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 to provide a roadmap out of the current lockdown. The 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 vaccine deployment programme continues successfully;
- Evidence shows vaccines are sufficiently effective in reducing hospitalisations and deaths in those vaccinated;
- Infection rates do not risk a surge in hospitalisations which would put unsustainable pressure on the NHS;

7.2 Our assessment of the risks is not fundamentally changed by new Variants of Concern.

7.3 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.

7.4 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.

7.5 On 6 January 2021 Tier 4 restrictions were strengthened and all of England made subject to the amended Tier 4 in order to achieve a national lockdown. The expiry date of the All Tiers regulations was also extended to 31 March 2021.

7.6 On 22 February 2021 the Government set out the Covid-19 Response – Spring 2021 to provide a roadmap out of the current lockdown. The 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 vaccine deployment programme continues successfully;
- Evidence shows vaccines are sufficiently effective in reducing hospitalisations and deaths in those vaccinated;
- Infection rates do not risk a surge in hospitalisations which would put unsustainable pressure on the NHS;
- Our assessment of the risks is not fundamentally changed by new Variants of Concern.

7.7 This instrument makes changes to the tiers system of restrictions which will start on 8 March, alongside schools and colleges opening to all students.

7.8 The Government will mandate use of face coverings in polling stations and places where votes are counted. SAGE has previously advised that there is evidence to recommend the use of cloth masks in certain higher-risk settings as a precautionary measure where masks could be at least partially effective. These settings would be enclosed spaces where social distancing is not possible to maintain consistently, creating a risk of close social contact with multiple parties the person does not usually meet. Mandating the use of face coverings to individuals in polling stations and in premises used for the opening or counting of votes, when used alongside other measures, offers a reasonable protective measure to reduce the risk of infection on contamination by a virus that presents a significant harm to public health.

Outdoor recreation, wrap-around childcare, and 2021 Census

7.9 This instrument amends the All Tiers Regulations to:

- Include outdoor recreation as a reasonable excuse to leave home in Tier 4
- Enable wrap-around childcare activities for all children where necessary to support parents to go to work, seek work, attend education, a medical appointment or to attend a support group;
- Clarify that where an officer considers that a person is outside the place where they live, they may direct a person to return to the place they are living, including where they are contravene the ‘stay at home’ order.Facilitate access to the 2021 Census by allowing community centres to open for the purposes of digital access to public services; and

Declaration of Travel forms

7.10 This instrument amends the All Tiers Regulations to:

- Introduce a requirement for individuals intending to leave the CTA to complete a travel declaration form and present it to relevant persons when directed.

- Introduce a new FPN for failure to comply with the requirement to complete the declaration of travel form, failure to do so honestly, or failure to present the form when directed by a relevant person.

Elections and Face Coverings

7.11 The UK Government proposes allowing for two months of in-person campaigning in the run up to the May elections, to ensure free and fair elections; to make changes to the number of subscribers required to support candidates in the nomination process; and to reduce the need to travel or come into contact with others, whilst retaining the need to show a level of support for their candidacy.

7.12 The changes made by this instrument will:

- Facilitate campaigning in support of the electoral success (or against the electoral success) of candidates or political parties, or relating to a referendum outcome. This will be achieved by allowing people to leave home and gather, where reasonably necessary, to undertake campaigning activities in relation to the elections and local referendums taking place on 6 May and for any further by-elections and local referendums being held for as long as Covid-19 related restrictions remain in place. This includes delivering leaflets and canvassing electors at their doorstep. These provisions are applicable from 8 March to ensure that all electors can be contacted and ensure there is equality of access to information so that electors are able to make informed choices about who and what they vote for. This also ensures there is equality of opportunity for candidates to put forward their policies and arguments to their electorates.
- Permit people to leave their homes, and gather (in a maximum of 2), where reasonably necessary for the purposes of completing candidate nomination processes, which require signatures to be collected, and for completed forms to be delivered in person to a returning officer. The nomination process is essential for elections to be able to take place. Leaving home, and gathering, where reasonably necessary for the purposes of observing voting, or the opening or counting of votes in an election or referendum will also be permitted. This will ensure the effective scrutiny of the electoral process can continue as it normally would, albeit in a Covid-secure way.
- Require people to wear face coverings in polling stations, and in premises where votes are opened or counted (unless they have an exemption or a reasonable excuse not to). This will apply to those working or providing services where they are in one of these premises where these are open to the public, and the staff member may or is likely to come into contact with members of the public. This, along with other Covid-secure measures set out in guidance, is to make sure that voters, electoral staff, observers, and the wider public are protected to the maximum extent possible from the spread of Covid-19.
- ensure that a person may not be refused entry or removed from premises if this would have the effect of preventing a person from voting where that person is otherwise entitled to vote at that polling station. Face coverings are already mandatory in a range of indoor spaces, and this amendment will ensure the requirement to wear a face covering is consistent across the range of venues that may be used for the purposes of elections.

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 the All Tiers Regulations as amended by this instrument.

11.2 There is also specific guidance published on wearing and making face coverings. This guidance will continue to be updated to include the latest information on what constitutes a face covering, the settings where the Face Coverings Regulations, as amended by this instrument apply and those who will be exempt from those Regulations.

11.3 The Electoral Commission has published guidance on polling stations and verification and count considerations in England, which includes the use of face coverings. The guidance will continue to be updated.

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, a Regulatory Impact Assessment is not required and would be disproportionate.

13. Regulating small business

13.1 This instrument 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 expire and cease to have effect on 31 March 2021.

14.4 The Face Coverings Regulations include a statutory review provision requiring them to be reviewed before the end of the period of 6 months beginning on the day on which they came into force (24 July 2020). That review provision is unaffected by this amending instrument.

14.5 This instrument amends the Face Coverings Regulations and the expiry and review provisions set out in those Regulations will continue to apply. The Face Coverings Regulations cease to have effect at the end of the period of twelve months beginning on the day on which they came into force (24th July 2020).

15. Contact

15.1 Neil Townley at the Department of Health and Social Care, email: Neil.Townley@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kevin Dodds, 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, the Parliamentary Under Secretary of State for Innovation at the Department for Health and Social Care can confirm that this explanatory memorandum meets the required standard.