

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION (NOTIFICATION) (AMENDMENT) REGULATIONS
2020

2020 No. 237

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 makes provision for the purpose making COVID-19 a notifiable disease and SARS-CoV-2 a notifiable causative agent, meaning doctors are required to notify Public Health England (PHE) when they identify a patient with COVID-19 and laboratories are required to notify PHE when a causative agent listed in the Regulations has been identified.
- 2.2 This will ensure that PHE are promptly notified of any novel cases of COVID-19, which will assist in providing accurate data on the number of cases in England and ensure that information is reported to enable contact tracing, where appropriate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument is made under the negative procedure pursuant to section 45Q(3) of the Public Health (Control of Disease) Act 1984 (c. 22). The 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 order without a draft being so laid and approved so that public health measures can be taken quickly to respond to the threat to human health from the new strain of novel coronavirus (COVID-19) and reduce the risk of it becoming more widespread in the community.

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)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England only.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Public Health (Control of Disease) Act 1984 (“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 (“the 2008 Act”), provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises, for use in rare circumstances where voluntary cooperation cannot be obtained. 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 Specifically, section 45C of the 1984 Act enables the appropriate Minister (defined in section 45T as the Secretary of State for England, or the Welsh Ministers for Wales) 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 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 arising from the virus known as COVID-19.
- 6.5 This SI amends The Health Protection (Notification) Regulations 2010, listing COVID-19 as a notifiable disease and SARS-CoV-2 a notifiable causative agent. This will require doctors to notify their local authority (who in turn would notify Public Health England) if they have a patient that they suspect has COVID-19.
- 6.6 The SI will also require doctors to provide a range of information on the patient that they suspect has the notifiable disease, including name, date of birth, sex, their place of work, home address, the address of anywhere that they are staying that is not their home, overseas travel history and certain information on the timing of diagnosis and symptoms.
- 6.7 Finally, the SI will require laboratories to notify Public Health England if they identify SARS-CoV-2 when they test a sample.

7. Policy background

What is being done and why?

- 7.1 The amendments to the 1984 Act made by the 2008 Act comprehensively modernised the legal framework for health protection. Part 2A of the 1984 Act, as inserted by the 2008 Act, takes an “all hazards” approach to health protection, where the criterion for action is based on the potential of an infection or contamination to present significant harm to humans, rather than on specific infectious diseases.
- 7.2 The Health Protection (Notification) Regulations 2010 require registered medical practitioners to notify the proper officer of the relevant local authority if a patient whom they are attending has a notifiable disease, has an infection which, in the view

of the registered medical practitioner, presents or could present significant harm to human health, or is contaminated in a manner which, in the view of the registered medical practitioner, presents or could present significant harm to human health. Prior to this amendment, COVID-19 was not a notifiable disease, and therefore notification relied on a medical practitioner's assessment of the potential for significant harm. While cases have been reliably notified to date, in light of the increase incidence of COVID-19 in the UK we consider that it was no longer suitable to rely on these provisions. This instrument therefore inserts COVID-19 into the list of notifiable diseases, putting beyond doubt the obligation to notify of patients diagnosed with COVID-19, and provide the relevant information detailed in the Regulations to allow an appropriate public health response. Similarly, prior to this amendment, SARS-CoV-2 was not a notifiable causative agent, and therefore laboratories were not under an obligation to report positive test results directly to Public Health England. While results were being reported to registered medical practitioners and then notified to the local authorities and Public Health England, in light of the increase incidence we similarly did not consider it appropriate to continue to rely solely on this method of reporting, and therefore have placed the duty on diagnostic laboratories to notify Public Health England directly to assist the coordinated public health response to COVID-19.

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 Consolidation is not relevant to this instrument as it does not involve amendments to legislation.

10. Consultation outcome

10.1 There has been no public consultation in relation to this instrument.

11. Guidance

11.1 No guidance is published alongside this instrument at the current time.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is a low level of impact per business.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that it would have a minimal additional burden on small businesses because doctors and laboratories are already voluntarily taking this practice.

13.3 The basis for the final decision on what action to take to assist small businesses is that no additional support is needed as the impact should be minimal.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be kept under regular review.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Jeremy Mean at the Department of Health and Social Care. Telephone: 020 7210 5231 or email: Jeremy.Mean@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jeremy Mean, Deputy Director for Population Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under-Secretary of State, Nadine Dorries at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.