

EXPLANATORY MEMORANDUM TO

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENTRY TO VENUES AND EVENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 1435

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 makes provision to take public health measures to ensure an appropriate response to the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England which causes the disease Covid-19.
- 2.2 The instrument makes this provision by amending the Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021 (S.I. 2021/1416 ("the Certification Regulations")) to correct minor errors and an omission.

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"). The Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) (Amendment) Regulations 2021 ("Amending Regulations") are made without a draft having been laid and approved by a resolution of each House of Parliament. It is the opinion of the Secretary of State that, by reason of urgency, it is necessary to make the Amending Regulations without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus (SARS-CoV-2) and the Omicron variant of concern (B.1.1.529).
- 3.2 The Amending Regulations come into force at 6am on 15 December 2021 and are published on www.legislation.gov.uk. The Amending Regulations cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. Further, the Certification Regulations, which this instrument amends, provide that they expire at the end of 26 January 2022
- 3.3 The purpose of the Amending Regulations is to make amendments to the Certification Regulations in order to correct the calculation of attendee thresholds for: 'Category B' events, those with 500 or more people indoors, likely to stand and move around; and 'Category D' events, those with 10,000 or more attendees. Additionally, this instrument suspends the requirement for a responsible person who wishes to

implement spot checks to submit their assessment to the relevant local authority at least 10 working days before the event is held until 31 December 2021. Instead the application to the local authority must under the Amending Regulations be submitted as soon as possible before the event. Finally, the Amending Regulations allow previous designations (concerning an authority to whom Fixed Penalty Notice (FPN) payments must be paid) made under the Steps Regulations, to continue to apply for designate the authority for payment fixed penalty notices issued under the Certification Regulations.

4. Extent and Territorial Application

- 4.1 The Amending Regulations extend to England and Wales and apply in relation to England only.

5. European Convention on Human Rights.

- 5.1 The Parliamentary Under Secretary of State for Health and Social Care, Maria Caulfield MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (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.
- 6.4 A number of regulations under section 45C of the 1984 Act have been made, including regulations relating to severe acute respiratory syndrome Coronavirus 2 (SARSCoV-2) (“COVID-19”).
- 6.5 This instrument is made under section 45C to provide for 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). The Certification Regulations create a series of legal obligations on people and organisations that implements a policy of ensuring that access to settings with large crowds, mixing and close contact where the risk of COVID-19 transmission may be increased is restricted to attendees/visitors who can demonstrate their COVID Status or exemption. COVID Status is obtained by being either fully vaccinated against COVID-19 (not including a ‘booster’) with any authorised COVID-19 vaccine; proof of a negative polymerase chain reaction (PCR) test or lateral flow (LFD) test, which has returned a negative result within 48 hours of entry; or proof of a medical exemption from vaccination or through participation in a clinical trial.

- 6.6 Regulation 1 sets out the date on which this instrument comes into force and its extent and application.
- 6.7 Regulation 2(1) sets out that this instrument amends the Health Protection (Coronavirus, Restrictions) (Entry to Venues and Events) (England) Regulations 2021.
- 6.8 Regulation 2(2) makes minor and corrective amendments to the Certification Regulations. Firstly, to correct the calculation of the number of attendees at a ‘Category D’ event, an event with 10,000 or more people. The number of attendees must be calculated on the basis all attendees to the event (excluding workforce) whether they are seated or unseated. Secondly, to correct the calculation of the number of attendees at a ‘Category B’ event, an indoor event with 500 or more people likely to stand or move around. The number of attendees must be calculated on the basis of all attendees to the event, excluding the workforce.
- 6.9 Regulation 2(3) amends the Certification Regulations, such that where the responsible person wishes to admit persons using spot checks to an event or venue which falls before 31 December 2021, they must apply to the local authority as soon as practicable before the date of the event, rather than the usual 10 working days. This date is amended from 29 December to provide 10 working days between the Certification Regulations coming into force and the requirement for an application to be made at least 10 working days before the event, accounting for bank holidays.
- 6.10 Regulation 2(4) amends the Certification Regulations, such that a prior designation of an authority to whom Fixed Penalty Notice (FPN) payments must be paid, which was made under the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 (S.I. 2020/1375), or the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (S.I. 2021/364), is designated for the purpose of the Certification Regulations.
- 6.11 The Amending Regulations correct errors in, and an omission from, the Health Protection (Coronavirus, Restrictions Entry to Venues and Events) (England) Regulations 2021 (S.I. 2021/1416) which come into force at 6am on 15 December 2021. These Amending Regulations are therefore issued free of charge to all known recipients of S.I. 2021/1416. The issue was identified and corrected promptly. The effect of the first two amendments was reflected in the explanatory memorandum to S.I. 2021/1416 and the published guidance in relation to COVID-19 at www.gov.uk/coronavirus on certification in England.

7. Policy background

- 7.1 The Amending Regulations are corrective and ensure the Certification Regulations apply as intended.

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.

9. Consolidation

- 9.1 No consolidation is being undertaken.

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 introduction of certification for England, as well as medical exemptions for those who are unable to vaccinate for medical reasons. This guidance reflects the intended approach and therefore does not need 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 in under 6 months, an Impact Assessment is not required and would be disproportionate. This extension falls under the Civil Contingencies Exclusion of the Better Regulation Framework and the Better Regulation Executive will not seek to enforce the current administrative requirement for validating impacts for temporary emergency COVID-19 legislation in advance of the wider reform of the Better Regulation Framework.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. This includes venues to which certification will apply and those who provide the workforce to those organisations within scope. These Regulations are being implemented as part of broader measures that prioritise controlling transmission of the virus while seeking to minimise economic and social impacts, including on small business. The NHS COVID Pass will support all businesses in checking the COVID Status of visitors to settings, reducing the operational burdens in verifying visitors' vaccination status.

14. Monitoring & review

14.1 This instrument will expire and cease to have effect at the end of 26 January 2022.

15. Contact

15.1 Georgina Stockley at the Department for Health and Social Care (georgina.stockley@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Andrew Vereker Deputy Director for COVID Strategy at the Department for Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Maria Caulfield MP, Parliamentary Under Secretary of State at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.